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# Principles of Multiculturality and Human Rights in Latin America – Several Observations

This article argues that the concept of multiculturalism, which is an extremely valuable asset, may, in the context of various interpretations, serve to resolve social conflicts. However, it may also generate conflicts. Using examples from several Latin American countries, the text will present some significant elements that drive processes, in which the principles of multiculturalism may be contradictory to the ideal of multiculturalism on which were grounded.

**Key words**: Human Rights, Indigenous Peoples Rights, multiculturalism, customary law

According to Rodolfo Stavenhagen, there are at least three kinds of cultural rights: the right of access to cultural capital (where culture is seen as "the accumulated heritage of humanity"); the right of an individual to engage in cultural activities (where culture is seen mainly in terms of creativity); and the right to culture as a way of life. This article will focus on the third cultural right (29-33).

The aforementioned rights are sanctioned by international declarations and conventions (including the UNESCO Universal Declaration on Cultural Diversity). Some of these legal acts distinctly underline the cultural rights of indigenous peoples and minorities, including the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Convention 169 of the International Labour Organisation – ILO 169). The UNESCO Declaration states that "no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope" (UNESCO).[1] On the other hand the right to cultural diversity is also a human right, and thus – by definition – inviolable. The problem of potential mutual exclusion of cultural rights and other guaranteed rights

[1] ttps://www.oas.org (30.12.2015).

is particularly relevant in countries where customary law is handled in a distinctive manner, for example in Bolivia[2] and Guatemala. Moreover, in certain contexts, political and cultural human rights are seen not as universal, but as being imposed by the dominant culture. This is not helped by the fact that the categories and concepts enshrined in the Universal Declaration of Human Rights (1948) are often untranslatable into indigenous languages (Pitarch). Moreover, while analyzing the perception of human rights in "traditional" societies – which significantly differs from that in Western Europe – we should keep in mind that cultures are not static, and are subjected to processes of construction, reconstruction, and continuous acculturation.

Indigenous people in Latin America are still being discriminated against and remain vulnerable to exclusion. The necessity to fight for their territorial rights and their right to identity and recognition persists. The recognition of multiculturalism in Latin America is part of the process of decolonization, and the adoption of its principles can and should be a very useful tool for solving social issues. However, this requires the development of structures that – among other things – will determine the rules that govern multiculturalism, and answer questions such as: 1) Which elements of culture should be affirmed and which should not? 2) Who belongs to a particular culture and who is excluded from it? Who has the right to decide? 3) Does the culture in question have subcultures? What is their status?

The answers to these questions would give a clearer picture of the relationship between the legal systems of human rights, and the rules that minorities have evolved as their own way of regulating social reality.

The concept of multiculturalism, whereas being a very valuable asset, in the context of its various interpretations may serve as a tool for resolving social conflicts, but conversely it can also generate them. The core assumption is that multiculturalism leads to the harmonious coexistence of different societies within the same state. However, it is necessary to talk about "borderline issues." Using examples from several Latin American countries, this paper intends to identify catalysts for generating processes in which the principles of multiculturalism may be incompatible with the concept thereof as promoted by UNESCO. Analysis of these elements and processes seems to be essential for intercultural dialogue, as well as for debate on multiculturalism, which assumes the communicational (consensual) rationality of its subjects.

## Multiculturalism and Customary Law

Although constitutions[3] are the primary source of legal regulations in various countries of the region, the extent to which they take into account indigenous issues varies greatly. According to Cletus Gregor Barié, the "avant-garde" countries that have adopted the constitutional rights of indigenous peoples in Latin America are currently: Brazil; Colombia; Paraguay; Peru; Bolivia; Argentina; Ecuador; Venezuela; Mexico;

[2] In the Bolivian legal system, customary law has been legally equated to positive law. The definition of customary law has been regularly abused by various social actors. The Internet provides countless media accounts describing and explaining "mob justice" as customary law. See for example: https://www.youtube.com/watch?v=hLr9e-a0Xy4 (30.12.2015).

[3] Constitutional norms can have precedence over international agreements, as is the case of Peru, or *vice versa*, as in Colombia (Barié).

