

# “Our Struggle Continues.” Confronting the Dynamics of Dispossession in the Peruvian Amazon

The case of Santa Clara de Uchunya and their fight to obtain justice and regain their territory

By Tom Younger

Forest Peoples Programme



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## ABSTRACT

The Shipibo-Konibo community of Santa Clara de Uchunya is struggling against the dispossession and devastation of their ancestral lands due to the aggressive expansion of oil palm. This article discusses the social and cultural impacts of agribusiness-led deforestation on the community and their territory. The discussion focuses on the political and legal strategies they have developed together with allies to demand the restitution and remediation of their ancestral lands. Finally, we consider some of the critical successes and challenges the Shipibo-Konibo community faced during the past five years of this struggle.

**Key Words:** indigenous peoples, land titling, deforestation, agribusiness, palm oil, corporate accountability

When Santa Clara de Uchunya community members, a Shipibo-Konibo Indigenous community located on the banks of the Aguaytia River in the lowland rainforest of the Peruvian Amazon, talk about their ancestral territory, there is a before and after.

Luisa, a woman leader from the community, puts it this way:

*"Before, we walked freely. Now we are like hunted animals. We have to take care whenever we walk anywhere, from fear."*

This rupture in time and in people's relationship with their territory occurred with the entry of a transnational oil palm company, Plantaciones de Pucallpa (today Ocho Sur P). Beginning in 2012, the company destroyed more than 7,000 hectares of forest and stripped the community of a vital part of their traditional lands. Practically overnight - in historical terms - the company's aggressive expansion of oil palm monoculture has forced radical changes in the community's way of life.

Wilson, a community authority now in his 40s, describes some of these changes:

*"Before, we used to set out from here to go hunting and sleep in the forest. We would stay out for anywhere between eight and fifteen days. We would make our way there, set up our campfires and eat out there. Three or four families would go together to hunt there. We would build a campfire, and all eat together. That was our custom. It's not that today we no longer want to; now one cannot even walk there safely on the other side [of the river, where the plantation is now located] ... Nowadays, if they see us, the people there, act like thugs, treating us as though we were thieves. We used to walk freely. They are putting an end to our customs. Who's responsible? The State."*

The Shipibo people have inhabited the lands to the west of the Aguaytia and Ucayali rivers for generations. Maps drawn up by missionaries such as "Exploraciones y fundaciones de los misioneros de Ocopa en la Montaña del Perú 1750 – 1825", which today hangs in the Franciscan Convent of Santa Rosa de Ocopa outside Huancayo, shows the location of "Sipibos." They occupy the lands which Santa Clara de Uchunya are struggling to reclaim today, several centuries later.

Despite this longstanding historical recognition of the Shipibo's traditional territoriality, the continuing structural oppression of Indigenous Peoples in Peru means that the community lacks full formal recognition of its ownership rights over the entirety of their ancestral territory.

Thus, when Plantaciones de Pucallpa's workers started destroying Santa Clara's traditional forests in 2012, the community only possessed a collective land title granted in 1986, covering 218 hectares. This site is a minuscule portion of the territory that the community has traditionally owned and occupied for generations, originally covering over 86 thousand hectares.

If the community's lifeways were previously oriented towards abundant and carefully tended forests, today, in a new context of scarcity created by the intense enclosure and dispossession of their lands, families from Santa Clara de Uchunya must depend more and more on the market economy to meet their needs.

As community members point out time and again about the game animals, fish, and other forest foods, plant medicines, construction

materials, and clean water that they previously provisioned themselves with from within their territory: ***“There is nothing left.”***

A community member who just several years ago was able to construct the roof on his house using xebon leaf, harvested from nearby, must now buy corrugated iron sheets; gathering xebon leaf from the territory is no longer tenable due to invading land traffickers.

The same goes for traditional medicine.

*“Our medicine was chuchuhuasi, clavohuasca, sangre de grado, copaiba resin,”* says Wilson. *“Our elders used to diet these plants for three days to a week to cleanse and heal their bodies.”*

*“Before, we didn’t need injections or pills. Those who felt unwell would go into the forest. Our elders, who are around 80 years old, walk strong because they treated themselves with those medicines. Plant medicines were the best medicine we had. But today, there is no more.”*

The devastation of the living ecosystems that make up the community’s territory and the loss of practices intimately linked to this place hinder the community’s lifeways and well-being in the present and give rise to anxieties about the future.

