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THE CONSEQUENCES OF THE PROTECTION OF INDIGENOUS PEOPLES'  
RIGHTS ON ENVIRONMENTAL PRESERVATION IN THE AMAZON

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## **Abstract**

The subject of this research is the likely consequences of the protection of the rights of indigenous peoples on environmental preservation in the Amazon rainforest, within the Peruvian territory.

Departing from an understanding of Amazonian indigenous cultural identity – framework for the protection of traditional lifestyles, spiritual values and cosmovision – this investigation will examine the internal dimension of the human right to self-determination, the right of indigenous peoples to choose their priorities and means for development, and the human right to a healthy environment as recognized in the inter-American system for the protection of human rights. The analyses of both rights will be conducted in order to approach the linkages between the protection of human rights and the preservation of the environment.

Therefore, we will approach social and environmental conflicts concerning industrial concessions, the construction of infrastructures and development policies in the Amazon from the lens of indigenous peoples' rights. Moreover, this study aims to place claims for environmental justice in the context of a multicultural state, compromised towards a progressive realisation of democracy while addressing the challenges for sustainability within an intercultural, albeit globalised society.

This work points to the potentialities of local empowerment, through culturally adapted structures for education and political participation of indigenous communities, in combating cultural defragmentation and preserving traditional livelihoods. Underlying that the preservation of cultural identity is a counter-hegemonic means for balancing social, environmental and economic interests so as to include sustainability.

## **Table of acronyms and abbreviations**

ACHR	– American Convention on Human Rights
ACHPR	– African Charter on Human and Peoples’ Rights
ADRDM	– American Declaration of the Rights and Duties of Man
CBD	– Convention on Biological Diversity
CERD	– Committee on the Elimination of Racial Discrimination
CO <sub>2</sub>	– Carbon Dioxide
FUNAI	– Brazilian Indian Affairs Department
GA	– General Assembly
IAHRS	– Inter-American Human Rights System
ILO	– International Labour Organisation
IP	– Indigenous Peoples
ICCPR	– International Covenant for Civil and Political Rights
HRC	– Human Rights Committee
NGO	– Non-Governmental Organisation
OAS	– Organisation of the American States
PMCC	– Purus-Manu Conservation Corridor
REDD	– Reducing Emissions from Deforestation and Forest Degradation
SSP	– San Salvador Protocol
UDHR	– Universal Declaration of Human Rights
UN	– United Nations
UNDRIP	– United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	– United Nations Framework Convention on Climate Change

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## 1. Introduction

“The original sin of South America was to have been constructed without indigenous and against indigenous.<sup>1</sup>” Boaventura de Sousa Santos

### 1.1 General overview

According to the Worldwatch Institute, there are 4000-5000 indigenous cultures in the world, with 190-635 million community members<sup>2</sup>. In Peru, indigenous peoples (IP) represent 30% of the population<sup>3</sup>. In the 2007's census of indigenous communities, there was recorded a total of 332,975 Amazonian indigenous inhabitants<sup>4</sup>.

The common history of IP in Peru indicates that human rights violations have been occurring ever since the arrival of the Spanish settlers in the XVth century<sup>5</sup>. The commonalities behind the first contact experiences that occurred in the past centuries, as documented by missionary missions and further studied by anthropologists, describe various forms of cultural assimilation, forced evictions, inhuman and degrading treating and even slavery<sup>7</sup>. Many of such peoples still face assimilationist onslaught under different shapes and activities that perpetuate exploitation.

In order to discuss indigenous issues we must consider the contributions of anthropology: minimize our social constructions and cultural references and submerge in the mind set of different civilisations, in order to study them and attempt to understand different conceptions of the world. Only a certain mental malleability will allow us to observe and acknowledge their reality, in order to understand the social practices and reflect upon the functioning of distant societies. For we believe this to be the only way to value the variety of human existence and respect the others as authors of their own destiny. Therefore, we must briefly introduce some features that are

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<sup>1</sup> Santos, Boaventura de Sousa, ‘Visions and propositions for a more just world’ – Participation in the conference *Sociétés et changement* at Université Catholique de Louvain, 20/04/2015. Available at: <https://www.youtube.com/watch?v=rRAU84jtyoU> (consulted on 02/06/2015).

<sup>2</sup> Brown, 1993, 81.

<sup>3</sup> Herrera, 2011, pp. 67.

<sup>4</sup> Mikkelsen, 2014, pp. 159.

<sup>5</sup> Acosta, 1972 pp. 10-12.

<sup>6</sup> As broadly recreated in the movie *The Mission*. See Annexes, cinematographic references.

<sup>7</sup> Santos, 1992, 155-202.

common to Amazonian indigenous communities and their identity, which relies on a collective perception of their lands, resources, culture and activities.

