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# **The Rights of Indigenous Peoples in Peru: From Socio-political Marginalization to the Modern Principles of Multiculturalism**

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The purpose of this article is to give a brief overview of the evolution of the socio-political and legal status of indigenous peoples in the Republic of Peru, and to present one particular example of the struggle for respect and implementation of their rights, as enshrined in international documents and the Constitution of Peru (1993). In the article the historical and problematic perspective has been assumed, discussing the problem from Colonial times, when important decisions were made by the Spanish administration regarding legal and political aspects of indigenous peoples' status. Next it is discussed the Republican period, which was characterized by a policy of integration and forced acculturation of indigenous peoples into Creole-mestizo mainstream of society. Then the article focuses on the 20<sup>th</sup> century and the first attempts to acknowledge the diversity and cultural and ethnic identity of the indigenous population, albeit as part of a paternalistic indigenism movement. Finally, it examines the recent decades, which saw the introduction of multicultural policy principles in the form of particular amendments to the Constitution and ratification of major international documents relating to the rights of indigenous peoples. This last period is characterized by a new model of relations between the state and indigenous, and represents an official effort to move away from discriminatory and marginalizing attitudes towards the Indian community, although implementation of multicultural principles is still a very difficult process due to the ossified and inflexible system of dependency and indolence at the level of local administration. The article concludes with a case study of *Comunidad Nativa Tres Islas* (Madre de Dios), one of the native communities which has for years been fighting for the implementation of a favorable decision of the Constitutional Court of Peru, which at the regional level is still not respected.

**Key words:** indigenous peoples, Peru, multicultural politics, *Comunidad Nativa Tres Islas*

## Indigenous Peoples and the State: From Socio-cultural Segregation to Forced Political and Legal Integration

To understand, why the relationship between the state and indigenous peoples in Peru is so difficult and why the implementation of rights considered fundamental to the proper development and self-determination of indigenous is still the main problem of Peruvian social and cultural policy, we must go back to colonial times – a period where we can find the origins of a new model of power and ethnic relations in the Andean region.

The autarchic development of indigenous peoples came to an end with Spanish colonization times, during which they were subject to political subordination, economic exploitation, and cultural depreciation. The idea of “natural inferiority of Indians” presented by some European philosophers and theologians was necessary to impose and legitimize the new political and legal order. Political subordination meant that indigenous people lost their sovereignty and became “minorities” defined as subjects of tutelage. Cultural depreciation was based on racial and class segregation into two “republics” and two realities: Spanish society *versus* indigenous society; Creole cities, metropolises and *haciendas versus* civic reductions, missions and introduction of mandatory work (*encomienda, mita, obrajes*). Europeans organized a new economy based on the pre-Columbian system, but related strictly to the interest of the Spanish Crown and focused on implementing an extractive economic model. The lands of indigenous peoples were protected by the Crown, but only because they paid a tribute. Some indigenous authorities (such as the *curacas* and *alcaldes*) were officially recognized in order to facilitate governance of the *pueblos de indios*<sup>1</sup>, and Quechua became the second official language of the Viceroyalty (and remained so almost to the end of the colonial period). Although a system of legal pluralism (based on respect for so-called “customary law” of indigenous) had officially been in place since the mid-16<sup>th</sup> century, at the same time native’s practices and customs were limited by “human and divine law”, reflecting the idea, that Indians were savages by nature and their customs required regulation and control (Flindell Klarén 44-53; Gibson; Remy; Yrigoyen Fajardo 2002: 159). As Stern concludes (34): “Relations between the Andean native peoples and the Europeans displayed an uneasy mixture of force, negotiation, and alliance”.

Peru’s independent republic was founded on liberal principles of democracy, equal citizenship, individual rights and “republican utopia” – the idea of a single Peruvian Nation for all *Peruanos* introduced by Creoles. Nonetheless, indigenous peoples, although *de iure* became citizens of the new state, *de facto* were not recognized as having rights. Despite the fact that they constituted 62% of the population, they were excluded from the new model of governance. Although during the colonial era the Crown recognized some elements of their jurisdiction and authority, in

<sup>1</sup> The *curacas*, named *caciques* during the colonial period were the principal Indian chieftains who served as intermediaries between local communities and the Spanish administration. They were responsible for overseeing and administering the Indians, as well as collecting and delivering tributes. *Caciques* thus preserved much of their former Incan elite status, and gained an important position in the post-conquest society of the Viceroyalty of Peru (see: Gibson; Pease García Yrigoyen; O’Phelan Godoy).

the Republican period, a monist legal model was established and successive governments failed to recognize indigenous authorities, laws, jurisdictional powers, and the right to contemporary (and not Pre-Columbian) cultural identity. The passage of time has shown repeatedly that the liberal concept of “equality before the law” was nothing more than a phrase. With the exception of the first Constitution (1822) throughout the 19<sup>th</sup> century, Republican constitutions expressed the assimilations idea of constructing a single, culturally homogeneous nation under Creole and mestizo leadership and cultural domination. Despite previous declarations of the equality of all citizens, citizenship was mainly reserved for inhabitants from the *costa*, restricted to landowners, independent workers, and Spanish-speaking Catholics, so – not for indigenous from the *sierra* called “semi-civilized” (Flindell Klarén 134-146; Posern-Zieliński 2009: 333-334). Indians from the Amazonian region were even treated as semi-humans, and in Peruvian legislation were referred to as “savage tribes” (1832), “un-civilized natives” (1837), “barbarians” and “reduced Indians” (1847). In the context of presented indigenous people’s socio-political status it is worth to mention that although in 1880 president Nicolas de Piérola declared himself a “Protector of the Indigenous Race” the government had problems developing an adequate policy to all indigenous peoples. Indeed, it was not clear which institutions (the Ministry of Labor, the Ministry of Justice, or the Ministry of Agriculture) were responsible for the issue (Ballón Aguirre 52; Morel Salman 24-25). Regarding to economy policy, Republican administration took over many of the economic rules of the colonial regime, albeit under different names, for example, the Indian tribute tax became the *contribución indígena* (until 1855), and *mita* became *servicio a la República*, as obligatory community service. The Creoles also employed mechanisms for appropriating the lands of indigenous peoples. As early as 1825, Simón Bolívar decreed the abolition of *curacazgos* and special rights for *pueblos de indios* (such as inalienability of communal property). This resulted in the dispossession of Indians from their territories and division of collective lands. The system of *haciendas* – properties of Creoles and mestizos with forced labor from the indigenous – was not only maintained, but expanded more quickly than ever before.