In that sense, Fidel, a young man, asks, *“Our concern as young people is that if we do not know many animals at this age, what will it be like later for our children?”*

Luisa adds, *“Before, we had everything we needed. For us, our market was our territory. Now we can no longer walk for even an hour*

*because we are under threat. That’s why I’m concerned, because tomorrow, in the future, what will our children eat? How are they going to feed their children? I recall how my mother and father fed us, and we can no longer do that. And it’s going to be much worse for them because now there’s nothing. They’re not even going to know what it is to turn a tree into a canoe, as is our custom. They’re not going to know our medicines, because there are none left. Everything is being destroyed. Before we ate well, we grew to be strong and fat, but now, what happens to our children? They suffer from diarrhea, vomiting, dehydration.”*

The company’s arrival and continuing presence has driven fierce competition for control over lands between groups of non-indigenous/mestizo settlers from other regions of Peru dedicated to what is known locally as “land-trafficking.” Dammert (2019) characterizes this phenomenon as *“the perverse and systematic use of State titling mechanisms to incorporate lands into market circuits and profit from them.”*

Both individuals and organized groups occupy and take possession of lands that lack formal legal recognition and seek to obtain possession certificates from the regional agricultural agencies, typically clearing any forest on such lands in the process. Indeed, forest clearance is incentivized by Peru’s essentially agrarian land-use classification system dating back to the 1970s. The classification system stipulates that people claiming land rights must demonstrate “economic activity,” i.e., by clearing forest to install agropastoral systems. These possession certificates, which may subsequently be

converted into individual land titles, may be sold to commercial buyers (as was the case with Plantaciones de Pucallpa). This forms part of a more extensive and ongoing process across the Peruvian Amazon of the commodification of collectively held Indigenous lands and their forced incorporation into a commercial land market, ever-expanding commodity production, and international circuits of capital accumulation.

The consequences highlighted above have led to the reconfiguration and emergence of social hierarchies based on gender, race, and class.

These include:

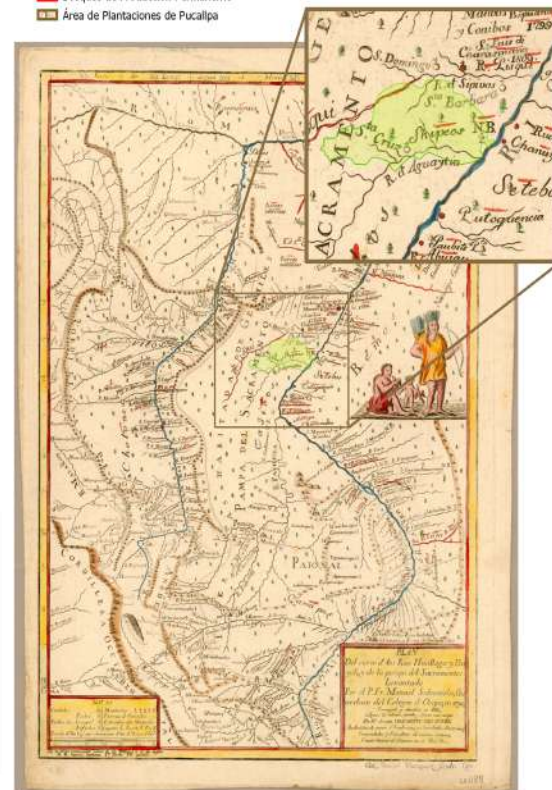
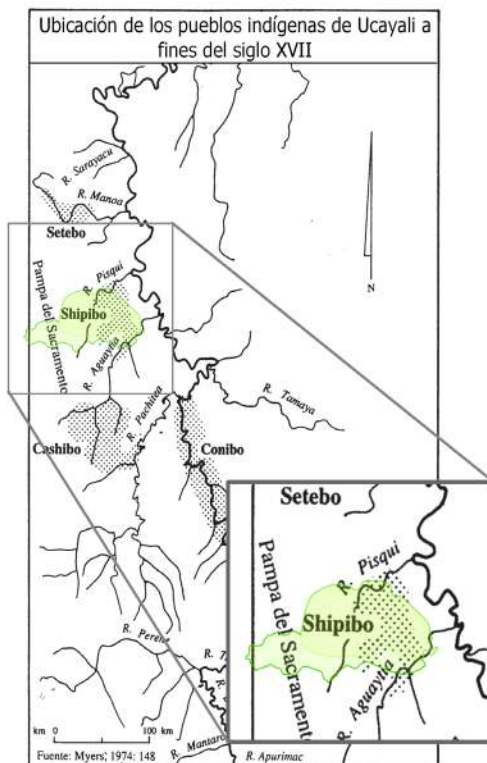
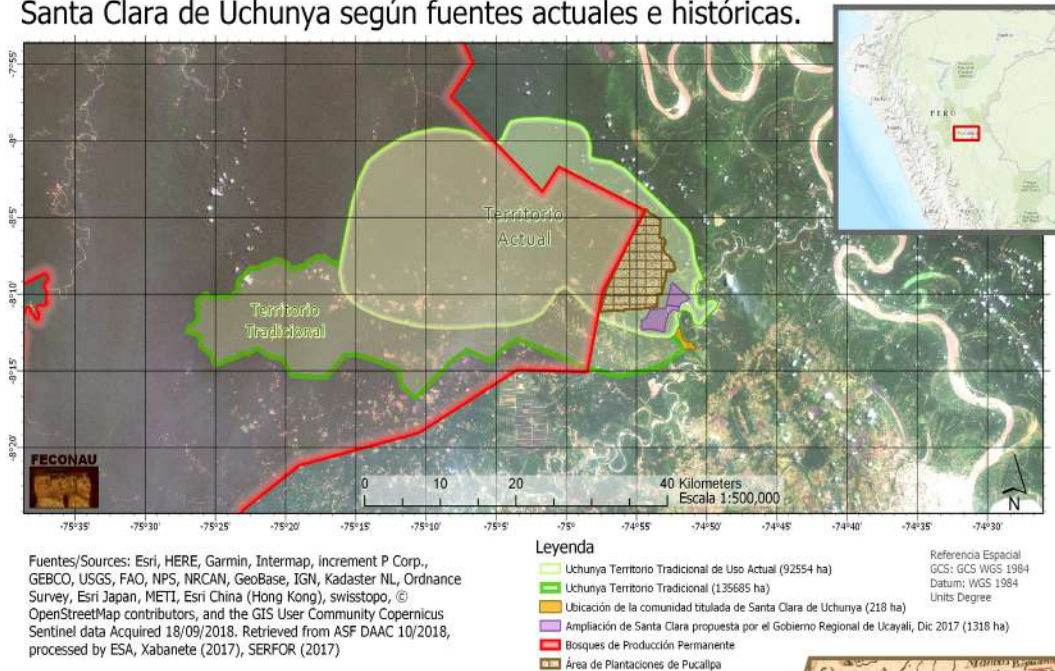
- The destruction of Santa Clara de Uchunya's communal and household autonomy and non-monetary territorial provisioning systems. The losses force both men and women to seek waged work where possible, often outside of the community, increasing the burden of care work for women and elderly people who remain in the community.
- Men and women from the community have been divested of the power to decide over what happens within their lands, with decisions taken by mestizo men representing the Peruvian State in offices in the cities of Pucallpa and Lima, as well as the Euro-American men who direct Ocho Sur and its US-based investors. A stark example of such racialized discourses are comments made by the Ucayali Agrarian Agency's ex-director, Isaac Huamán Pérez, who repeatedly expressed his rejection of

Indigenous Peoples' customary land rights. He argued in the case of Santa Clara de Uchunya that "ancestral property is a thing of the past" and unequivocally stating that Indigenous Peoples want to enforce "the law of the jungle." On the other hand, Huamán made numerous public announcements on the urgent need to recognize the 'customary possession rights' of settlers. Furthermore, he attempted to change prevailing forest laws to dissolve the 'permanent production forests' to achieve this goal, making clear the priority he attributed to non-indigenous people's rights and their uses (Forest Peoples Programme et al., 2018, p. 15).