The perception of the territory is particularly relevant for further understanding indigenous societies, as they have a deep spiritual relation with their lands, which are known to be the foundation for their live, culture and memory. Insofar, several tribes and peoples identify themselves by the name of the land they belong to. Moreover, teachings and traditions are transferred from generation to generation in oral narratives. Further ahead of ancestral knowledge in what concerns to biology, botany and agronomy that is translated into subsistence practices, such narratives address the entire set of cultural and spiritual believes, recurring to mythological constructions that prescribe a metaphorical model for the functioning of their ecosystem and the interaction between human beings and nature<sup>8</sup>.

As a matter of fact, their cultural practices and traditional lifestyles have embedded distinctive features of spirituality - the internal connexion with the universe and surrounding environment, as important to IP as other aspects of mental and physic health - upon which inter-social relations are built, accordingly to premises of solidarity, friendship with nature and reciprocity that attribute significance and hope to their lives and define the contours of a holistic cosmovision. Hence, it is possible to understand the pressing need of referring to spirituality when speaking about IP worldviews and to distinguish it from religion, the practices and rituals that exteriorize spirituality<sup>9</sup>.

Moreover the concepts of spirituality, culture, traditions and knowledge frequently crossover one another and are impressed on IP' interaction with the natural world<sup>10</sup>. Together they provide the key for IP' survival that relies upon a symbiotic relation with nature and is translated in the preservation of environment<sup>11</sup>. In this line, IP' sustainable livelihoods represent a balance in between mankind and nature in the contemporary world. Despite the different realities and particularities of each community, indigenous cosmovision shows to be in accordance with pre-industrial productive methods.

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<sup>8</sup> Descola, 2004 pp. 25-27.

<sup>9</sup> Castro, 2004 pp. 37-42.

<sup>10</sup> Ibidem.

<sup>11</sup> Ibidem.



Therefore, as soon as globalisation started with the attempts of a distant civilisation to conquer the Amazon forest, natural elements started to be regarded purely as economic assets. Alongside with the historical barbarities that postulated colonialism and cultural assimilation, this soon compromised the integrity of the native cultures that inhabited the Amazon and - once cultural defragmentation is intimately connected with the loss of ancestral knowledge, the degradation of the living conditions and the surrounding environment - the forest itself as a living ecosystem.

During the passage of the last centuries roots have grown in what we consider to be a contemporary paradigm common to several indigenous communities whose socio-economic situation, that confers them a situation of special vulnerability, is grieved by the desperate state of reliance on a monetary economy: working for survival in activities that compromise their means of human and cultural survival and place the preservation of their habitat at stake.

This is particularly relevant regarding the particularities of the Amazon, the biggest rainforest in the world<sup>12</sup>, as an ecosystem. Having been referred to as the lungs of our planet because of its carbon dioxide reserves and the major role it plays on regulating the global climate scene, it is home to a very significant amount of the world's biodiversity<sup>13</sup>. Scientific studies refer to habitat loss in between other variants as the causes for the annihilation of the majority of endemic plants in the last 500 years<sup>14</sup>. This assertion goes in line with the timeframe of the colonisation process, evidencing the linkages between cultural assimilation and environmental degradation in the Amazon.

The exhaustive exploitation of natural resources under the activities of wood logging, oil extraction and mining industries, the increasing number of infrastructures being built in the territory, such as dams and roads, the expansion of agriculture and farming contribute to the contamination of lands and rivers, compromising the quality of the soil, water and food upon which depends the survival of IP and their traditional lifestyles. In the last 40 years these activities were translated into the intensification of

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<sup>12</sup> Greenpeace International, 'Amazon Forest'. Available at: <http://www.greenpeace.org/international/en/campaigns/forests/amazon/> (consulted on: 10/07/2015).

<sup>13</sup> As recorded in the movie *Amazonia*. See Annexes, cinematographic references.

<sup>14</sup> Nobre, 2014, pp. 9-10.

deforestation and coincided with the increase of natural disasters related with climate change, such as desertification and droughts that compromise the future climate of the Amazon and might contribute to the reduction of forested lands<sup>15</sup>.

Furthermore, deforestation is spreading across the Amazon under the premise of development policies, the main reasons behind which are known to be economic interests, government doubtful and often illegal concessions within IP lands and the lack of compliance with the legal framework for individual and collective rights, as prescribed in international human rights law. Moreover, it has been defended that the climate crisis has the potential to be more severe than the economic one, despite the fact that governing elites have postponed effective decisions<sup>16</sup>. This is an impactful information in the context of civil society claims, demonstrations and petitions presented in the South American continent for social and environmental justice, that reveal an arising concern on the matter and trigger topical discussions, namely the international debates on climate change concerning state compromises towards mitigating policies in order to prevent the global temperature from rising.