Guatemala; Nicaragua; and Panama. All the aforementioned states accept and protect the identity of the indigenous peoples that inhabit them. However, in contrast to the "pro-indigenous" constitutions is the constitution of French Guiana – a French-dependent territory with the status of an overseas department – in which there is no debate on indigenous peoples or their rights. According to Barié, Costa Rica, El Salvador, Guyana, and Honduras all address indigineous issues in their constitutions, but do so only "vaguely and superficially". On the other hand, Belize, Chile, French Guiana, Suriname, and Uruguay "almost completely ignore indigenous issues" (548-549; see more in: Krysińska-Kałużna, Yamashta *czyli Ten, Który Prawie Umarł*). As is evidenced by the above, the degree of constitutional recognition of multi-ethnicity and multiculturalism differs between various Latin American countries.

Recognition of multiculturalism is connected with granting rights to ones own cultural practices, thus including legal practices in the form of so-called traditional or customary law. Fundamental laws are not the only documents that give indigenous peoples legal guarantees in terms of customary law. First and foremost, such documents also include the ILO 169. Article 8 of the Convention states:

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

The ability of indigenous people to use traditional law is one of the principles which should govern a multicultural state.[4] According to Rodolfo Stavenhagen (16), we can assume that customary law is a set of customs recognized and shared by a certain group, for example, an ethnic or religious group. The main difference between customary law and positive law – according to Stavenhagen – is that exercising the latter is the responsibility of the state and its institutions. Customary law operates without reference to the state. On the other hand, Barié (72) identified three sources of currently functioning indigenous rights: traditional law itself; state law (positive law); and international law. For each source, we can distinguish the law, custom, jurisprudence, and doctrine. Naturally, each of the different sources and its dimensions has different institutional expression.

## Differences with Regard to the Ontological Foundations of Law

Given that the application of customary law "shall not prevent members of these peoples from exercising the rights granted to all citizens" (ILO 169), it remains extremely relevant to look at the consequences of differences between the indigenous

[4] Customary law was the basis for the creation of positive law. As stated by the founder of the German historical school of thought, von Savigny, law is not derived from the state, but legislated by it (Dupret).

ontology and that on which positive law and human rights are based. There is a distinct difference between the ontology of the indigenous world and the ontology of the Western world, which has been shaped by positivist thinking. Indeed, each determines differently what is real and rational. This may create obstructions to respecting the law, regardless of whether it is positive (perceived in certain situations as imposed and not related to the merits of an issue) or traditional (perceived as "unreasonable").

For example, in some indigenous communities, it is believed that sickness and death are caused by witchcraft, thus a specific person is blamed for such occurrences. Justice requires this person be punished, for example, by being excluded from the community, physically chastised, or – in extreme situations – deprived of life. The social reality, i.e. the ontology, on which national law that originates from Europe is constructed, does not foresee the possibility of judging someone for practicing witchcraft. Similarly, it does not provide for the potential transformation of one creature into another, for example, a human being into a jaguar, a bird, or a bear. In indigenous worlds, however, such transformations do occur. According to Stavenhagen (23) "Witchcraft in many indigenous communities is considered to be antisocial (…) and punishing it is considered as legitimate self-defense".

Within the legal system – as defined by positive law – the process of regulating social relations is dependent on the introduction of legal standards that make up a legal order (Sarkowicz, Stelmach 109). Regulated social relations are called legal relations, and one of the elements of these legal relations – aside from their subject, object, and content – is legal facts (Morawski 163). A legal fact is any event that "causes the emergence, termination or change of content within a legal relation, i.e. any such event that causes any legal consequences" (Morawski 164). We have two types of legal facts: a) legal occurences, i.e. events that do not depend on human will (natural disasters, human birth, the passage of time – e.g. reaching adulthood); b) activities, i.e. legal facts that depend on human will, namely human behaviors – e.g. payment or non-payment of taxes. This division is consistent with the ontology on which the western worldview is based. Conversely, for example, it is in no way compatible with the ontology of the Huaorani – a people that will be discussed in more detail later in the text – because what is defined as a legal occurrence in the western worldview may be seen here as dependent on human will. Furthermore, legal occurrences – as defined previously – are impacted by beings that are in no way provided for by positive law or case law, but which can maintain a relationship with people, thus influencing their behavior. Such relationships may or may not face sanctions from the community, and may or may not be valorized positively, but within this context, they are simply obvious and real.