- The Shipibo people's territoriality – comprising the multiple ways they relate to their territory – has been largely ignored by the State in its interventions, as will be expanded upon below. These interventions have tended to focus at best on important though narrowly conceived "environmental aspects" of the case, such as quantifying deforestation.
- The racialized hierarchies according to which the plantation itself operates are also worthy of remark. While white, Euro-American men hold power over the running of Ocho Sur P's plantation, Shipibo leaders have observed that many of the 1,700 workers whose labor is exploited there are themselves Indigenous people from Ucayali and neighboring regions such as Loreto.



## Mapas de ubicación del territorio tradicional de la comunidad shipibo-conibo de Santa Clara de Uchunya según fuentes actuales e históricas.



Aclaración: Todos los mapas y datos que describen el territorio consuetudinario de la comunidad de Santa Clara de Uchunya en este documento son confidenciales y la propiedad intelectual de los miembros de la comunidad. Por ende, no deben reproducirse, publicar, distribuir, transmitir, mostrar o difundir de otra manera sin su permiso expreso dado; libremente, previamente, de manera informada y en forma escrita. La información sobre el área de uso actual y tradicional de la comunidad proviene del 'Estudio de la territorialidad de la comunidad nativa Santa Clara de Uchunya', XabaNete Marzo 2017. El estudio ha identificado y definido el 'Territorio Tradicional' de la comunidad como 'la superficie ocupada, por lo menos, desde los ancestros recientes, es decir dos generaciones antes de los actuales ancianos' y el 'Territorio Tradicional de uso actual', como el área que 'por diferentes razones de pérdida territorial, en la actualidad se encuentra reducido del Territorio tradicional'.

The resulting conflicts have exposed the Shipibo-Konibo community to intimidation, threats, and attacks. Community members, leaders, and allies who have made a stand to protect their territory against the spread of land grabbing and forest destruction have been subjected to verbal abuse, threatened and warned to abandon their homes, received death threats, and been shot at on multiple occasions. These abuses and threats have prevented community members from moving through their territory. People who have asserted their right to freely access their traditional lands have been met by groups of men wielding machetes, sticks, and firearms. Shipibo land defenders have also been targeted and defamed by regional authorities and regional press, and media (Forest Peoples Programme, 2020a, p. 14-16).

### **“We continue struggling” - strategies for resisting the dynamics of dispossession.**

For the past six years, the community has been fighting to defend what remains of their forests, waters, and way of life, prevent further deforestation and oil palm expansion, and ultimately, to ensure legal and practical control over their ancestral territory. The community has taken direct action to intervene and halt further deforestation, protested, and denounced these violations and the devastation caused to their home locally and internationally.

The community has taken a series of legal actions to defend their territory, using criminal and constitutional judicial mechanisms. In May 2015, the community filed a criminal complaint against the palm oil company, Plantaciones de

Pucallpa, for deforestation. The case was initially investigated by the First Corporate Provincial Prosecutor’s Office Specialized in Environmental Matters of Ucayali before being transferred to the First Supra-provincial Corporate Specialized Prosecutor against Organized Crime in Lima. This was carried out after it was determined that the case involved organized crime. In January 2018, the Fourth National Preparatory Investigation Court issued a precautionary measure ordering the company to immediately suspend its activities. However, this injunction was never enforced, and five years after the original complaint was filed, the company continues its operations with impunity.

In May 2016, the community, together with their representative Indigenous organization, the Federation of Native Communities of Ucayali (FECONAU), presented a constitutional lawsuit against the company and the Regional Government of Ucayali public registry officials who facilitated the land grab. This lawsuit seeks the restitution, collective titling, and remediation of the community’s ancestral lands. The claim was rejected by two courts in Ucayali before being admitted for consideration by Peru’s highest Court, the Constitutional Tribunal, which in August 2018 announced that it would resolve the case. A hearing took place in September 2019. The community’s claim was strengthened by an *amicus curiae* expert legal briefing provided by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, underscoring Peru’s legal obligations to formally recognize the community’s traditional lands (2019). The community is currently awaiting the Court’s ruling on their case.

The community has also shared their testimonies and demanded solutions in international spaces, such as the Inter-American Commission on Human Rights (2018) and during a formal mission by the UN Special Rapporteur on the Situation of Human Rights Defenders to Peru in January 2020 (OHCHR, 2020).

While the actions mentioned above have been primarily directed towards the Peruvian State, the community and allies have also sought to hold accountable the companies involved by using non-judicial redress mechanisms. One of them is the complaints mechanism of the Roundtable on Sustainable Palm Oil (RSPO),<sup>1</sup> a global body that seeks to improve the sustainability of palm oil supply chains.