The concept of environmental justice refers to the acknowledgment that the degradation of the quality of the environment compromises the fulfilment of human rights and development goals, particularly the enjoyment of the right to a healthy environment for it impacts on human living conditions, resulting in situations that may represent an abuse of the human rights to life and health (e.g. deaths and diseases related with contamination), claiming that amenities and burdens should be borne equally by the world's population. Despite the fact that it has been recognised that people of all nations and social backgrounds are experiencing the nefarious consequences of ecosystem decline, the harmful consequences of activities that contribute to environmental degradation recurrently seem to affect most the living conditions of those who belong to particularly vulnerable sectors of society – ethnic, religious and linguistic minorities or the poor, such as IP in what concerns the Amazon and the Peruvian reality.

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<sup>15</sup> Ibidem.

<sup>16</sup> Cfr supra footnote 14 pp. 34-36.

This phenomenon has been labelled as environmental discrimination and threatens basic premises of democracy and equality when people are denied to participate in the decision-making process. In line with the international commitments made under Agenda 21 at the 1992 World Summit on Sustainable Development, the right to participation is understood to be the individual's right to participate in decisions that directly or indirectly affect their habitat<sup>17</sup>. However, few communities participate in public decisions concerning severe environmental harm in their territories<sup>18</sup>.

This is the background to the discussion of the likely consequences for the environment of the protection of IP' rights to self-determination and to a healthy environment. Attending to the challenges posed by the available opportunities for survival and economic prosperity of indigenous communities and the efforts for environmental preservation in relation to the Amazon forest, in order to debate sustainable routes for development, cultural and ecologically sound.

## **1.2. Research questions**

Departing from a general understanding of the reciprocal relation in between indigenous populations and their spiritual connection with the surrounding environment, this thesis aims at evidencing the likely consequences of the protection of IP' rights on environmental preservation in the Amazon. In order to do so, an analysis of the connection between the protection of human rights and the expected consequences for the environment will be made, particularly in what concerns to the right of IP to self-determination and the recognition of the right to a healthy environment as a human right in the inter-American system for the protection of human rights.

This study will examine the contemporary social and environmental conflicts in the Amazon through the lens of the rights of IP. Therefore, the current investigation will discuss the recognition of both rights and the effectiveness of their implementation. In regard to the right to self-determination, we will focus on its internal dimension: the right of indigenous communities to pursue their economic, social and cultural development without outside interference. In what concerns to the right to a healthy

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<sup>17</sup> Picolotti, 2010, pp. 50-55.

<sup>18</sup> Taillant, 2010, pp. 132.

environment, we will rely on situations where the human rights to life and health are frustrated to approach abusive situations.

Underlying the main characteristics of indigenous traditional livelihoods - peacefulness, sustainability and resource management techniques as a dimension of traditional knowledge, cosmovision and spirituality - the question of how the protection of IP' rights could impact the protection of the Amazon forest will be addressed.

### **1.3. Methods, materials and delimitations**

We will rely upon the contribution of history and anthropology to understand the background to the current social and environmental conflicts in the Amazon, journalistic sources that denounce these controversies and social sciences in order to broadly portray the contemporary reality. Nevertheless, this research will be conducted under a legal approach, from the lens of IP' rights.

Therefore, an analysis of the international human rights standards for the protection of the rights of IP and the right to a healthy environment will be made in order to discuss the compliance of the current situation in the Amazon with the concerning international instruments-

Recalling the obligation of the Peruvian state to respect, protect and fulfil the human rights enshrined in the conventions and declarations it is a party to and have ratified, namely: the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), along with the First Optional Protocol to the ICCPR that provides the legal basis for the individual complaints procedure, the International Covenant on Economic and Cultural Rights (ICESCR), the American Declaration of the Rights and Duties of Man (ADRDM), the American Convention on Human Rights (ACHR), the Additional Protocol to the Convention in the area of Economic, Social and Cultural Rights, the International Labour Organization (ILO) Convention 169 and the United Nations (UN) Convention on Biological Diversity (CBD). We will also make mention to main premises of international environmental law as prescribed in the Rio Declaration on Environment and Development and Agenda 21, the UN Programme of Action from Rio, as well as documents in regard to the 21<sup>st</sup>

session of the conference of the parties to the UN Framework Convention on Climate Change (UNFCCC), which will take place in Paris, November 2015.

Furthermore we will briefly refer to jurisprudence from the inter-American Commission and Court on Human Rights and the African Commission on Human and People's Rights (ACHPR). However, we will not analyse the jurisprudence, the cases we will refer to, alongside with special rapporteur's reports to the Human Rights Council and individual petitions presented to the UN treaty bodies, aim at illustrating the relation in between the selected human rights. Neither shall this investigation address the controversial concept of development, albeit we will refer to development projects and their impact on environmental preservation in the Amazon.