## Who is Indigenous?

An issue of extreme relevance is who decides what an element of the tradition and culture of people, community, or ethnic group is, and who is a member of the indigenous community, i.e. who is – *de facto* – an indigenous person.

Even now within the framework of the United Nations system, there is no agreement on a single definition for the meaning of "native" or "indigenous people".

A definition developed by José R. Martinez Cobo, a Special Rapporteur for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, is usually applied as a working definition (Daes *Indigenous peoples. Keepers of our past – custodians of our Future* 18; see also, e.g.: Daes "On the concept of 'indigenous people'" 36). Indigenous peoples themselves do not accept it as the only criterion either.[5] Lack of a commonly accepted definition makes it impossible to uniformly answer the above question, either on the basis of international law, as well as through analysis of legal regulations in individual countries[6] – some of which define indigenousness primarily on the basis of a number of distinguishable characteristics, and some on the basis of self-identification. Conducting positive indigenous self-identification is in turn largely dependent on the context in which it takes place. The results of censuses may be a good illustration for context-dependent self-identification. My field experience has also confirmed great fluctuation of categories on which indigenous self-identification is constructed as well as the significant importance of the context in which it develops.[7] The question of who an "Indian" is in accordance with the law – as well as the process of understanding indigenousness as perceived by the indigenous themselves – remains unanswered (Krysińska-Kałużna "'Indianin' w świetle prawa").

This issue is vital, especially when part of the indigenous community refuses to acknowledge the indigenous status of the remainder thereof. Such instances have been noted in Mexico, where conflicts between indigenous Catholics and indigenous Protestants occur. Occasionally, the latter are expelled from their homes or even from their communities. I asked a member of the P'urhépecha people from Mexico, a person with a university education interested in customary law, to comment on the situation. His comments are quoted below, as in my opinion they faithfully reflect the views of indigenous Catholics who believe that Protestants themselves are responsible for their exclusion from the indigenous community. He stated,

> I am an indigenous and I have a sense of belonging, therefore I should first and foremost know my indigenous beliefs, and next have a general understanding of communal. And if you accept Protestantism, then well, you should be aware that you have responsibilities within the community. I should obey them, so as to have a right to my religion. But if I do not fulfil my communal duties, I therefore break off from my people and turn away from them by practicing different religions (…) The adoption of another religion, new or old, but not your own, equates to the loss of indigenous memory. This means falling into a void or extreme alienation. (…) It is not the community that prohibits *fiestas*, but this new doctrine that tells them that they should not participate, cooperate, celebrate, or coexist in a community in a traditional way. This takes away their rights and responsibilities; thus resulting in loss of their membership in the community (org. *la ciudadanía comunitaria*). (…)

[5] As proven, for example, by the lack of collective consensus within the Working Group for Indigenous People, which discusses issues regarding the acknowledging of the "indigenousity" of Rehoboth Basters, descedents of the Khoi and white Namibian settlers.

[6] Especially when taking into account that legal regulations within the same country can possess conflicting provisions.

[7] I personally heard statements made by members of indigenous families in Mexico, where brothers and sisters differed with regards to self-identification – some identified themselves as indigenous, others as Mestizos.

> Concerning Protestants that – as you claim – are still indigenous… Biologically, yes, there is no doubt about this. What is debatable is their consciousness, identity. An indigenous person is an indigenous person that is taking responsibility and accepting the vision and life of indigenous people, and conscious of this difference (org. *y los intereses de esa diferencia*), (personal communication 2010, translated from Spanish).

The aforementioned statement illustrates the importance of the questions raised above in this article: 1) Who and on what basis decides on someone else's membership in an indigenous community? 2) Who and on what basis decides on the definition of what is the indigenous culture? 3) Can someone who is born an indigenous stop being indigenous in any other way than on the basis of her/his own decision? 4) If, the answer to this question is *yes* and a community may decide on this issue, does this not violate the right to ethnic and cultural identities?

## Contradictions of the Rule of Law

Contradictions between rules of law are sometimes of great relevance. They may relate to the underlying principles of fundamental human rights, e.g. the principle of equality of all people, the right to defense or the right to life. Here are a few examples.