The Republican idea of “one nation – one state” together with single state law have hindered full recognition of cultural diversity of Peruvian nation. At the beginning of 20<sup>th</sup> century, the paternalistic policy of indigenism (*indigenismo*) appeared. This was an integrative, state-controlled policy developed by representatives of the educated upper and middle class, whose gave themselves the right to decide the fate of indigenous peoples on national territory. An inspiration for indigenism movement were revolts and indigenous uprisings mainly throughout the *sierra* region, together with the so-called “problem of the Indians” which in Peru was considered the main source of social conflict and economic backwardness of the state. The *Pro-indígena* policy was also embraced by the government of Augusto B. Leguía during the second term of his presidency (1919-1930). The 1920s saw the introduction of more laws, decrees, and resolutions concerning indigenous matters than ever before, but these remained paternalistic in nature. The overriding objective was to modernize the country, which would entail the implementation of a general education program, and the integration of indigenous peoples into Creole-mestizo society. The institutionalization of *pro-indígena* activity had its origins in the new Constitution (1920), which enshrined extensive civil and social protection rights based on the

Mexican Constitution of 1917. Two important articles related directly to indigenous peoples were introduced: Article 41, which officially recognized the existence of Indian communities; and Article 58, which guaranteed state protection over indigenous peoples by giving them special rights to cultural development in accordance with their needs.<sup>2</sup> The territories of indigenous peoples were also protected by the state, and were officially recognized as inalienable, imprescriptible, and free of expropriation. The Constitution of 1920 played therefore a key-role in the recognition of communal indigenous rights. In 1924, a new Penal Code was also introduced, which divided the population of Peru into four categories: civilized peoples (Creoles and mestizos); aboriginal peoples (*indígenas*); semi-civilized aboriginal peoples (*semi civilizados*); and wild peoples (*salvajes*).<sup>3</sup> *Ipo facto*, indigenous peoples were made subordinate, subjected to particular categorization and figured as a object of domination state policy. Inhabitants of the *sierra* were still defined as “semi-civilized”, degraded as a result of abuse, hard work, and alcohol, while indigenous of the Amazonian region were briefly defined as “wild” and incapable of self-determination in both legal and economic terms (Articles 44 and 45, see: Yrigoyen Fajardo 2002: 160; Ballón Aguirre 53-55; Remy). The state thereby recognized cultural diversity of indigenous population within its territory, but in the context of exclusion and penalties for behavior which deviates from those adopted by the dominant legal and cultural system. It acted as the guardian and executor of the existence of indigenous peoples, thus denying their right to self-determination. Behind the slogans of the indigenism movement was the real idea of integration and cultural, ethnic and racial assimilation. Officially recognized were indigenous languages, dress, customs, and other cultural expressions (more like academics and artistic matter of interests); but indigenous peoples were treated as political objects, and dominated by the centralist policy of Lima and the cultural monopoly of other social classes. In economic aspects this subordination was even more visible – their territories were seen as an area of new forms of invasion and colonization in the name of “progress of the Nation” and principles of state development. They were deprived of their lands and forced to work as dependent workers on the *latifundios* of white oligarchs (Gibson; Yrigoyen Fajardo 2006; Posern-Zieliński 2009; Kania 88-103; Stavenhagen 322-328).

Centralist and integration policy was also developed in the 1960-1970s. During this period, social and agrarian reforms were introduced by the military government of General Juan Velasco Alvarado (1968-1975), and social solidarity and class harmony under the tutelage of the state was officially proclaimed. The velasquist movement addressed two main issues regarding the indigenous population: agrarian and educational reform; and reestablishment of a traditional linguistic

<sup>2</sup> “The State will protect the indigenous race and will introduce special laws for their development and culture in harmony with their needs. The Nation recognizes the legal existence of indigenous communities and the law shall grant them appropriate rights” (*Peruvian Constitution* 1920, Article 58). The fragment: “The Nation **recognizes** the legal existence of indigenous communities” deserves our special attention. It is an admission by the state of the pre-existence (and not invention) of the rights of indigenous peoples in the Peruvian legal system. The term “indigenous”, as used in the Constitution, referred exclusively to the population of the *sierra*.

<sup>3</sup> This classification system reveals the prejudices of Peruvian society at the time. It remained in place until the 1990s. (see: Ballón Aguirre 53).

and cultural space. As a consequence of the political decisions, the state nationalized the exploitation of natural resources, and expelled foreign companies (mainly American) that were extracting oil and mining. The Agrarian Reform Law of June 1969 ended serfdom in the countryside. Private *haciendas* were expropriated and the lands were awarded back to indigenous communities, whose name in the Andean region was officially changed to “peasant communities” (*comunidades campesinas*) by Decree No. 17716. This new term referring to the indigenous peoples of the *sierra* intended to make the state more homogenous, and became a new marker of socio-economic status and cultural identity of indigenous population, whose members had to recognize themselves simply as peasants, i.e. as a part of people formally from the mainstream society created by *mestizos*. Several million Indians thus nominally disappeared from the ethnic map of Peru. However, it is worth mentioning that at the same time, Decree No. 21156 of 1973 proclaimed Quechua the second national language of the state (Bonilla 46-47; Flindell Klarén 341-343; Posern-Zieliński 2008: 127; Stavenhagen 326-332). In addition, the state recognized the legal right of communities to resolve their internal conflicts. A special jurisdiction and autonomy of indigenous authorities can be illustrated with a particular form of a communal indigenous organization – *rondas campesinas* and their exercise of so-called “customary law”. They have emerged autonomously in the rural areas of northern Peru in the mid-1970s. Their original aim was to provide security against robbery or abuses and they introduced the practice of resolving intercommunal disputes and problems *via* general assemblies (Yrigoyen Fajardo 2002:160-163; Flindell-Klarén 411).<sup>4</sup>

The status of ethnic groups in the Amazonian region (who had been gradually dispossessed from their lands and natural resources by colonists and rubber tappers – *caucheros*) was also legally regulated. Law No. 20653 on Native Communities and Agricultural Promotion of the Forest Regions and the Amazonian Selva (1974) recognized their territorial rights; though they were forced to settle in reduced areas, delimited and titled for particular communities. In 1978, some modifications were introduced, and in 1979 a new Law No. 22175 on Native Communities and Agrarian Development of the Forest Regions and Amazonian Selva was passed. On the basis of the latter, the indigenous peoples of the Amazonian region were organized legally into so-called: “native communities” (*comunidades nativas*) (Ballón Aguirre 55; Morel Salman 28-29).<sup>5</sup>

In response to a crisis during the second term of the military government (1975-1979), a constituent assembly was elected. The terms “peasant communities” for the

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<sup>4</sup> The *rondas* exercise authority within their territory (community). They are example of ambivalence politic and maintained paternalistic and dominant role of Peruvian government towards indigenous people: their activity and limited recognition of their functions was regulated by Law No. 24571 of 1986, which legally recognized pacific, democratic and autonomous form of *rondas campesinas*, but not their right to administer justice, which remained under the control of state judiciary system.

<sup>5</sup> The laws from 1974 and 1978 essentially constitute positive decisions and regulations for the indigenous peoples. Their purpose was to protect Indian territories and support Indians who were in control of their lands. However, these laws led to fragmentation of indigenous territories, and sometimes to division of the tribes inhabiting them. They also introduced new categories of land designated for agriculture and forest exploitation, which were used by the government in political decisions against indigenous peoples (for more see: Morel Salman 27-29).



population of the *sierra* and “natives” for those in the *selva* were confirmed in the new Constitution of 1979 (thus the term “indigenous” disappeared officially from legal language), but some of the rights recognized during the Velasco Alvarado period were reiterated, such as official recognition of the Quechua language or the legal recognition of autonomy of communities (thus reaffirming the monist legal system), and their inalienable rights to their land. Furthermore, the Civil Code of 1984 weakened the legal existence of native communities by making them dependent on registration and official state recognition (Article 135).

### **The Third Generation of Human Rights: Principles of Multicultural Politics**

Until the 1990s, a decade which brought significant changes, there was only one culture, and one legal system recognized in the territory of the Peruvian state. In harmony with the worldwide trend towards democratization and principles of cultural pluralism, the state began to spread the belief that its internal policies should take into account the interests of all ethnic groups living within its jurisdiction, and with their active participation. Together with rejection of paternalism and centralist policy emerged promotion of the fundamental principles of consultation and cooperation with representatives of indigenous peoples and their political, cultural and economic inclusion into the mainstream life of the state (see more: Remy; Stavenhagen; Sieder; Posern-Zieliński 2008). The leaders of indigenous communities boldly and clearly began to demand recognition and respect for their rights, as enshrined in various documents adopted during this period by the state administration.