## **2. Protection of indigenous peoples' rights in international human rights law**

### **2.1. Universal standards for the protection of indigenous peoples' rights**

Peru is one of the 51 original members of the UN (founded in 1945) that voted in favour of the UDHR in December 1948. Until the 1960's, the anti-discrimination provision provided by Article 2 UDHR was the only existing measure specifically relevant to minority populations<sup>19</sup>. Accordingly to which:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.

Despite the fact that states were often reluctant to confer such a broad interpretation to this right, the Convention on the Prevention and Punishment of the Crime of Genocide, from 1948 without mentioning implicitly minority groups, reaffirmed their existence<sup>20</sup>. Furthermore, the UDHR can be customary law when there is state practice and *opinion iuris* in that sense.

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<sup>19</sup> Vizi, 2002.

<sup>20</sup> Ibidem.

Since 1966, persons belonging to ethnic, religious or linguistic groups were recognised as minorities, as mentioned in Article 27 of the ICCPR, as individual rights were understood to preserve group identity. This article reads:

“In those State in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

From the various existing interpretations of national, ethnic, religious and linguistic minorities few general statements can be made: minority groups generally have a sense of community (organized around a well definable group identity that values its transmission in between generations), a common will to preserve that group cohesion and usually, but not always, a territorial concentration<sup>21</sup>. The Peruvian State is party to the ICCPR, adopted by the UN General Assembly (GA) on the 16<sup>th</sup> December 1966, signed by Peru on the 11<sup>th</sup> August 1977 and ratified in the 28<sup>th</sup> April 1978.

In this context, it is important to highlight that IP’ rights started to be protected under Article 27. Indigenous representatives have struggled to design the doctrinal contours of the notion of IP aiming at the creation of a body of international human rights norms that are specific to them. The primary characteristic that distinguishes IP from minorities is an asserted distinctiveness with respect to religious, cultural and related structures, particularly evident in what concerns to IP communal, religious and cultural ties to ancestral lands and resources<sup>22</sup>.

Moreover the international convention on the elimination of all forms of racial discrimination, adopted by the GA on the 21<sup>st</sup> December 1965, was signed by Peru in 22<sup>nd</sup> July 1966 and ratified on 29<sup>th</sup> September 1971<sup>23</sup>.

Nowadays, the use of the term *peoples* reflects core normative values of collective identity and continued communal survival. IP have been claiming that generally applicable human rights should be interpreted to account for their distinctive characteristics and the specific ways in which processes of development present continuous challenges to the survival of their traditional lifestyles. As a result over the past 50 years, international and regional human rights institutions have paid increased

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<sup>21</sup> Ibidem.

<sup>22</sup> Randall & Kronk, 2013, pp. 46-48

<sup>23</sup> Ratifications to the International Convention on the Elimination of All Forms of Racial Discrimination. Available at: <http://indicators.ohchr.org> (consulted on: 10/09/2015).

attention to the international status of IP. The adoption of the term *indigenous* distinguishes these claims from those of groups that could be classified as minorities under international law<sup>24</sup>.

Several human rights bodies have addressed the issue of the rights of IP, including the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the African Commission on Human and Peoples' Rights. These bodies have affirmed the existence of IP' legal identity and recognized a range of human rights specifically aimed at protecting their distinctive way of life. IP's rights to self-determination, cultural integrity and property serve as the foundational pillars for the recognition of further specific rights. Over the last decades these rights have been elaborated in order to provide special protection to IP, particularly in contexts of state development<sup>25</sup>.

In 1986, the ILO adopted the Convention number 169 on Indigenous and Tribal Peoples Convention (ILO Convention 169) that entered into force on the 5<sup>th</sup> September 1991. Peru ratified this Convention on the 2<sup>nd</sup> February 1994<sup>26</sup>. So far only 22 countries have ratified the ILO Convention 169. As Irène Bellier explains several states, including some of the most powerful in the world, are opposed to use a clear, wide-accepted definition of IP in a normative instrument since it would imply the recognition of their legal personality<sup>27</sup>. As a matter of fact, countries like the United States, Canada, Australia, New Zealand, Kenya, Sweden or Finland have not ratified the Convention<sup>28</sup>. Another reason is said to be related to the fact that the formulation present in the Article 1(2) UN Charter "self-determination and equal rights of peoples" was for long associated with the idea of independent statehood, namely as a premise for decolonization. Nevertheless, IP do not demand a right to secession, their claims are

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<sup>24</sup> Cfr supra footnote 22.

<sup>25</sup> Ibidem.

<sup>26</sup> Ratifications to the ILO Convention 169. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102805](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102805) (consulted on: 23/06/2015).

<sup>27</sup> Bellier, 2005.

<sup>28</sup> Cfr supra footnote 26.

much more narrow and mainly concern to the right to pursue their own economic, social and, cultural development<sup>29</sup>.