In some indigenous cultures, it is assumed that not all community members are equal. For example, this is true of the Tzeltal culture (Mexico). In the words of Pedro Pitarch (97),"this asymmetry also explains why not all human beings possess the same respect or, in this context, the same rights". Further on, the same author writes, "For instance, for the Tzeltals, this perspective renders almost incomprehensible Article 16.2 of the Universal Declaration of Human Rights, which reads, 'Marriage shall be entered into only with the free and full consent of the intending spouses'. This is considered unjust: given that the young woman has benefitted from the care and attention of her parents throughout her childhood without offering anything in exchange, the parents should receive something when handing their daughter over for marriage" (98).

Practices within indigenous communities associated with customary law are occasionally marked by violence. This issue – within the overall picture of indigenous peoples as a group towards which the dominant society uses violence – is often overlooked. An example of such a "unification" of the image of indigenous practices is "The Handbook for Administering Indigenous Law in Ecuador", which states: "Various indigenous communities has always had their own legal systems in order to maintain social control and to preserve harmony, peace, and tranquility between inhabitants" (29). This statement ignores such groups as the Huaorani, residents of Ecuador, for whom periods of peace were only intervals between periods of war; or the Jivaro, for whom the *tsantsa* ritual was very culturally significant. Of course, the Jivaro no longer practice the aforementioned, but this does not mean that all indigenous peoples in their activities assume that "maintaining harmony, peace, and tranquility between the inhabitants" is the most important goal, and even if we agree with this statement, it may occur that the category of "inhabitant" is restricted to co-residents of the same communal hut.

In 2003, the Huaorani from the Ecuadorian part of the Amazon killed over a dozen (probably fifteen) people from the isolated Taromenane group. They killed one

man, as well as women and children. This was done in retaliation, perceived as enacting justice. When killing they knew that their victims were people from a different group – the one whose members had killed a person from their community ten years earlier, an act that they wanted to avenge. However, this did not matter, because for the Huaorani, the act of vengeance has a cultural background. In the absence of a strong response from state authorities, who decided to leave justice in the hands of the Huaorani, the group again attacked the Taromenane in 2013, killing over twenty people (Cabodevilla; Krysińska-Kałużna „Quién y cuándo puede matar…"; Krysińska-Kałużna *Yamashta, czyli ten który*… 242).

Dr. Gina Chavez Vallejo, a specialist in constitutional law who was also involved in the 2003 project "Justice Systems of Indigenous Peoples", commented on the murders:

> Revenge creates social responsibilities that must be fulfilled. Failure to comply with the rules of revenge is a socially unacceptable fact. Revenge is not an act that is practiced within a family group, because as such the killing of co-residents and families is unthinkable. The enemy is not a specific person, but a whole group and its members are killed with spears. It would be impossible to think of killing the enemy without a spear, or similarly to kill a *huamoni* [an inhabitant of the same territorial community – MKK] using it (33-34).

She writes further

> As for the narrative of events and the apparent dichotomy as to who should identify the facts of the case and pass judgement on them – the indigenous people or the national authorities – we have a constitution that recognizes the collective rights of indigenous peoples. These include the right of indigenous authorities to administer justice during an internal conflict, which forces us to analyze the events of 26th May in the light of constitutional obligations (31).

According to Chavez Vallejo

> This directly excludes the possibility of subjecting events such as those of 26th May to an investigation under the Criminal Code or any other provision of law of equal or lower rank. Moreover, such instruments are not consistent with constitutional principles relating to collective rights (36).

In my opinion, it is difficult to agree with the point of view represented by Chavez Vallejo, because – by remaining consistent – we would have to conclude that violations of fundamental human rights can only be penalized if they are recognized as a crime by the system of traditional law which, for some reason, has jurisdiction over the offenders of the act in question. No less important is the question of why jurisdiction should be granted to the Huaorani and not to the Taromenane. The answer may be simple: because they live in isolation. In placing the situation under the jurisdiction of the Huaorani, were the rights and traditional law of the Taromenane violated, as they would likely have expected a different verdict? Furthermore, the killings took place on Taromenane territory. What would we say if the Taromenane, who somehow found a way to speak out, request the death penalty? Would we then also conclude that "the right of indigenous authorities to administer justice during an internal conflict" should be enforced?