In 1994, the Congress of Peru ratified Convention No. 169 of the International Labour Organization on Indigenous and Tribal Peoples in Independent Countries (further: ILO Convention No. 169), the most important legal document regarding indigenous peoples.<sup>6</sup> In 1995, it was entered into force and given constitutional status. The Preamble to the Convention recognized the need to appreciate the aspirations of indigenous peoples to exercise control over their own institutions, lifestyle, and economic development, and to protect their right to preserve and develop their own identity, language, and religion in their respective countries. Recalling and appreciating the contribution of indigenous and tribal peoples to the cultural diversity of national societies, they were officially recognized their customs and traditions, institutions, land-use patterns and forms of social organization. ILO Convention No. 169 therefore leaves no doubt that indigenous peoples reserve the right to preserve their cultural identity and to make decisions regarding their territories and members. Their right to territorial autonomy is the basis of their right to have their own judicial system, which must be respected by state authorities.<sup>7</sup> Article 4 of the

<sup>6</sup> Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169 was announced in 1989 and has been in force since 1991 ([www.ilo.org/indigenous/Conventions/no169.htm](http://www.ilo.org/indigenous/Conventions/no169.htm)).

<sup>7</sup> Article 8 of ILO Convention No. 169 states: “The law should provide appropriate sanctions against any unauthorized intrusion into the lands of the peoples concerned or any unauthorized use of them by persons outside them, and governments should take steps to prevent such infractions”.

Convention clearly underlines the other obligations of states towards indigenous populations: states should apply appropriate measures to protect the institutions, cultural goods, labor, and environment of indigenous peoples in accordance with their freely expressed wishes. Particularly significant for the new model of relations between state and indigenous peoples are resolutions regarding the recognition of collective rights, which protect the territorial, biological, and cultural integrity of indigenous communities, as well as the right to be consulted in all legal and administrative matters, which is considered as a fundamental instrument of multicultural policy (ILO Convention No. 169, Article 6).<sup>8</sup> The consultation law grants the right to representatives of indigenous peoples to voluntarily participate in all national and regional decisions concerning either them or their territories, which itself is part of the fundamental human right to self-determination.

Many of the provisions adopted at ILO Convention No. 169 were simultaneously discussed at the Peruvian Congress, and later included in the Constitution of Peru in 1993. The Nation of Peru was declared “multicultural”, with equal rights for all Peruvians to their own ethnic and cultural identity. The state obliged itself to recognize and protect the ethnic and cultural plurality of the nation, and respect fundamental human rights, intercultural dialogue, and human dignity (*Peruvian Constitution* 1993, Article 2.19; Article 89).<sup>9</sup> Article 17 guarantees bilingual and intercultural education, and Article 48 grants official status to Spanish, Quechua, Aymara, and other aboriginal languages in their respective regions of domination (*Peruvian Constitution* 1993). In accordance with multicultural principles and respect for cultural autonomy, the monist legal system was rejected and the collective and individuals rights of indigenous peoples were recognized. Articles 89 and 149 contain amendments that recognize the legal status, and the organizational, economic, and administrative autonomy of *rondas campesinas* and peasant and native communities, i.e. the right to exercise jurisdictional functions, apply their own customary law and respect for their authorities (General Assembly or *Junta Directiva*). Although the jurisdiction of *campesino* communities applies only to members of those communities and is valid

<sup>8</sup> The prior consultation with and participation of indigenous peoples in every making process is one of the most important points of ILO Convention No. 169. The Convention requires that indigenous peoples be consulted “whenever legislative or administrative measures are given which may affect them directly. In addition, such consultations should be made in good faith and in an appropriate manner to the circumstances in order to reach an agreement or consent on the proposed measures” (ILO Convention No. 169). The Peruvian Consultation Law on Indigenous and Native Peoples was signed by President Ollanta Humala in 2011; but paradoxically, the final text included items NOT consulted or agreed upon with indigenous organizations in Peru. For more about the prior consultation law see: Ballón Aguirre 141-146; Aranda Escalante 199-230; Remy; Salmon.

<sup>9</sup> “The State **recognizes** and protects the ethnic and cultural plurality of the Nation” (*Peruvian Constitution* 1993, Article 2.19). As was mentioned before, our attention should be focused on the word “recognizes”. This is important because the document did not “create” a new situation of cultural plurality, but rather recognized the *status quo antes*, i.e. the pre-existence of indigenous cultures. The principle of protectionism was also rejected. Indeed, whereas the Constitution of 1979 declared that: “the State will advance the cultural development of the members of peasant and native communities” (Article 161), the Constitution of 1993 states: “the State will respect the cultural identities of the peasant and native communities” (Article 89).

only on territory that belongs to them, the fact of its recognition by the state signifies a return to a system of legal pluralism (*Peruvian Constitution* 1993; Yrigoyen Fajardo 2002: 167-171; Ballón Aguirre 137-138).

Unfortunately, the ideas of cultural autonomy, legal pluralism and ownership of *comunidades campesinas* and *comunidades nativas* were in conflict with the authoritarian government of Alberto Fujimori (1990-2000). This period of governance was characterized by decrees, a neoliberal economy, and justification of all activities relating to the development of infrastructure and exploitation of natural resources in the name of state progress and socio-economic advancement. Fujimori's administration provided rules to facilitate the sale of indigenous lands, so that transnational corporations could engage in extractive activities. It also adopted legislation on mining that allowed for expropriation and administrative easement. If communities did not agree to sell or authorize their lands for mining activities, they would be directly dispossessed. This indicates then, that in many aspects the idea of a multicultural state, political participation and economic inclusion of indigenous peoples remains little more than a political promise (Ballón Aguirre 137; Yrigoyen Fajardo 2002: 164-166; Flindell – Klaren 410-412). Moreover, during the internal conflict of *Sendero Luminoso* terror and following years of authoritarian regime Fujimori's administration presented an aggressive protectionism and implemented discriminatory decisions towards indigenous. In 1993, as part of counterinsurgency strategy the government developed policies to control indigenous communities through military operations, and formally placed all *rondas campesinas* under the control of the armed forces, which was in evident contradiction with constitutional model of pluralism and right to autonomy. The policy of instrumental and subordinated treatment of indigenous population was presented also in the governmental Reproductive Health and Family Planning Programme launched by Alberto Fujimori in 1996. As a result more than 260.000 of Quechua women from poor Andean areas were forcibly sterilized without their consent (Lizarzaburu). Sterilization was done officially under the policy of promotion of the principles of public health and prevention of epidemics, but unofficially Fujimori argued that a lower birth rate would drive down poverty in the province and facilitate control over the rural population, therefore forced sterilization of women cannot be seen otherwise than a manifestation of an aforementioned aggressive protectionism and racist attitudes of state towards indigenous part of Peruvian population.

In modern Peruvian political and social dispute a need of new model of relations between state and indigenous peoples is underlined, understood from a much wider perspective, i.e. not only in legal terms, but as a thorough reform of the state and social relations in general. Proposals for constitutional reform have been made since the beginning of the 21<sup>st</sup> century. One of these was presented in 2002 during president Alejandro Toledo's discourse in Congress, and then reiterated by the National Commission of Andean and Amazonian Peoples in a document entitled "Constitutional Reform: Bases of a Proposal by the Andean and Amazonian Peoples". The beginning of document states the general principle: "The Peruvian Nation is multicultural, multiethnic and multilingual, constituted on the basis of diversity of the peoples that comprise it. The Peruvian State is unique and indivisible" (Karp de Toledo 143). The rights listed in the document have to do with cultural identity, language, territory, mining and hydrocarbons, right to development, intercultural and



bilingual education, collective ownership of knowledge, institutions of internal government, and the right to jurisdiction and prior consultation with regard to any legal or administrative act that affects indigenous peoples. This proposal is doubtlessly in harmony with the modern principles of multiculturalism, and in clear contrast to the Republican view of citizens' rights, the ideas of the indigenism movement from the early 1900s or aggressive and discriminatory politics of authoritarian regimes (Karp de Toledo 127-146; Ballón Aguirre 137-139).