During the drafting of the Convention, there was a controversy concerning the use of the term *populations* over the term *peoples*, which was finally adopted. James Anaya, former special rapporteur on the rights of IP, explained that the term *peoples* is understood to have a more positive recognition of group identity and corresponding attributes of community and that states offer resistance to accept its use because of associations with the term self-determination.

Concerning this matter, comments made in 1989 by the IP' working group of Canada in the ILO for the partial revision of the ILO Convention 107 explained that indigenous and tribal peoples, as distinct societies, must be referred to in a precise and acceptable manner and that the continued use of the term *populations* would unfairly deny them their true status. In the same year, the Inuit Circumpolar Conference presented at the session of the UN Working Group on Indigenous Populations professed that Inuit, alongside other indigenous peoples worldwide, are not and have never been mere populations. Moreover, IP refuse to be treated as *populations* because this term holds a degrading connotation, as it was generally used to describe biological species.

There is not yet an universally accepted definition of IPs and the establishment of such a definition is complex for it should reflect the problems that were posed by the approaches of assimilation, development and integration, as well as the efforts of the international community to improve the situation of the recognition of their rights in recent decades. Neither does ILO Convention 169 provide us a strict definition of indigenous and tribal peoples, albeit Article 1 describes the peoples the Convention aims to protect:

“Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the

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<sup>29</sup> Anaya, 1996, pp. 75-88.



time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”

The elements of the definition of IP include both an objective and a subjective criterion. On the one hand, Article 1(1) mentions to the objective criterion used to recognise and accept a person as a member of their people: historical continuity (for have lived in a certain area prior to the colonization), territorial connection (to their ancestral lands, translated), traditional lifestyle (and culture references that distinguish them from the rest of the population) and the existence of their own social organization and political institutions. On the other hand, Article 1(2) provides a subjective criterion of self-identification that reciprocally complements the objective one. Hereby, the Convention’s coverage is based on a joint reading of both - such criteria has been used as the working definition for the purpose of identifying IP in international and national political and legal processes, not exclusively within the jurisdiction of the ratifying states. The same definition was used as the basis for UN agencies specialized in indigenous issues that further developed working definitions of the term, such as the World Bank and the United Nations Development Programme<sup>30</sup>. In what concerns to Article 1(3), the inclusion of the disclaimer on the understanding of the term *peoples* as in international law is related to the fact that ILO’s mandate concerns economic and social rights, therefore, it was considered outside its competence to interpret the political concept of self-determination<sup>31</sup>.

The fundamental principles of the ILO convention 169 are the prohibition of discrimination (Article 3 and 20, that refers particularly to indigenous workers), the call for special measures - attending to the situation of special vulnerability of IP (Article 4), the recognition of traditional lifestyles, cultural identity and spiritual values (Article 5), the right to participate in decision making processes - free, prior and informed consent

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<sup>30</sup> ‘Indigenous and Tribal Peoples’ Rights in Practice – A Guide to ILO Convention No. 169’, International Labour Standards Department, 2009. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_106474.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_106474.pdf) (consulted on: 07/02/2015).

<sup>31</sup> Ibidem.

(Article 6) and the right to decide their own priorities for the process of development (Article 7). Moreover, Article 4(1) of the convention expressly mentions “Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned”. Subsequently, the state must take special measures to safeguard the environment of IP.

Despite the utmost importance of the ILO convention 169 as framework for the rights of IP, it has been pointed that the concepts of property and possession are typically occidental, private fundamental rights that characterise constitutional states and do not correspond to the vast majority of indigenous cosmovision. For indigenous peoples conceiving ownership over land sounds absurd, and most certainly arrogant: “once the land is the eternal mother and the man mortal and transitory, it would equal to the pretension of owning a star or the sun”<sup>32</sup>.

Furthermore, as a result of the UN Conference on Environment and Development Agenda 21, the UN Programme of Action from Rio declared IP as a main group concerning efforts for a sustainable development. In the same context, the CBD, to which Peru is a party since the 29<sup>th</sup> of December 1993<sup>33</sup>, goes further and recognises on Article 8(j) the important contribution of indigenous and local communities in the preservation of the environment, providing that each contracting Party shall:

“Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”.

In the same line Article 10(c) reads that the Parties to the convention must “Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”.

The potentialities of IP’ ancestral knowledge are re-enforced in Article 1 of the UN Educational, Scientific and Cultural Organization Universal Declaration on Cultural Diversity, from 2001, where cultural identity, diversity and multiculturalism are said to

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<sup>32</sup> Gómez, 2006, pp. 140.

<sup>33</sup> List of Parties to the Convention on Biological Diversity. Available at: <https://www.cbd.int/information/parties.shtml> (consulted on: 07/07/2015).

be a “common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations”. In particular when read in conjunction with Article 4 that formulates “cultural diversity as an ethical imperative” which implies a commitment to human rights and fundamental freedoms, “in particular the rights of persons belonging to minorities and those of indigenous peoples”.