Both Plantaciones de Pucallpa and another plantation which expanded at the same time immediately to the south, Plantaciones de Ucayali, form part of a complex web of agribusiness companies that have used secrecy rules in overseas jurisdictions to avoid accountability for their activities. This corporate web has come to be known in Peru as the “Melka Group” of agribusiness companies, named after Czech-US businessman Dennis Melka. Melka, who was previously implicated in agribusiness-led deforestation and human rights violations as co-founder and joint CEO of Asian Plantations Ltd in Malaysia, gained notoriety in Peru and globally during recent years for industrial-scale deforestation and rights violations associated with his oil palm and cacao plantations in Ucayali and Loreto.

The community and allies have targeted formal complaints with the RSPO against Plantaciones de Pucallpa <sup>2</sup> and companies that have been buying and processing oil palm from their devastated lands, including the miller OLPESA and Peru’s largest consumer goods company, Alicorp. <sup>3</sup>

## Successes, challenges, and limitations

While the community is still fighting for a definitive solution to ensure the restitution and remediation of their territory, their unified stance and determination have resulted in some significant successes.

At great personal risk, community members have organized territorial patrols to monitor their lands and undertaken the self-demarcation of their territory (despite this being an obligation of the Peruvian State). Community members intervened on multiple occasions to prevent further logging of their forests by settlers, exercising their right to administer Indigenous justice in defense of their territory to confiscate logging equipment.

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<sup>1</sup> <https://www.rspo.org/> The RSPO describes itself in these terms: “... not-for-profit that unites stakeholders from the 7 sectors of the palm oil industry: oil palm producers, processors or traders, consumer goods manufacturers, retailers, banks/ investors, and environmental and social non-governmental organisations (NGOs), to develop and implement global standards for sustainable palm oil.”

<sup>2</sup> <https://www.forestpeoples.org/en/global-finance-trade-palm-oil-rspo/press-release/2017/press-rspo-ruling-condemns-plantaciones-de>.

<sup>3</sup> <https://www.forestpeoples.org/en/palm-oil-rspo/press-release/2019/amazonian-community-fights-lands-are-destroyed-sustainable-palm>.



In September 2015, the Peruvian Ministry of Agriculture ordered Plantaciones de Pucallpa to suspend its operations.

In April 2016, the RSPO issued the company with a stop-work order.

The community's continued resistance and mounting legal actions are likely what precipitated the auction of Plantaciones de Pucallpa and Ucayali's plantations to Ocho Sur P and U in July 2016, with Plantaciones de Pucallpa subsequently withdrawing from the RSPO in October 2016.

In February 2017, United Cacao – another company linked to Melka and one of Plantaciones de Pucallpa's financiers - was excluded from the London Stock Exchange's Alternative Investment Market.

When the Constitutional Court agreed to resolve the community's claim for protection in August 2018, this marked the first time that the Court would decide on the titling of Indigenous territories. The Court's decision has the potential to set a vital precedent for Indigenous Peoples across the country -many of whom lack any form of official recognition of their traditional lands.

The community's defense of their territory gained a further boost in February 2020 when the Regional Government of Ucayali repealed a regional ordinance that sought to remove protections for more than 3.5 million hectares of rainforest and facilitate the invasion of Indigenous lands, including a significant part of the community's territory. Despite these

significant milestones, the structures of impunity in Peru mean that the condemned plantation has been able to keep operating on the community's lands.

The legal actions started by the community – including both the criminal investigations and the constitutional lawsuit – have been subject to intense delays and setbacks. Administrative processes have faced similar obstacles. Despite the community and allies' best efforts, even a partial land title extension covering the community's lands between the river Aguaytia and the oil palm plantation is still yet to be fully formalized.

Community leaders who have taken a stand in defense of their lands have been subjected to criminalization, threats, and violence. Despite having reported these threats to various State entities – including members of Congress, the Human Rights Ombudsman, the Ministry of Agriculture, the Ministry of the Environment, the Ministry of the Interior, the Ministry of Justice and Human Rights, the Regional Government of Ucayali, the Regional Police of Ucayali, etc. – members of the community and FECONAU have not received effective protection measures.