As a continuation of an official course of the principles of multiculturalism and respect for indigenous rights the UN Declaration on the Rights of Indigenous Peoples was ratified and adopted in 2007.<sup>10</sup> Of special importance is Article 2, which declares that: "States recognize and respect the pluricultural and multilingual nature of indigenous peoples, who form an integral part of their societies". Thus, there are indigenous peoples themselves, and not the states, that are declared as multicultural in their entirety. There are indigenous peoples also and not states or international organizations that take responsibility of all decisions concerns them and act on their behalf. Subsequent articles contain resolutions that clearly emphasize indigenous peoples' right to self-determination, the recognition of their collective rights to territories and natural resources, and their right to development and protection from violations of their biological and cultural integrity. Member states are recommended to take all efforts to ensure effective implementation of the rights enshrined in the Declaration (*UN Declaration 2007*, see Articles: 18, 19, 23, 32, and 38). Peru has also been an active supporter of works on the American Declaration on the Rights of Indigenous Peoples.<sup>11</sup> After almost 30 years this difficult process ended with adoption of the Document on the 15<sup>th</sup> of July, 2016 during the 46<sup>th</sup> regular session of General Assembly of the Organization of American States (OAS) in Santo Domingo. In many aspects, the OAS Declaration is a continuation of the policy adopted in the UN Declaration. It is considered a comprehensive, regional human rights instrument and one of the most important of the Inter-American Human Rights System (though it does not force any legislative changes on OAS member states).<sup>12</sup> It offers specific recommendations for the protection of the rights of American indigenous peoples to self-determination, self-government, education, health, culture, lands, territory, and natural resources. It also includes some resolutions that pertain to specific indigenous groups in the Americas.

It can be concluded then, that Peru's contemporary policy of multiculturalism is officially guided by principles of recognition of indigenous peoples as equal with

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<sup>10</sup> It has to be mention that in 2006 Peru officially recognized the existence of indigenous peoples in isolation or of first (initial) contact. They are defined and are protected under the Law No. 28736: Law for the Protection of Indigenous and Tribal Peoples in Situation of Isolation and in Situation of Initial Contact. The territories inhabited by those peoples have been organized in 5 special territorial zones (*reservas territoriales*) recognized officially and legally by the state (for more see: Huertas Castillo).

<sup>11</sup> See: Preparatory Document for the Proposed American Declaration on the Rights of Indigenous Peoples of 1997 ([www.cidh.oas.org/Indigenas/chap.2g.htm](http://www.cidh.oas.org/Indigenas/chap.2g.htm)).

<sup>12</sup> It should be emphasized that the Declarations, in contrast to the Conventions, are not binding laws, despite their important international overtones. They only serve as the commitments and standards towards which all countries should strive. For critical commentaries about the Declarations of 2007 and 2016, see: Clavero.

the rest of Peruvian society, i.e. with the same rights, cultural values, and socio-political status. Although constitutional reform is still waiting full implementation, ILO Convention No. 169 has always been regarded as an example of specific commitments imposed on the state by the international system, and a symbol of progress in its relations with the native population. The main idea is to move away from the discrimination and domination, which have reduced the cultural and political status of the native population in the past, as well as the attitudes and assessments that criminalize the activity of representatives of indigenous peoples, involved in defending and enforcing their rights.

Nonetheless, the first years after the introduction of multicultural policy were marked by a paradox of Peruvian reality. On one hand, Peru is an example of significant advancement in terms of legal and political recognition of the rights of indigenous peoples. Cited most often as evidence for this are the Prior Consultation Law of 2011, and processes of previous consultations initiated since 2013. On the other hand, we are aware of the ongoing devastation and appropriation of territories belonging to indigenous peoples – the phenomenon described sometimes as another cycle of neo-colonialism, comparable to the discriminatory policy of extermination and cultural extirpation realized during the 19<sup>th</sup> century. The desolation of the *sierra* territories, and particularly in the Amazonian region, is mainly a result of extractive activity, the introduction of agriculture based on monoculture and transgenic crops, and dynamic infrastructural development. These actions are justified by the principles of progress and the laws of economic growth, which generally entail certain social costs. However, as notes Raquel Yrigoyen Fajardo – a Peruvian lawyer who has long worked towards defending the rights of indigenous peoples – the systematic, structural, and mass-scale nature of the invasions of indigenous territories in Peru interferes with their way of life and disrupts their territorial, biological, and cultural integrity to such an extent that it can be classified today as a humanitarian crisis (2016, 26).

## **The Struggle for Implementation of Indigenous Rights: a Case Study of *Comunidad Nativa Tres Islas*<sup>13</sup>**

The aforementioned conflicts are some of the biggest challenges to modern relationships between the state and indigenous peoples in Latin America with respect to territories rich in natural resources of the first order: oil and gold.

One of the disputed areas in Peru is the Department of Madre de Dios, which ranks third in terms of gold-mining territory in the country. To date, about 30,000

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<sup>13</sup> I want to thank the president of *Comunidad Nativa Tres Islas*, Sergio Perea Ponce, the treasurer of *Comunidad*, Hermógenes Aguilar, the ex-president of *Comunidad*, Juana Payaba Cachique, and all the members of *Comunidad* for their hospitality and permission to publish their story. I would like to thank Dr. Raquel Yrigoyen Fajardo and lawyers Carlos Elguera Alvarez and Rocío Trujillo from the International Institute on Law and Society (IILS-Lima) for their cooperation in 2014–2016, and for all consultations related to the *Comunidad Nativa Tres Islas* case. My work with *Tres Islas* was possible thanks to the project *Indigenous Peoples Rights and Legal Pluralism* (IILS, PUCP, Lima – Madre de Dios 2014, 2016), and grant from the *Social – Environment – Technology Project* (Human Capital Operational Programme, Jagiellonian University in Cracow, 2014).

hectares of forest have been destroyed as a result of illegal and uncontrolled mining activities, known as *minería ilegal* (in areas where it is strictly prohibited; mainly rivers, water reservoirs (lakes)<sup>14</sup>, and nature reserves) and *minería informal* (in areas where it is permitted, but requires appropriate concessions), respectively. Inspections carried out by officials from the Ministry of Environment in 2016 showed that over 30,000 *mineros* (gold extractors) have been operating in the Madre de Dios area over the last few years, while only 2,000 licenses have been issued. Representatives of the *Sociedad Peruana de Derecho Ambiental* (the Peruvian Association of the Environmental Law) estimate that nearly 16 tons of gold, with a value upwards of 1.7 billion soles, is mined each year. It can be assumed that illegal goldmining is Peru's main illicit economy. Free of labor and environmental obligations, it is more profitable than drug trafficking. Indeed, gold, unlike cocaine, is traded and transported freely and legally. Moreover, it is very portable and very difficult to detect its origin. The discrepancy between the production declared to the Ministry of Energy and Mines and the exports registered by the Tax Superintendence reveals that Peru exports more than 2 billion dollars of illegal gold per year. The area of intense activity from 2008-2016 unfortunately includes protected zones, where any mining activity is prohibited. These include the *Reserva Nacional de Tambopata*, and territories of native communities for which concession requires consultation with and consent from the owners. Inspections have also revealed that illegal mining activities are carried out even in areas where interventions have already been made – in which illegal mines have been closed down, equipment confiscated, and penalties imposed. The territory of the Department has undergone gradual environmental devastation, and not only due to deforestation intended to provide access to gold-bearing deposits. The waters of the Madre de Dios river transport stifling silt and high levels of stratospheric heavy metals. The Department's water, soil, plants, and even children also have significant levels of mercury (and most likely lead and arsenic as well) up to five times higher than their healthy counterparts (Barrantes, Glave 17-18; 30 000 hectares...2-3; Hidalgo 2-3; Ráez Luna).