Attending to the interrelatedness of human rights, the protection of human dignity and equality result in the prevention of discrimination and demand the protection of IP’ cultural and environmental rights. The legal framework for the protection of IP’ rights seems to indicate that safeguarding indigenous cultural identity and ancestral knowledge points in the direction of the conservation of the environment.

## **2.2. Indigenous peoples as a subject of international law**

As discussed above, despite the fact that Article 1 of the ILO convention 169 concerning indigenous and tribal peoples in independent countries provides us the criteria to identify the holders of the rights prescribed in the Convention, there is no exact definition of IP in international law.

A proposed definition submitted by the former Special Rapporteur of the former UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, José Martínez Cobo, reads that “indigenous communities, peoples and nations are those which having historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”<sup>34</sup>.

Erica-Irene A. Daes, the chairperson-rapporteur of the UN Working Group on Indigenous Populations at the time, compiled a list of factors that international organizations and lawyers considered relevant for the understanding of the concept of indigenous peoples: (a) priority in time, with respect to the occupation and use of a specific territory; (b) the voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes

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<sup>34</sup> UN doc. E/CN.4/Sub.2/1986/7/Add.4 para. 379.

of production, laws and institutions; (c) self-identification, as well as recognition by other groups, or by State authorities, as a distinct collective; and (d) an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist<sup>35</sup>.

In the Nuuk Recommendations on Indigenous Autonomy and Self-Government, adopted by the UN Meeting of Experts in Greenland 1991, it was said that indigenous peoples constitute societies, holders of the right to self-determination that includes the rights of autonomy, self-government and self-identification. It was also pointed that they have the right to self-determination as provided for in the international covenants on human rights and public international law as a consequence of their continued existence as distinct peoples.

More recently, in 2007, the UN Declaration on the Rights of Indigenous Peoples was adopted by a strong majority of 143 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions<sup>36</sup>. It represents a big achievement for IP and the result of many years of negotiations that lead to the establishment of a common framework for the realization of IP' rights, dignifying living conditions and well-being. However, the declaration does not attempt to define the concept of IP, but merely identifies them as the beneficiaries of the prescribed rights – despite the fact that the preamble to the Declaration provides us a brief characterisation<sup>37</sup>.

We can identify as common to the above definitions the concepts of self-identification, distinctive features of a cultural identity that is prior to colonialism and the determination to preserve their continued existence as peoples by keeping their culture and spirituality alive, as well as ownership over their ancestral territories. The stress appears to be on the importance of indigenous cultural heritage, traditional knowledge and spiritual values, as main premises for the sustainable livelihoods.

Edward Tylor, the founder of cultural anthropology defined culture as a “complex whole which includes knowledge, belief, art, morals, law, custom, and any other capacities and habits acquired by man as a member of society”. In addition, it has

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<sup>35</sup> UN doc. E/CN.4/Sub.2/AC.4/1996/2 para. 69.

<sup>36</sup> Adopted by the UN General Assembly Resolution 61/295 of 13 September 2007.

<sup>37</sup> Daes, 2000.

been said to be a “patterned way of life shared by a group of people, encompassing all that human beings have and do to produce, relate to each other and adapt to the physical environment”<sup>38</sup>.

This notion establishes an undeniable link in between cultural references and its translation in the adaptation to the natural world. As a matter of fact, in line with the Human Rights Committee (HRC) General Comment no.23, in regard of Article 27 of the ICCPR, “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of IP<sup>39</sup>”. In this line, the Committee highlighted that the right to cultural identity “may include such traditional activities as fishing or hunting”<sup>40</sup>.

In the case of *Kitok v. Sweden*, fishing and reindeer husbandry were understood as subsistence activities of the Sami people therefore, the Committee recognized that despite the fact that regulating an economic activity is normally a matter of the state alone, “where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 ICCPR”<sup>41</sup>. According to which persons belonging to ethnic, religious or cultural minorities shall not be denied the right to enjoy their own culture<sup>42</sup>.

Moreover, to decide this controversy, that concerned the complaint of a single member of the Sami minority, the HRC mentioned the case of *Lovelace v. Canada*, according to which “a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification, and be necessary for the continued viability and welfare of the minority as a whole”<sup>43</sup>. One can infer from this communication that the HRC shares the understanding that IP’ subsistence and other traditional economic activities can be detrimental to cultural integrity and survival.

Additionally, in *Bernard Ominayak and the Lubicon Lake Band v. Canada*, the complaint held that Canada had denied its members their rights to self-determination

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<sup>38</sup> Kipuri, 2009, pp. 52.