## The Suruahã Tragedy

Some indigenous groups living in the Amazon practice infanticide. These include the Uru-eu-uau-uau, the Deni, the Jaminawa, the Kuikuro, the Kamayurá, and the Suruahã (also written: Zuruahã). The most common victims of such killings are children with physical deformities, twins, and the children of women who for some reason should have refrained from sexual relations. Indeed, "According to a study conducted by Rachel Alcântara from the UNB [the University of Brasilia], approx. 30 children in the Parque do Xingu are killed each year. According to research conducted by the physician specialist for public health, Marcos Pellegrini, who until 2006 coordinated the work of DSEI [*Distrito Sanitário Especial Indigena*] among the Yanomami in the state of Roraima, in 98 children were killed by their mothers in 2004, making this cultural practice the leading cause of mortality among the Yanomami"[8]. Such data should be interpreted with reservation, as they are difficult to compare. Taking into account, *inter alia*, the tragedies related to invasions of Yanomami land by illegal gold prospectors, it is questionable whether actually killing children is aleading cause of mortality amongst the Yanomami. It is, however, difficult to deny the existence of the aforementioned problem.

One well known case is that of a girl named Hakani from the Suruahã, who was saved from being buried alive by one of her brothers, and was later taken in by missionaries.[9] Hakani did not develop like other children. At the age of two, she still could not speak or walk. The Suruahã community decided that she was the child of an evil spirit who had sex with her mother, and therefore must die. The community exerted strong pressure on her parents, so they committed suicide – a common way of solving problems among the Suruahã. From 1980 until 1995, "there were around 38 [Suruahã] deaths by suicide – 18 men and 20 women – amid an average population of 123.6 people. (…) Mortality factors were dominated by the intense practice of suicide by poisoning (38 cases, or 57.6% of the total). Among the adult population (people over 12 years old) during the same period, suicides accounted for an extraordinary 84.4% of all deaths in this age group (38 cases from a total of 45) (Dal Poz)"[10]. For the Suruahã, there is nothing surprising about the fact that young people commit suicide because, according to their perception of human life, it is good to die young and strong. Furthermore, it is not only a love of youth that leads the Suruahã to commit suicide. Any tension in family relationships, friendships, or within the group can lead to suicide. João Dal Poz cites the following examples:

> In 1985, after the suicide of a young woman expelled by her mother-in-law, both her sister and sister-in-law died. In 1986, the suicide of a man who revolted against his wife for refusing to prepare him food which then provoked the death of a friend and of the friend's classificatory father. In 1987, the mother and friend of a young man died after he

[8] http://www.hakani.org/en/infanticide_among.asp (30.12.2015).

[9] http://www.hakani.org/pt/infanticidio_entrepovos.asp (30.12.2015), http://www.hakani.org/en/hakani_history.asp (30.12.2015); http://www.ilhacap.com.br/edicao_janeiro12/Capa-Hakani-jan11.html(30.12.2015).

[10] http://pib.socioambiental.org/en/povo/zuruaha/989 (30.12.2015), http://www.ilhacap.com.br/edicao_janeiro12/Capa-Hakani-jan11.html (30.12.2015).

had killed himself because others had complained about the excreta left by his dog. The same year, two adolescent girls drank *konaha* [poison – MKK] because their grandmother had scolded them for sexual lapses, which also led to the death of their brother (Dal Poz).

These are only a few of the examples given by anthropologists working among the Suruahã. Such external pressure can have two outcomes: either do what is expected from a member of the Suruahã community, or commit suicide. Hakani's parents chose the second solution. The obligation to kill the girl fell to the eldest brother, who buried the girl. However, she did not die, and after crying for a long time, somebody pulled her out of the ground. Her grandfather took her in, but he knew that the duty to deprive his granddaughter of her life now rested on his shoulders. He shot the girl with a bow, but she managed to survive. The oldest brother and grandfather then committed suicide. The middle brother looked after the girl for several years, offering her his leftovers. Finally, when she was 5 years old, he carried her to the house of Protestant missionaries and asked for their help.[11]