One example of the legal battle that has been going on for several years with regard to the intense illegal activity of the *mineros* is a conflict on the territory of *Comunidad Nativa Tres Islas*, 26 km north of the town of Puerto Maldonado in the Tambopata province. The community consists of two ethnic groups: the Shipibo-Conibo, originating from the North of Ucayali and Pucallpa region; and the Ese'Eja, aboriginal inhabitants of the lower basin of Madre de Dios and the Tambopata regional basin. The former appeared in the province of Tambopata during the so-called "rubber boom", and were brought by force by *cauchero* Máximo Rodríguez Gonzales in the 1940s to work on rubber plantation near Iberia settlement. In 1943, Rodríguez Gonzales sold his land to the *Corporación Peruana de Amazonas* – a company that collaborated with the *US Rubber Corporation* established in 1944. Together with the land, he sold the Indians, who were treated as ordinary slaves: they were rewarded for

<sup>14</sup> The Peruvian government passed a series of decrees to combat illegal mining in the Madre de Dios region. On the basis of Supreme Decree No. 1100 and Decree No. 1102 of 2012, a total prohibition of mining activity on the rivers, springs, and water reservoirs was established. This prohibition applies to all owners of land with detected alluvial gold deposits. The search for gold must be carried out at least 100 meters from any hydrographic system.

their hard work only with small rations of meat and alcohol, and severely punished for insubordination by flogging, amputations, and other torture. A small group of Indians managed to escape and returned to their home north of the Ucayali Basin. Those who remained after the collapse of the “rubber boom” were relocated to Puerto Maldonado. Some, however, chose to remain in the *selva* and established a new community on three small river islands created at a certain place by the meandering water of the river Madre de Dios. Sometime later, they were joined by the Ese'Eja Indians, who in turn had migrated from the areas of a liquidated mission led by the Dominicans in the nearby settlement of El Pilar. In the 1960s, the new settlement of the Shipibo-Conibo and Ese'Eja – which had come to be called *Tres Islas* – was under the care of the Apostolic Vicariate of Puerto Maldonado. Missionaries continued their evangelical activity (masses in Spanish, catechism lessons), and delivered food and material aid to its residents. On the 24<sup>th</sup> of June, 1994, the native community was officially registered under the name of *Tres Islas (Registro Nacional Desconcentrado de Comunidades Nativas)*; and the Ministry of Agriculture, under Directorial Decree No. 087/94/ MA-DSRA-MD-RI issued to the indigenous the title for area No. 538, which covers 31,423,71 hectares along the riversides of the Madre de Dios.

Today, the *Comunidad Nativa Tres Islas* constitutes a community of 110 families whose main occupation and source of income is agriculture (67%), trade (10.7%), fishing and controlled forest management, and mining activity (about 10%). Despite the fact that the territory of *Tres Islas* is not far away from the city of Puerto Maldonado (only about a half hour drive), some members of the *Comunidad* do not want any contact with the outside world, and take care to preserve their own traditions by maintaining contact only with representatives of their own ethnic groups, i.e. the Shipibo and Ese'Eja. They are dedicated to handicraft (*artesanía*), the art of making beautiful hand-painted glassware and textiles (*cushmas*). Some maintain the tradition of shamanic sessions with *ayahuasca*. In recent years, however, the number of families who have taken in newcomers from the outside has increased. These are mainly Quechua immigrants from the areas of Cusco and Puno looking for jobs and a place to settle down. Their presence has gradually diluted the ethno-linguistic consistency within the *Comunidad*, a phenomenon evidenced by the languages of its inhabitants. The most spoken language is Spanish (55%), followed by Quechua (32%), and then Shipibo (13,%).

As mentioned above, what attracts people to the Madre de Dios area of the *selva* is no longer rubber, but gold. Fluvial sediments of gold-bearing sand occur in the layers of the riverbed and spread to the ground in the nearby floodplains. They come and go with the ebb and flow of groundwater, and are extracted from there by special machines (dredges and suckers) that suck out the sand and gravel (III. 1). On land, the gold-bearing layers are reached by performing small, controlled explosions that produced big holes. The dredgers and excavators extract clods of earth and gravel from the pit, which are filtered with big sieves. When leaching river sands, *mineros* use mercury to dissolve amalgamates and extract pure gold. They pay no attention to environmental protection regulations, and allow corrosive metal, garbage, diesel oil from platforms and machines, and the mercury itself to leak into the river and floodplains, thus poisoning the plants and animals. Most of the gold extractors working on the territory of *Tres Islas* are *terceros* (intruders, strangers, not belonging to the community). The community's *Junta Directiva* claims that, although they try to legitimize their activity with concessions granted by the Ministry of Energy and

Mines (Puerto Maldonado department), their work is illegal, because the concessions were issued without the act of prior consultation or consent from members of the community. Moreover, the concessions were granted without any studies or investigations (mandatory in the light of environmental law) aimed at assessing the biological, social, and cultural impact of this type of activity on the community.



Ill. 1. Machine used by *mineros* to extract gold-bearing layers.  
Territory of Comunidad Nativa *Tres Islas* (photo: Marta Kania)

The uncontrolled extraction of gold is not the only cause of devastation in the *Tres Islas*. Deforestation for purposes of gold exploration is also a major problem, and violates the wellbeing of wildlife. Illegally felled trees (including valuable tree species that are protected and recognized by the Indians as sacred) are confiscated either by members of the community, or by officials from the Regional Program of Forest Resource Management in Puerto Maldonado. However, delayed interventions do not protect forest areas from devastation. This contamination of water, destruction of flora and fauna, and deforestation is furthered by the existence of illegal settlements and “wild camps” of *terceros* (Ill. 2). Poaching, fights, shootings, prostitution, alcoholic excesses, intimidation of children, and littering are part of a long list of violations of the community’s social, biological, and cultural integrity. Despite many petitions and complaints submitted against intruders to the regional government in Puerto Maldonado, the situation has not changed over the years.<sup>15</sup>

<sup>15</sup> In the last few years, the situation on the waters of Madre de Dios has been a direct threat to the lives of the members of *Comunidad*. To prevent illegal gold extraction, the central government sent helicopters which shot up everything floating on the river. Officially, these actions were also linked to the fight against drug trafficking (according to government, the territory of the Madre de Dios Department was one of a major distribution route to Bolivia





Ill. 2. One of the “wild camps” near Madre de Dios river and *terceros* working on the platform. Territory of Comunidad Nativa *Tres Islas* (photo: Marta Kania)