All but two of the dozen personal security guarantees requested by community members since 2017 after receiving death threats have been rejected by the Ministry of the Interior, allowing the perpetrators to continue to act with impunity. Furthermore, complaints filed following shootings in December 2017 and July 2018 against members of the community, FECONAU, and legal support organization, the Institute of Legal



Defense, were thrown out due to the Interior Ministry's incapacity to identify those responsible persons. Community members who have exercised Indigenous justice by confiscating chainsaws and expelling land-traffickers from their lands have also been subject to further intimidation and repression. Traffickers who accuse them of crimes such as aggravated robbery, seeking damages and duress took actions in the form of malicious judicial proceedings. Responding to these spurious allegations compounds the psychosocial impacts experienced by community members and demands more of their limited energy and resources.

A significant barrier that impedes the community's access to justice is that they are not considered to be an affected party regarding the deforestation which has taken place in their territory. Peruvian law stipulates that forests constitute the "patrimony of the nation." Therefore, it is the State – and not the community – that is harmed by these crimes. Peru's position disregards the fact that it is frontline community members who are actively organizing to patrol and protect their territories and forests--something which the State does not do. Rather than supporting this community-led territorial defense, the State limits itself to offering community leaders who face death threats for undertaking this dangerous work ineffective and reactive protection protocols for human rights defenders. This also prevents the community from participating in and giving momentum to criminal investigations, which instead must depend on prosecutors who often lack the resources and personnel to investigate and resolve cases. Furthermore, this lack of

regard for Indigenous Peoples' experiences means that such investigations and judgments usually fail to consider the social and cultural effects of environmental crimes.

Mounting resistance from the community and allies from 2014 onwards and the high-profile denunciations against Plantaciones de Pucallpa have been met with numerous company attempts to avoid accountability and to neutralize demands for justice. Amidst increasing economic disruption, Plantaciones de Pucallpa and Plantaciones de Ucayali used trusts and subsequent auctions organized irregularly in June 2016. Both plantations were sold for USD \$62 million to two recently formed companies, Ocho Sur P and U.

The shares for both companies would appear to be owned by a third company, Peruvian Palm Holdings Ltd, incorporated in Bermuda a few weeks after the RSPO issued its stop-work order. The holding company's formation was initiated the day after news emerged that Peruvian authorities had verified and documented that Plantaciones de Pucallpa continued operating in violation of the stop orders. Melka, who previously directed Plantaciones de Pucallpa, was one of Peruvian Palm Holdings' directors until mid-2020.

Other Peruvian Palm Holdings directors include principals and partners from several US-based private equity firms specializing in agribusiness investments, including Anholt Services (USA) Inc. and AMERRA Capital Management LLC. The former also previously invested in United

Oils Ltd. SEZC, the original parent company of Melka's plantations in Ucayali, which was domiciled, like Melka's other company, United Cacao, in the Cayman Islands. AMERRA reports having made private debt investments initially in palm oil in Peru in September 2015, though it is unclear whether these investments related to Plantaciones de Pucallpa. This use of complex corporate structures and secrecy jurisdictions, such as the Cayman Islands and Bermuda, has made it very difficult to trace the owners and financiers of Ocho Sur and holding them accountable for these destructive investments proves an enduring challenge. This specific case of land tenure and human rights violations by Ocho Sur again raises legitimate questions over international investors and financiers' accountability to Indigenous Peoples and local communities, who are directly and indirectly harmed by actors and business operations receiving transnational finance credit.

The Peruvian State's unwillingness to resolve the case has continued effects on the community, their territory, and way of life. A satellite analysis published in October 2020 found that between 2012 and August 2020, some 15,721 hectares of the community's forests—an area three times the size of Bermuda—were destroyed (Forest Peoples Programme, 2020b). The oil palm plantation owned by Ocho Sur P SAC operates on at least 6,845 hectares of these lands, while deforestation of the lands surrounding the plantation continues to increase. While the highest deforestation rates occurred in 2013, during the initial clearance for the plantation, the second-highest rates were recorded in 2019. This more recent forest destruction has been happening in the community's territory to the west of the plantation. Rates of forest loss in mid-2020

during the pandemic lockdown were already 35% higher than for the same period in 2019.