<sup>39</sup> UN. Doc. CCPR/C/21/Rev.1/Add.5, para. 7. Available at: <https://www1.umn.edu/humanrts/gencomm/hrcom23.htm>. (consulted on: 03/07/2015).

<sup>40</sup> Ibidem.

<sup>41</sup> UN doc. CCPR/C/33/D/197/1985, para. 9.2. Available at: <http://www1.umn.edu/humanrts/undocs/197-1985.html>. (consulted on: 06/07/2015)

<sup>42</sup> Ibidem.

<sup>43</sup> Cfr supra footnote 41 para. 9.8.

and to dispose freely of their natural wealth and resources. Chief Ominayak claimed that despite of the existence of the Indian Act of 1980 and Treaty 8 of 1899, that recognized the Band's right to continue its traditional way of living, Canada had expropriated approximately 10.000 m2 for oil and gas concessions on their lands. And that this denied the community means of subsistence and enjoyment of the rights of self-determination, causing irreparable injury to its members. This is known to be the first case under the appreciation of the HRC for the violation of a people's right to self-determination, concerning the affectation of their right to food (exercised under the traditional activities to fishing and hunting) by oil extractive industries<sup>44</sup>.

The HRC rejected the claim under the right to self-determination, it was found inadmissible for Article 1 (which violation sustained the claim) is not subject to the complaint procedure as provided in the Optional protocol. Had the HRC been able to deal with the case in matters of admissibility, it would most like have been found a violation. Nevertheless, in this particular case the Committee affirmed that the notion of *culture* of Article 27, includes traditional means of economic subsistence, usually related with the relation of cultural groups with their lands, especially important in behalf of IP<sup>45</sup>. Furthermore of the importance of guaranteeing to indigenous communities the means to realise their culture by the management of their own resources, Canada was held responsible for summiting the community to cruel, inhuman and degrading treating for the appropriation of the Band's territories and the destruction of its traditional livelihoods.<sup>46</sup>

With this brief explanation of IP' distinctive characteristics and recurring to the construction of the understanding of culture through some precedent setting individual complaints to the HRC, we would like to highlight that the core of IP' identity relies upon cultural heritage. Which was built since ancestral times, as far as indigenous communities have the ownership of their ancestral lands and resources and established an intimate spiritual relation with them. Consequently, the use of their territory's natural resources and the activities that sustain their livelihoods are an expression of their right

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<sup>44</sup> UN doc. CCPR/C/38/D/167/1984. Available at: <http://www1.umn.edu/humanrts/undocs/session45/167-1984.htm> (consulted on: 07/07/2015).

<sup>45</sup> Ibidem.

<sup>46</sup> Cfr. Supra footnote 46 para. 16.2.

to enjoy their own culture, spirituality and cosmovision. Hence, the protection of their cultural identity, vital to their recognition as IP, points to the preservation of the territory they inhabit.

### **2.3. Self-determination as a human right**

The right of all peoples to self-determination was firstly mentioned by philosophers such as Thomas Hobbes, Benjamin Whichcote, Immanuel Kant and Jeremy Bentham and strongly reinforced by the enlightenment philosophers. As a political concept it can be found in the American Declaration of Independence of 1776, which mentions that governments derive their just powers from the consent of the governed. Accordingly, one of the guiding principles of the French Revolution of 1789 stressed that the will of the people, not the will of the King, should be the basis of the constitution (in line with Rosseau's *Social Contract*)<sup>47</sup>.

The principle of self-determination of peoples is recognized in the Charter of the UN, according to Article 1(2) of the Charter one of the purposes of the UN is to “develop friendly relations among nations based on respect for the principle of equal-rights and self-determination of peoples and to take other appropriated measures to strengthen universal peace”. The first part of Article 55 provides that with a view to the creation of conditions of “stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Implicitly, it is also found in both Article 73 of the declaration regarding non-self-governing territories and in Article 76 on the international trusteeship system. It should be noted that the Charter of the UN speaks of a principle and not a right to self-determination of peoples and that no attempt is made to define the substance of the principle or the right of peoples to self-determination. However, some authors of international law defend that during the drafting of the Charter it was already conceived as denoting autonomy and not independent statehood.

Some soft-law mechanisms have contributed to reinforce the understanding of the evolution of the right to self-determination towards a principle of self-determination, such as the adoption by the UN GA in 1960 of the Declaration on the Granting

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<sup>47</sup> Anaya, 2000.

Independence to Colonial Countries and Peoples<sup>48</sup>. Moreover, this declaration was followed by a GA resolution on the right of peoples and nations to permanent sovereignty over their natural wealth and resources. This principle was reaffirmed once again with the adoption of the Declaration on Principles of International Law and in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993<sup>49</sup>.