The turning point in the difficult relationship between *Tres Islas* members and the representatives of regional authorities was a reaction of the indigenous to the lack of consultation and (in the opinion of the *Junta Directiva* of *Tres Islas*) illegal use of the road passing through community territory, by transport companies *Los Mineros* and *Los Pioneros*. They used the road without permission or consultation, and it was well known that they collaborated with people working illegally on the territory of *Tres Islas*, as well as those living in the camps on the riverside. In the opinion of the community, uncontrolled transit through its territory had contributed to destruction of the forest and contamination of nature, and had facilitated the installation of more machines and platforms to extract gold from the river. When representatives of the *Junta Directiva* filed an official complaint in Puerto Maldonado, the governmental office simply advised them to accept the situation. In 2010, on the basis of a decision taken during their General Assembly, members of the community installed a small guard booth and gate on the road leading to its territory in an effort to control transit and prevent the entry of *terceros*. The case was presented to the judge of the District Court of Madre de Dios, who, under pressure from the transport companies decided that the rights to freedom of movement and transport, guaranteed to every Peruvian in the territory of Peru, had been violated, and ordered removal of the gate and destruction of the guard booth. The *Tres Islas* community was also ordered to

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and Brazil), but the unexpected raids and explosions on the platforms scared members of the *Comunidad* who were fishing or playing near the river. Destroyed platforms and machines are still in the bays and shallows, and their leaking oil poisons to the water.

allow unrestricted transit through its land, a decision which contradicted the rights to autonomy on its own territory. 100 officers from the local police and a group of workers were sent to destroy the structures. At the same time, the *presidenta* of the community at the time – Juana Payaba Cachique was arrested for taking the decision to block the road. *Los Pioneros* and *Los Mineros* sued *Tres Islas*, accused its members of breaking the rules of public transport, and threatened Juana Payaba Cachique with a prison sentence of several years for violation of public order. The authority and autonomy of the representatives of native community was once again ignored and disregarded by the regional court, despite the fact that the *presidenta* had the right to decide on all matters relating to *Tres Islas* territory on the basis of constitutional guarantees and international instruments ratified by Peru (ILO Convention No. 169 and Declaration of 2007).

The case of *Comunidad Nativa Tres Islas* could be one of many examples of violations of indigenous rights, and their powerlessness against corrupt local authorities, but members of *Tres Islas* have decided to fight for their rights. They took their case to the Constitutional Court of Peru with legal assistance from the International Institute on Law and Society in Lima. Both the litigation process, which lasted until 2012, together with sentence of the Constitutional Tribunal given that same year, are worthy of our attention for several reasons. For the first time in a case against an indigenous community, the principles of legal pluralism were applied in favor of the community's right to autonomy, collective land, and a cultural and territorial identity. During the proceedings, Juana Payaba Cachique indicated a violation of all the rights enshrined in Articles 88, 89, 149, and 200 of the Constitution of Peru, Article 25 of the Penal Code (right to *habeas corpus*), Articles 8.2, 9, and 12 of ILO Convention No. 169, and Article 34 of the UN Declaration of 2007 ("Tribunal Constitucional..."; Yrigoyen Fajardo 2013). In Constitutional Court Sentence No. 1126-2011-PHC/TC announced on 11 September, 2012 the judge referred to the same documents, siding with the indigenous community rather than the state or the intruders. It recognized the legitimacy of the representatives of the community and their right to autonomy and jurisdiction on their territory. A decision was made to cancel all licenses of the transport company not granted with the consent of the community, and to suspend all concessions for the extraction of gold issued without consent from the *Junta Directiva* of *Tres Islas*. In accordance with the right to self-determination and territorial autonomy of native communities, the Constitutional Court also ordered cessation of all violence and use of force against members of the *Comunidad*, and canceled all decisions made by the District Court of Madre de Dios regarding the community's territory.<sup>16</sup> This was first time in the history of Peru that the highest judicial authority officially recognized a violation of indigenous rights to territory, autonomy, and independent jurisdiction. Moreover, these rights were presented as the right to self-determination and in broader perspective fundamental human rights. This sentence, interpreted by observers in the context of *pro-indígena* policy, was immediately recognized as a precedent in existing Peruvian case law and a unique example of how

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<sup>16</sup> It is worth to mention, however, that while the Constitutional Court did agree with the community regarding infringement of its autonomy and its right to territorial integrity and self-determination, it did not express any opinion about the devastation of the natural environment or the health threats related to contamination of the territory with mercury.

to resolve conflicts between the state and indigenous peoples (Reyna Ramos; “Tribunal Constitucional...”).

Unfortunately, this historical decision has not yet been implemented. Not only are the *terceros* still present on the territory of the native community, but their activities have become even more intense in recent years. The regional government of Madre de Dios still grants concessions to gold extractors without consulting the *Junta Directiva*. It is estimated that there are already more than 140 licenses for exploitation of over 30% of the territory of *Tres Islas*. Uncontrolled mining activities increased water pollution and deforestation of new areas belonging to the community (III. 3, 4). The costs of the destruction and reconstruction of the aforementioned gate and guard booth remain uncovered, and it appears impossible to determine who should pay compensation and rebuild destroyed structures. The two transport companies no longer exist, and there is no contact with their former owners. There are no deadlines, and no one has been made responsible for implementing the resolution and recommendation of the Tribunal. For this reason, community did not receive also the refund of the costs of the process. A subsequent appeal filed in 2013 did not bring any positive results either. On the contrary, in the last three years, private employers of the *terceros* have continued their activity even more dynamically, hiring more people for gold extraction, settling more illegal camps, and felling more trees without prior consultation or consent from the *Junta Directiva*.



III. 3. Result of deforestation and gold-mining activity.  
Territory of Comunidad Nativa *Tres Islas* (photo: Marta Kania)

It can be concluded, that despite the fact that Peru officially recognized the rules of legal pluralism (i.e. indigenous jurisdiction, autonomy, and collective rights) in the case of *Comunidad Nativa Tres Islas*, this recognition was no more than a theoretical

application of the provisions enshrined in the Constitution and ILO Convention No. 169 on the highest levels of state structures and non-compliance with them in the practice on the lower levels of the regional administration. In the 2012 court decision and in the resolution in response to the 2013 appeal, the Tribunal recognized the rights of indigenous peoples and clearly defined the obligations of the authorities of the Department of Madre de Dios in favor of the community. The state thus officially respected and fulfilled the principles of multicultural policy, and complied with its obligations to the Indians enshrined both in the Constitution and in ILO Convention No. 169. But the problem is still with their implementation at the local level. Representatives of the regional government have presented intentional indolence and have showed little interest in implementing the Court's decisions, most probably out of fear that they will lose their positions or that adverse changes will take place in the internal structures of their administration.



Ill. 4. Result of devastation and contamination of hydrographic system.  
Territory of Comunidad Nativa *Tres Islas* (photo: Marta Kania)

Members of the community *Junta Directiva* have not remained passive. They are taking further decisions on the complete removal of all *terceros* from their territories, and on the prohibition of any activity carried out without their consent. Together with lawyers from the International Institute on Law and Society, they have adopted a strategy for a wide-ranging information and education campaign. They are currently presenting the case of *Comunidad Nativa Tres Islas* and the whole process of fight for their rights during conferences, seminars, and numerous press interviews, and they work together with national and international NGOs concerned with the rights of indigenous peoples. Lawyers representing the community have taught the



authorities of *Tres Islas* how to behave in confrontations with the police or *terceros*, how to preserve evidence of illegal activity, and how to deal with documentation. Community leaders are thus learning and become more aware of both the laws that pertain to them, as well as legal strategies for the implementation of their rights. This is a significant, positive change when we consider the unequal relations between the state and the indigenous yet at the end of the 20<sup>th</sup> century, which have been characterized both by the indigenous misunderstanding and ignorance of Peruvian law and international conventions, and a lack of support for the communities from the government or any other part of society.

