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## Indigenous Peruvians Score a Victory in Fight for Territorial and Health Rights

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After months of pressure and work, indigenous and campesino (farm workers) organizations won a victory May 25 when the Peruvian Congress repealed a law that infringed on their territorial and self-determination rights.

The repealed law—Legislative Decree 1333—had authorized expropriation of territory belonging to indigenous people and campesino communities and the relocation of indigenous populations, as well as the interference in internal native and campesino community organizations, in order to facilitate investment projects included in President Pedro Pablo Kuczynski's economic reactivation program ([NotiSur, March 24, 2017](#)).

This decree contemplated the creation of a government agency (Proyecto Especial de Acceso a Predios para Proyectos de Inversión Priorizados APIP), that would have granted access and prioritized execution of infrastructure projects on lands that had not yet been regularized. Of Peru's 10,529 indigenous communities, more than 4,000 still lack property titles.

The Institute for the Legal Defense of the Environment and Sustainable Development (Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible, IDLADS), which provided indigenous organizations with legal support in the efforts to repeal the law, praised the congressional action. "This legislative achievement owes its success to the excellent work of indigenous organizations, which used parliamentary procedures, social impact, strategic litigation, and an outstanding communications campaign to its fullest potential," it said.

IDLADS was making reference to the disinformation campaign launched by the economics ministry (Ministerio de Economía y Finanzas, MEF), which tried to represent meetings with indigenous organizations as an indication of the organizations' agreement with Decree 1333 and their opposition to its repeal. The ministry simply wanted to make slight modifications to the decree.

"The saddest thing about the MEF campaign was that the vice minister in charge of inter-cultural relations backed the decree and ignored congressional action [the Congressional Constitutional Commission had voted on March 14 in favor of its repeal] and the ombudsman, who recommended repeal of this regulation because it had been created without proper of consultation and it was damaging to the collective rights of indigenous peoples. It then became clear that the agency in charge of inter-cultural relations does not respond to the defense of indigenous rights and requires urgent reform," IDLADS stated.

Six indigenous organizations that joined in a unity agreement (Pacto de Unidad de Organizaciones Indígenas del Perú) issued a statement on May 4 saying, "We offer our public support to the members of the Constitutional Commission who have chosen to repeal [Decree 1333], demonstrating authentic sensitivity toward the collective rights of our peoples and indigenous communities, a decision we hope will be ratified by Congress ... In this sense, we demand that

Congress repeal Legislative Decree 1333 and that the Ministry of Economy and Finance stop encouraging evictions from our lands and ancestral territories.” The organizations warned the MEF to avoid actions that could generate new Baguazos, referring to events in 2009 when Amazonia indigenous communities rose up against legislative decrees that affected their collective rights and that resulted in the deaths of 23 policemen and 10 civilians ([NotiSur, June 18, 2010](#), and [June 27, 2014](#)). “As of now, the indigenous organizations declare ourselves dedicated to the struggle and on permanent alert, reaffirming our commitment to mobilize in defense of our rights as we have done historically.”

In May, groups representing agrarian workers (Confederación Nacional Agraria, CNA) and the indigenous women of Peru’s Andes and Amazon regions (Organización Nacional de Mujeres Indígenas Andinas y Amazónicas, ONAMIAP), both part of the unity agreement, filed a protective action to invalidate the eviction law, arguing that it violated the law requiring prior consultation (Ley de Consulta Previa, in effect since 2011) and directly affected the right of ownership and possession of indigenous peoples.

The indigenous news service Servindi published an article by the lawyer Luis Hallazi in which he enumerated legal reasons for repealing the decree. “Given that APIP does not differentiate between urban and rural lands, neither formal nor informal, that is to say, it does not have any restrictions on the land that it will clean up for prioritized investment projects, said norm should have gone through a process of free, prior, and informed consultation according to Law 29785 and its regulations and the International Labor Organization Convention 169 [known as the Indigenous and Tribal Peoples Convention]. This has recently forced the indigenous organizations of the unity agreement to file a protection action for lack of prior consultation with Decree 1333,” Hallazi wrote.

Like Hallazi, numerous specialists, human rights defenders, indigenous organizations such as the Asociación Interétnica de Desarrollo de la Selva Peruana (Inter-Ethnic Association for the Development of the Peruvian Jungle, AIDSEP), and civil society groups supported the work of the organizations in the unity agreement to repeal Decree 1333. In Congress, legislators Tania Pariona Tarqui, María Elena Foronda, and Marisa Glave Remy, all members of the left-wing Frente Amplio, spoke out in favor of indigenous rights.