Some anthropologists and ONG activists deny the existence of infanticide among indigenous peoples, most likely in order to avoid hasty judgement thereof by the national community.[12] Alcida Ramos, who examined the impact of Napoleon Chagnon's studies on social attitudes towards the Yanomami, says that the consequences of describing different cultures and peoples can go far beyond what was originally intended by the investigator. Telling the "truth" cannot overshadow the importance of social responsibility of the anthropologist (Ramos). Certainly, Ramos had an empirical basis for adopting such an attitude, but perhaps her opinion is no longer as relevant as it was almost 30 years ago, when Ramos wrote her text. Nowadays, anthropologists can act as partners for the people they work with to an increasing extent, thus giving them a voice on many issues. Researchers have ceased to be the sole discoverers and interpreters of the habits of the people they research. We should therefore see anthropologists more as mediators of dialogue than as simply "the only rapporteurs". The position of "an intermediary" is part of the process of changes that leads to real dialogue between subjects with differing values and culture.[13]

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[11] http://www.hakani.org/en/hakani_history.asp (30.12.2015).

[12] For example, Survival International (SI),a renowned and very influential organisation that fights for indigenous rights, disputes accounts that the Suruahã practice infanticide. Fiona Watson, an employee of Survival International since 1990 and participant in many SI campaigns, stated in an interview for El Mundo that "This is absolutely not true. Some deaths may have occurred (org. *ha habido alguna muerte*) same as they could have occurred in England, but this is no basis for claims that English people kill their newborns." The same article that cites Fiona Watson also states, "João dal PozNeto, an anthropologist for the Federal University of Juiz da Fora, who worked with the Suruwahã in 1994 claimed that "infanticide amongst the Suruwahã is limited to very specific cases, where many factors come into play, but there is no law that condemns or any 'custom', that necessitates the removal of unwanted babies" http://www.elmundo.es/elmundo/2012/03/07/ciencia/1331148881.html (30.12.2015). The statements are contradictory and furthermore decisively do not respond to questions inferred by people who know the fate of the aforementioned Hakani, the girl from the Suruahã group.

[13] Anthropologists, fully aware of imposed acculturation and other processes, to which indigenous communities were subjected, tend to be very cautious in promoting cultural changes in the indigenous groups.

Opinions that deny the existence of the phenomenon of infanticide, seems particularly inconsiderate when juxtaposed with the documentary film *Quebrando o silêncio*[14], made by an indigenous journalist and told by the indigenous themselves that tackles the problem of infanticide in many groups in Brazil. For example, it presents parents who have had to leave their group in order to save their children, because in the opinion of their fellow community members, they should be killed. It also shows a young indigenous man who survived only because he was adopted by a person from outside his group. If this had not happened, he would have been buried alive due to the fact that he was a twin. The film features an indigenous lawyer who discusses the right to life, and many indigenous respondents indicate that the culture is changing (Terena).Their statements are compiled below: "Culture is dynamic and changes from generation to generation"; "Many indigenous are influenced by anthropologists who say that habits are inviolable"; "Culture does not stop at one place! It moves forward! Just the same way as culture does, the way of thinking is changing and that is why today we want to raise all of our children" (Terena). The film also mentions *La reunião de Concientzacão sobre Infanticidio* [Infanticide Awareness Meeting], an event that took place in Xingu in 2008, and a workshop called *Mulher e Indígena Ciudadania – Aldeia Nova Esperança Roraima* [Women and Indigenous Citizenship – Village New Hope Roraima], which took place in 2009. In the documentary, the indigenous themselves took a less radical stance towards their own culture than anthropologists. They expect that, thanks to cultural change, the suffering of both children and adults will diminish, including suffering of those who – according to tradition – condemn children to death. As is clear from the statements of the protagonists of the documentary, cultural change may be easier to accept for indigenous people than for anthropologists.

In my opinion, the tragedy of Hakani and her entire family deserves to be heard out and deserves our attention, and should not be denied. Her story is very difficult, but is nonetheless real. Therefore by merely talking about these stories and presenting them in the right context can lead to a situation that both the indigenous peoples and the national community will find a common language that will allow the evaluation of described events. Possibly, if the the Ecuadorian authorities had not decided in 2003 to deal with indigenous who killed members of isolated group in the depths of jungle, then the massacre of the Taromenane in 2013 may not have occurred. Marcos Mayoruna, once a baby saved from being buried alive and now an adult, said: "We have nothing against anthropologists. We only claim that they misunderstand us."