When we look at the case from a social perspective, we notice further societal and cultural problems inside the community, resulting from both difficult relations with the state, and the tense situation between the regional administration, the *terceros*, and individual members of *Tres Islas*. One such conflict involved the *ex-presidenta* of the *Comunidad*, Juana Payaba Cachique. She is a very strong and decisive woman, determined to fight for the rights of her community and the proper protection of its territories. In recognition of her achievements as a leader, and her involvement in the whole legal process between the *Comunidad* and Constitutional Court of Peru, as well as her efforts to protect the environment of the Madre de Dios region, international organization *Rainforest Alliance* granted her the „Community Leadership Award” (Reyna Ramos; New York, 11 of May 2016, see more: Yrigoyen Fajardo 2016). But the success and determination of Juana Payaba Cachique is not approved and accepted by all members of the community. There are rumors about how much money she has earned with international awards, who has financed her numerous travels to Lima and her visit to New York, and what benefits she derives from her activities. Not everyone accepts that she is recognized in mass media as an informal spokesperson of the group, although she no longer holds any official functions in the community. Another problem is that the opinions of the current representatives of the *Junta Directiva* are inconsistent with the opinions of some members of the *Comunidad*. The *Junta* is determined to defend the territory of *Tres Islas* from intruders, but other community members have a less radical approach, as they benefit from the sale of food and industrial goods to the residents of illegal camps. This conflict of interest has led to a disintegration of unity, and has begun to hinder communication and cooperation within the community.

The lack of unanimity in decision-making processes within the community may be related to its weak institutional structures and low degree of internal integration. Its territory has been only inhabited since 1940., and community was only legally integrated in 1994. This lack of integration and even identification with an “ancestral land” may also be due to the gradual increase in newcomers (especially males) over the last few years. These people, who are seeking jobs and a place to settle down in the Madre de Dios region, often marry women from the *Comunidad*. This allows them easy access to gold-bearing areas, and they participate in gold mining activity against the decisions of the *Junta Directiva*. Some other members of the community, especially young boys, who are looking for an easy way to earn money during summer vacation are joining the *terceros* and working with illegal concessionaires on *Tres Islas* land. Some of the women also reap financial benefits by running small shops that sell food and basic industrial products to the interlopers. This clearly shows that some members of the community act in opposition to the official rhetoric presented by *Junta Directiva* and those who want total prohibition of any intruder activity. This



conflict of interest of different groups leads to divisions within families, disputes between men and women, the young and the elders, weakening consequently the voice of opposition against illegal practices, which in the interest of protecting the rights of the community should sound unanimously.

One serious, yet “dormant” problem is the mercury contamination of *Tres Islas*.<sup>17</sup> In response to illegal gold-mining activity, the community has requested official recognition of the threat to their life and health and their rights to protection of their biological and cultural integrity. The mercury contamination of the environment and the need for careful study of mercury levels in the blood of all members of the *Comunidad* is the primary argument for the total elimination of concessions issued without the consent of the community, the removal of intruders from its territory, and the obtainment of compensation for losses incurred in recent years. Unfortunately, however, this argument could threaten the sale of agricultural products produced by the community, which constitute more than 60% of its income. There are also harassment and reluctance to *Tres Islas* expressed by the inhabitants of nearby Puerto Maldonado. The members of community are identified as a problem group which causes conflicts. Due to low general awareness of medicine, it is believed that they might pose a threat to the health of the rest of population of the province. If, however, the fact of contamination has been kept secret, members of *Tres Islas* will not receive any compensation and, in turn, they will be exposed to diseases (particularly neurological problems caused by mercury) that could be avoided with proper examination and prevention. These circumstances therefore impede the rights to free development and a dignified life, and raise concerns about the future of the younger generation.

## Final Considerations

From the beginning of 1990s, the period known in Latin America as “decade of indigenous peoples” in many countries a number of legal and institutional forms were introduced to ensure them full participation of indigenous in the political and social life of the state. Important international changes in indigenist policies occurred as a result of the adoption of ILO Convention No. 169, including the recognition of indigenous peoples identity, collective rights or so-called customary law. Another important feature of a number of constitutional reforms was the recognition of the multicultural nature of the nation – state and the right to cultural diversity. Do granted legal guarantees and various forms of representation and autonomy of indigenous peoples result in its real participation and the use of granted rights? It can be assumed that despite the rejection of paternalistic policy and an official recognition of indigenous communities based on their political, cultural and economic inclusion, the real participation and equal political and social status remains in the sphere of control of the state, under the domination of centralist political and economic interests.

Examples of non-compliance with multicultural principles and lack of implementation of the participation rules can be seen very clearly in territory of Peru in relation

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<sup>17</sup> Blood and hair samples from members of the community indicate mercury concentrations of 6.2-6.5 ppm (the acceptable concentration is 1-1.5 ppm). For adults this is not such a huge threat, but for children and future mothers, it is, as future generations will most likely suffer from neurological problems.

with an issue of sourcing natural resources. The official position of representatives of the Peruvian government (primarily from the Ministry of Environment) is strong condemnation of illegal mining activities in the region of the Amazon rainforest. The situation described above is clearly interpreted as a violation of fundamental human rights through social and environmental threats resulting from deforestation, contamination of water and soil, violence, human trafficking, and corruption.<sup>18</sup> The ambivalence of the government towards Indian territories is visible in its investment plans for the Department of Madre de Dios. In 2013, a company called PerúPetro S.A. began redistributing land and oil plots (*lotes*) for future concessions to foreign companies. 8 of these plots are appointed in the Department of Madre de Dios, and 2 of them (No. 157 and 191) are located on the territory belonging to the *Comunidad Nativa Tres Islas*. There was no prior consultation with the authorities of the community before any action began and decision was made. Once again, therefore, the rights of the community to its own territory, autonomy, consultation, and informed consent were violated. In January 2015, representatives of *Tres Islas* rejected the plan for division of their land, and, in cooperation with their lawyers from the International Institute on Law and Society, again submitted an official complaint to the Constitutional Court of Peru against the state for deciding to internationally auction of plots No. 157 and 191. Respect for international law and the provisions of the Peruvian Constitution regarding the rights of indigenous peoples is thus still a serious and unresolved problem. Despite the fact that in recent years social awareness has significantly increased, and that there are a lot of clearly articulated demands for guarantees of individual and collective rights for indigenous peoples in public discourse (both from official government agencies and from the indigenous themselves), implementation thereof is yet to occur.

In my opinion, the case of *Comunidad Nativa Tres Islas* is worth our attention for several reasons. On a micro-scale, is a story of a small group of people, but reveals the huge problems that in macro-scale plague many indigenous communities in Latin America. Behind the problems with contamination and devastation of natural environment are hidden dramas of individuals, dividing families, and caused tension of different levels of power: between indigenous authorities, regional governmental structures, and the state administration. Finally, when we analyze the case of *Comunidad Nativa Tres Islas* from more than just a legal or political perspective, we can assume that the principles of multicultural policy and the international instruments of law, when embraced by the highest level of state jurisdiction (Constitutional Court), may become a ... trap both for the entire indigenous community and its leaders. An understanding of the relevant laws and how to appeal to competent state institutions, as well as a conscious striving for implementation of court provisions at all levels of government, are extremely valuable and help establish a strong position for the leaders of indigenous peoples as equals to Creole-mestizo counterparts. Nevertheless, improvement in these areas also has the potential to turn against the leaders and contribute to internal divisions and loss of integrity within the community they represent.