### *The struggle continues*

“The decision by the full Congress that abolished Legislative Decree 1333 was an act of justice,” said a statement from the CNA.

The repeal of the decree, done with a majority vote, had support from members of Fuerza Popular, the pro-Fujimori party. Nevertheless, some Frente Amplio members argued that the Fuerza Popular vote was not a vote of conviction but of convenience. The repeal of Decree 1333 was more the result of the political tension between Fuerza Popular and the executive branch ([NotiSur, Jan. 20, 2017](#)) than of Fuerza Popular’s interest to support the indigenous cause, Congressman Marco Arana told Servindi.

“The indigenous organizations are aware that opposition within Congress and the spirit to destabilize the current government played a role in this victory,” the CNA said. “But they are also aware that justice was on their side and that their actions made a difference in the political class getting involved in indigenous causes that have little space in day-to-day discussions.”

## *Oil pipeline challenged*

Another regulation indigenous organizations challenged is Legislative Decree 1292, which established that operation of the Norperuano oil pipeline is a “public necessity or national interest” and therefore empowers the Peruvian government to “acquire” the necessary lands to operate it. In other words, that means the government could expropriate campesino community and native lands adjacent to, or near, the pipeline. In May, the full Congress voted to repeal the provision in Decree 1292 that declared the safe operation of the pipeline to be a public necessity and in the national interest. (The repeal was included in a proposal, Proyecto de Ley 1063, sent to Congress by the Constitutional Commission.)

As the ONAMIAP noted, both Decrees 1292 and 1333 were serious threats to the indigenous peoples and their territorial rights, and the fact that these threats have been overcome doesn’t mean they can lower their guard in the fight to defend their rights.

“From the point of view of ONAMIAP and indigenous organizations in general along with allied institutions, we salute the decision to repeal Legislative Decree 1333. At the same time, we reaffirm our commitment to remain vigilant to stop the growing escalation of legal norms that endanger our rights, particularly territorial rights, in the name of promoting investments in extractive activities and macroeconomic growth that deepens the economic, social, and political inequalities rather than contribute to narrowing them,” the ONAMIAP statement said.

And the CNA noted, “The thought within the indigenous and campesino movement on this victory is that what is needed is true representation in the government structure. It’s no coincidence that government officials operate on behalf of major investment projects, as occurred in this case.”

The office of the vice minister for inter-cultural affairs and the working group for indigenous policies (Grupo de Trabajo de Políticas Indígenas, GTPI) are still far from guaranteeing the actual fulfillment of territorial rights for Peru’s indigenous peoples. The goal of the indigenous organizations is to have real representation that guides the execution of programs and policies in favor of the needs and development of its peoples and to filter the ambitions of transnational and extractive interests that offer little life for the lands of natives and campesinos, the CNA said.

The struggle of indigenous people is long and permanent. In May, they also achieved the repeal of Resolution 355-2015 from the agriculture ministry (Ministerio de Agricultura y Riego) that placed obstacles in the way of streamlining the process of awarding titles to communal lands by requiring technical soil analysis. The new regulations (#0194-2017) that replace the repealed resolution, however, include a series of omissions that, as a result, leave indigenous rights out of the picture. They do not consider community participation in the titling process for communal lands and extend their reach to establishing individual property titles that, according to AIDSESEP, “come into conflict with communal titling.”

Although AIDSESEP welcomed the repeal of Resolution 355-2015, it sent a few suggestions to Pablo Quijandría, the vice minister in charge of agrarian policies. Among the suggestions were how to include a paragraph in the new norm that would recognize “the importance of respecting the customary rights of indigenous communities in the traditional use and customs regarding lands they occupy and use.” AIDSESEP also proposed adding an item that calls for the participation, in all phases of the titling process, of “technical representatives of indigenous organizations that

communicate with the native communities involved in the titling." They suggested another specific ministerial resolution be written covering titles for individually owned property.

### *Plan to reduce indigenous health care stymied*

Peru's indigenous organizations are determined not allow any measure by the Kuczynski administration to violate their rights. Before repealing and amending the legislative decrees that violated their right to prior consultation and their territory, they had already accomplished another victory when then persuaded the health ministry (Ministerio de Salud, MINSA) to rectify a measure approved March 5 to remove from the ministry structure the office dedicated to the health of indigenous peoples. On April 24, MINSA responded to pressure from indigenous groups supported by a conglomerate of health organizations from civil society known as Foro Salud and restored that position. The measure was well received by indigenous organizations, which announced that they would continue demanding respect for their rights to access good health services and the development of an intercultural health policy that includes their participation.

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