## The Non-Existent Law

The last of the issues that will be addressed is placed at the end of the text, not because it is less important – on the contrary, I deem it extremely important – but because it was paid more attention and is discussed in much more detail by many authors than the other aforementioned issues. This problem concerns the state as an institution responsible for implementing legal provisions that recognize multiculturalism, including the traditional laws of indigenous peoples, and which it usually

[14] https://www.youtube.com/watch?v=MBjDOqfQlio

fails to do. Negligence on the part of the state sometimes boils down to superficial activities, which do not take into account the introduction of tools that enable factual, official use of customary law in cooperation with the public administration, or which enable the use of customary law within the context of human rights violations (see e.g. Donna Lee Van Cott; Diego Iturralde; Laura Raquel; Valladares de la Cruz).

An example of such neglect can be found in events that took place in the community of San Juanico in Valle del Mezquital in the state of Hidalgo, Mexico.[15] According to customary law practised by the communities in the valley, when someone causes a death, the slayer or her/his relatives pay a negotiated amount of money to the family of the deceased as compensation, leading simultaneously to the restoration of good relations between the families of the slain and the slayer. In December 2008, a 15-year-old boy killed a resident of San Juanico, as a result of drunk driving. The family of the perpetrator did not want to pay the determined sum of money, thus the boy was imprisoned by relatives of the victim and no negotiated settlement occurred. Therefore, neither positive law nor customary law was respected. Finally, the federal police got involved and sent in 800 officers, who arrived in 20 buses and trucks. The intervention was also aided by a helicopter that flew over San Juanico with a clearly visible sniper leaning out. In the end, 29 people were detained. Many of them had nothing to do with the driver's detention and did not even live in San Juanico. A certain number of them were involved in opposition activities. Furthermore, the police robbed the local residents, violated the dignity of women, and destroyed property (Krysińska-Kałużna *Wiele kultur – jedno prawo?*).

Within the proper procedural framework, suitable tools would have been available for negotiating adequate compensation for the family of the accident victim, as required by customary law, and the conflict would never have occurred. Demands for compensation, however, are generally regarded as contrary to law; and if they are made, they are made informally, whereas participants are aware that they might be subjected to sanctions by institutional entities at the disposal of the representatives of the national judiciary.

## Conclusions

In this paper I have explored several phenomena which I consider relevant to the discussion on multiculturalism and inassessing the functionality of multiculturalism. These include: differences between legal systems of different cultures; offering variable adjudications as to what is right and what is wrong; different ontologies adjudicating on what is true and rational; as well as the attitudes of different actors – i.e. the state, the indigenous, anthropologists, and non-governmental organizations – towards the challenges of practical aspects of multiculturalism.

Law, culture, custom, and indigenousness are fluid concepts, and we do not always know who may legitimately speak out about them and in whose name. Furthemore, indigenous worlds are not always and unequivocally divided into human and non-human worlds; and the "perpetrations" of a person are not only limited to the actions he/she commits in his/her human shell. These variables, as well as the failure of the state and the lack of clarity on jurisdiction, in many cases make discussion

[15] https://www.youtube.com/watch?v=Ooq_V8cvVCw&NR=1 (30.12.2015).

on the principles of multiculturality very complicated. The questions mentioned at the beginning of the article – namely: 1) Which elements of culture should be affirmed and which should not? 2) Who belongs to a particular culture and who is excluded from it? And 3) Who has the right to decide the above? – have to do with who is exercising power, and in whose interest.

Ignoring the aforementioned problems, making no reference to them by various people and institutions participating in discussions on multiculturalism, impairs the capacity to: 1) develop truly functional rules of multiculturalism, as defined in the UNESCO Declaration; 2) start the process which would subject these rules to critical debate.

Law in the tzeltal language is translated as *mantalil*. *Mantal* without the-*il* suffix, means "what one says to somebody, about what they should or should not do" (Pitarch 95). It can also mean "advice", "order", or "rule". *Mantalil* accumulates in the human body throughout a lifetime as if it were something substantive. It defines not only the relationship between people, but also the relationship between human beings and the rest of the world (Pitarch 95). It is my hope that the *mantalil* accumulated as a result of the discussion on multiculturality will allow all parties involved to take appropriate decisions.

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