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<sup>18</sup> It can be assumed, that in Peru, the three state powers have been penetrated by illegal mining interests at all levels. For example, the General Director of Hydrocarbons of the Ministry of Energy and Mines, Luis Vicente Zavaleta Vargas, was at the same time the owner of Universal Metal Trading SAC, which in 2011 exported 19 tons of gold, allegedly from the Madre de Dios territories (Ráez Luna).

## References:

- Aranda Escalante, Mirva. "Los desafíos de la implementación de la consulta previa en el Perú". [in:] *El derecho a la Consulta Previa de los Pueblos Indígenas en América Latina*, La Paz: Konrad Adenauer Stiftung, Programa Regional de Participación Política Indígena (PPI), 2012: 199-230.
- Ballón Aguirre, Francisco. *Introducción al Derecho de los Pueblos Indígenas*, Lima: Defensoría del Pueblo, 2003.
- Barrantes, Roxana, Glave Testino, Manuel (eds.). *Amazonía peruana y desarrollo económico*. Lima: GRADE, Instituto de Estudios Peruanos, 2014.
- Bonilla, Heraclio. "Comunidades de indígenas y Estado nación en el Perú". *Histórica*, Vol. VI, No. 1, Julio 1982: 35-50.
- Brysk, Alison. *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford: Stanford University Press, 2000.
- Clavero, Bartolomé. "El difícil reto de la Declaración Americana sobre Derechos de los Pueblos Indígenas". [www.servindi.org.pe](http://www.servindi.org.pe). 15 July 2016.
- Flindell Klarén, Peter. *Peru. Society and Nationhood in the Andes*. New York, Oxford: Oxford University Press, 2000.
- Gibson, Charles. "Las sociedades Indias bajo el dominio Español". [in:] Bethell, Leslie (ed.). *Historia de América Latina*. Vol. 4: *América Latina colonial: población, sociedad y cultura*. Barcelona: Editorial Crítica, 1990: 157-188.
- Hidalgo, María, Elena. "Minería ilegal mueve 2600 mln dolares". *La República*. Cusco: 15 Septiembre 2015: 2-3.
- Huertas Castillo, Beatriz. IWGIA Report 9 (2010). [www.iwgia.org/iwgia\\_files\\_publications\\_files/0459\\_informe\\_9.pdf](http://www.iwgia.org/iwgia_files_publications_files/0459_informe_9.pdf)
- ILO Convention No.169. <http://www.ilo.org/dyn/normlex/en/169>
- Kania, Marta. *Prekolumbijski image Peru. Rola archeologii i dziedzictwa inkaskiego w kształtowaniu peruwiańskiej tożsamości narodowej*. Kraków: Studia Latynoamerykańskie Uniwersytetu Jagiellońskiego, Wydawnictwo Universitas, 2010.
- Karp de Toledo, Eliane. *Hacia una nueva Nación Kay Pachamanta*, Lima: Despacho de la Primera Dama de la Nación, 2002.
- Lizarzaburu, Javier. "Forced sterilization haunts Peruvian women decades on". BBCNews. 2 December 2015.
- Morel Salman, Jorge. "De una a muchas Amazonías: los discursos sobre la "Selva" (1963-2012). [in:] Barrantes, Roxana, Glave Testino, Manuel (eds.). *Amazonía peruana y desarrollo económico*. Lima: GRADE, Instituto de Estudios Peruanos, 2014: 21-46.
- "OAS adopts new declaration on the Rights of Indigenous Peoples". Indian Law Resource Center, <http://indianlaw.org/adrip/oas-adopts-new-declaration-rights-indigenous-peoples>
- O'Phelan Godoy, Scarlett. *Mestizos reales en el Virreinato del Perú: Indios nobles, caciques y capitanes de mita*, Lima: Fondo Editorial del Congreso del Perú, 2013.
- Pease García-Yrigoyen, Franklin. *Los Incas en la colonia. Estudios sobre los siglos XVI, XVII, XVIII en los Andes*, Lima: Museo Nacional de Arqueología, Antropología e Historia del Perú, Ministerio de Cultura del Perú, 2012.
- Peruvian Constitution* 1993. <http://www.congreso.gob.pe/Docs/files/CONSTITUTION>
- Posern-Zieliński, Aleksander. „Trudne początki ruchu indiańskiego w Peru”. [in:] Kania, Marta, Kaganiec-Kamieńska Anna (ed.). *Doświadczenie demokracji w Ameryce Łacińskiej*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2008: 123-138.
- Posern-Zieliński, Aleksander. "The State and the Indigenous Peoples in Latin America". [in:] Stemplowski, Ryszard (ed.). *On the state of the Latin American States*. Kraków: Akademia Frycza Modrzewskiego, 2009: 301-384.

- Ráez Luna, Ernesto. "En el Perú los mineros ilegales hacen más dinero que los narcotraficantes". [in:] *Etiqueta Negra*, Lima, 15 de Abril 2015, [www.etiquetanegra.com.pe/articulos](http://www.etiquetanegra.com.pe/articulos)
- Remy, María Isabel. "Historia de las comunidades indígenas y campesinas del Perú. Entrevista de Javier Torres a María Isabel Remy". *Documentos de Trabajo de Instituto de Estudios Peruanos*. No. 202. Lima: Instituto de Estudios Peruanos, Serie Sociología y Política, 2013: 5-16.
- Reyna Ramos, Iván. "La increíble historia de Juana Payaba, nativa de comunidad de Tambopata, que ganó juicio a mineros ilegales". *Rumbos del Peru*. Junio 2012: 3.
- Salmon, Elizabeth (coord.). *La consulta previa, libre e informada en el Perú*. Lima: Conrad Adenauer Stiftung, Pontificia Universidad Católica del Perú, 2012.
- Sieder, Rachel (ed.). *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. London: Palgrave, Institute of Latin American Studies, 2002.
- Stavenhagen, Rodolfo. *Derecho indígena y derechos humanos en América Latina*. México DF: El Colegio de México, Instituto Interamericano de Derechos Humanos, 2012.
- "30 000 hectáreas de bosques arrasados". *La República*. Cusco: 10 de Septiembre 2013: 2-3.
- Stern, Steve J. *Peru's Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640*, Madison: WI, 1982.
- "Tribunal Constitucional respaldó autonomía de comunidad nativa en Madre de Dios". *El Comercio*. Lima: 25 de Septiembre 2012: A3.
- UN Declaration 2007. [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- Yrigoyen Fajardo, Raquel. "The constitutional recognition of indigenous Law in Andean countries". [in:] Assies, Willem, Van der Haar, Gemma, Hoekema André (eds.). *The Challenge of Diversity. Indigenous Peoples and reforms of the States in Latin America*. Amsterdam: Thela Thesis, 2000: 199-221.
- Yrigoyen Fajardo, Raquel. "Peru: Pluralist Constitution, Monist Judiciary: A Post-Reform Assessment". [in:] Sieder, Rachel (ed.). *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*, London: Palgrave, Institute of Latin American Studies, 2002: 157-183.
- Yrigoyen Fajardo, Raquel. *Litigio estratégico en derechos indígenas. La Experiencia de la Comunidad Nativa Tres Islas*. Lima: Instituto Internacional de Derecho y Sociedad, Programa PRO-INDÍGENA, 2013.
- Yrigoyen Fajardo, Raquel. "¿Cuales son los ciclos históricos de invasión de los territorios indígenas?". [in:] *Revista Alertanet en Litigio Estratégico y Formación en derechos Indígenas*. Lima: Instituto Internacional de Derecho y Sociedad, 2016: 25-33.

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