### **Alternatives - Remain in the territory, regain the future.**

*"I feel worried, because five years have passed. It's because of corruption, I think, that they won't title us once and for all; they just continue to mess us around. But we as a community continue fighting to recover our lands, for our children."*

-Efer Silvano, community leader from Santa Clara de Uchunya

This paper began by describing the consequences of massive deforestation and oil palm expansion on the community of Santa Clara de Uchunya's lifeways, practices, and their autonomy in terms of access to their territory, food, water, plant medicine, and other materials.

We discussed how the oil palm plantation's establishment was both facilitated by and has, in turn, accelerated local processes of land trafficking, based on the dispossession and commodification of collectively held Indigenous lands. In turn, these processes have led to the reconfiguration of social hierarchies based on gender, race, and class, often linked to control over the territory.

In response to this situation, the community and its allies have undertaken a series of resistance strategies, ranging from direct action and protest to legal court actions, from advocacy in international human rights fora to non-judicial redress mechanisms. Though these actions have successfully disrupted the company and halted the further expansion of the plantation, they have not met their goals of land

restitution and remediation, and violence and deforestation against the community continue. The Peruvian State has failed to support the community's efforts to defend its territory and protect community members and allies who face threats, attacks, and criminalization. Furthermore, the fact that frontline Indigenous communities such as Santa Clara are prevented from fully participating in investigations over deforestation is a significant obstacle to social and ecological justice and protection. Simultaneously, the company's destructive operations have been facilitated by the use of elaborate corporate structures and secrecy jurisdictions, which has posed significant practical challenges for holding these actors to account and raises key questions around corporate accountability for downstream business actors, investor companies, and financial institutions.

During 2020, the COVID-19 pandemic expanded across the Peruvian Amazon, infecting more than 10,000 Indigenous people and claiming the lives of many, including cherished Indigenous elders, knowledge-bearers, and leaders.

During the National State of Emergency, Ocho Sur did not cease its agro-industrial activities. On 5 June, when the Ombudsman's Office of Ucayali, together with the Regional Health Directorate of Ucayali and Public Prosecutors, arrived at Ocho Sur's facilities to monitor labor and health conditions, they discovered that 35 out of 39 workers – 90% - tested positive for COVID-19.<sup>4</sup>

A community member said, "In June, a health team entered Santa Clara de Uchunya and counted some 15 cases [of COVID-19]. There

have been two deaths already, an elderly lady and a baby, with coronavirus symptoms(...) The company has got rid of our medicinal plants, our clinic. Where will we get medication during the pandemic? They've closed off the forest to us, and they treat us like thieves within our own territory. This is sad, and we want action to be taken now; the Court must return our land that we and our grandparents have taken care of for many years."

That Amazonian Indigenous Peoples find themselves on the frontlines of the pandemic and health crisis, as well as the ongoing dangerous struggle to protect their territories and forests of life during an unprecedented planetary climate and biodiversity emergency, makes visible the deep fractures of inequality and power which underlie the interconnected eco-social crises of our moment.

Confronting both the COVID-19 pandemic and the pandemic of violence and dispossession means putting Indigenous Peoples' rights and self-determination at the center of responses to the immense challenges faced by forest peoples and the whole of humanity. Crucially, this means recognizing Indigenous territories. As one collective of Amazonian Indigenous organizations put it in a statement issued from Yarinacocha in Ucayali in July 2020:

"We live in a system that has always relegated us and made us invisible. But today we say: Enough is enough! No more! It is time for change, justice, and equality!"<sup>5</sup>

<sup>4</sup> <https://convoca.pe/investigacion/ucayali-el-90-de-los-trabajadores-de-ocho-sur-testeados-dieron-positivo-para-covid-19>

<sup>5</sup> Statement from collective of Amazonian Indigenous organizations, Yarinacocha, Ucayali, July 2020

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**ABOUT THE AUTHOR**

## Tom Younger

Tom Younger offers this perspective as an action-researcher and anthropologist who has been working in solidarity with the community of Santa Clara de Uchunya since 2016. Since 2017, Tom has worked with Forest Peoples Programme, an international organisation which supports Indigenous and forest peoples in the defence of their rights and territories in more than twenty countries throughout Latin America, Africa and Southeast Asia. FPP supports Indigenous Peoples and local communities' struggles to create political spaces through which to defend their collective rights, govern their territories and determine their futures. Tom lives in Glasgow, Scotland.