The right of peoples to self-determination is included in the International Bill of Rights, in common Article 1 of the ICCPR and the ICESCR, accordingly:

“1) all peoples have the right to self-determination, by virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development;  
2) all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence;  
3) the State Parties to the present Covenant, including those having responsibility for the administration of Non- Self Governing and Trust Territories, shall promote the realization of self-determination, and shall respect that right, in conformity with the provisions of the UN Charter”.

The General Comment on Article 1 adopted by the HRC in 1984 is only of limited help, for instance, in defining the notion of *people*. In its General Comment 25, the Committee reaffirmed the relationship between Article 1 ICCPR and the right to participate in the conduct of public affairs, prescribed in Article 25 ICCPR. Accordingly, there were recognized similarities between the right to self-determination of all peoples (Article 1), the right to participate in the conduct of the public affairs (Article 25) and the right of minority members to participate in decisions, which affect their culture and identity (Article 27)<sup>50</sup>.

In the 1999 concluding observations concerning a state report of Canada, submitted under Article 40 of the ICCPR, the HRC makes note of the concept of self-determination as applied by Canada to the aboriginal peoples and regrets that no further explanation was given concerning the elements behind that concept. Despite the fact that the recommendation by the HRC lacks a precise notion, it shows that IP – such as

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<sup>48</sup> General Assembly Resolution 1514 (XV), 14 December 1960.

<sup>49</sup> Paragraph I(2) “All peoples have the right to self-determination, by virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development”. UN doc. A/CONF.157/23.

<sup>50</sup> Thornberry, 2000.



the aboriginal peoples of Canada – may be beneficiaries of at least some of the rights included under the scope of the right of self-determination of peoples<sup>51</sup>.

Bearing in mind that the right of self-determination is a crucial right of all peoples, IP cannot be denied this fundamental right, despite the controversy of the definitions of the term of IP itself. In this line, some governments have suggested formulating “a special indigenous version of the right of self-determination” – nevertheless, we must be critical toward approaches that imply a discriminatory application of international law. Moreover, it has been defended that IP should give up on self-determination claims, since their survival and defence can be facilitated by approaching individual rights, which were said to be more appropriate to the contemporary rights framework and less likely to generate apprehension from governments<sup>52</sup>.

As mention before, the HRC has admitted IP’s claims under the general protection for the rights of persons belonging to minorities under Article 27 of the ICCPR<sup>53</sup> and the right to effective political participation under Article 2 of the UN Declaration on the Rights of Minorities. Nevertheless, governments must recognize to IP’ the right to self-determination, so that the practical implementation of this right – that safeguards indigenous knowledge and sustainable livelihoods – might reinforce their autonomy and effective participation in a democratic society. Particularly in what concerns to the contemporary paradigm of resource exploitation and the affectation of their means of subsistence, that threatens their rights and living conditions, as exemplified with the Sami, this is a current challenge that many others indigenous groups in Peru, South America, the Artic, Canada, USA and Kenya are facing, particularly in the context of climate change and the international debates being held on the topic towards redefining new environmental goals and sketching mitigating policies.

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<sup>51</sup> Considerations of reports submitted by State parties under article 40 of the Covenant, Human Rights Committee CCPR/c/79/Add.105. Available at: <http://www.equalityrights.org/cera/wp-content/uploads/2010/03/HRC-COs-1999.pdf> (consulted on: 02/07/2015).

<sup>52</sup> Baer, 2000.

<sup>53</sup> The article reads: “In those State in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

In 1996, the Committee on the Elimination of Racial Discrimination (CERD) adopted the General Recommendation XXI on the right to self-determination, noting that ethnic, religious groups or minorities frequently refer to the right of self-determination not only in respect to the right to enjoy their own culture, but also to profess and practice their own religion or to use their own language.

Regarding the distinction between internal and external self-determination, the Committee observed that the internal aspect of such right represents “the rights of all peoples to pursue freely their economic, social and cultural development without outside interference”<sup>54</sup>. In that respect, there was recognized to exist a link to the right of every citizen to take part in the conduct of public affairs at any level, as mentioned in Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination. Accordingly, the Committee called upon State Parties to the convention to ensure that community members have equal rights regarding effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent<sup>55</sup>.

The external aspect presupposes that all peoples have the right to freely determine their political status and their place in the international community based upon the principle of equal rights as exemplified by the liberation of peoples from colonialism and the prohibition to subject people to subjugation, domination and exploitation.

It is to be mentioned that the Committee does not have a position regarding the question whether the right of all peoples to self-determination may include the right of a people to unilaterally declare secession from an independent and sovereign state which does not possess a government representing the entire population in the territory without distinction as for race, creed or colour. As for the internal aspect, the HRC concluded that this right implies the right of all peoples to pursue their economic, social and cultural development without outside interference, linked to the right of citizens to take part in the conduct of public affairs at any level, as well as to the right to a government,

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<sup>54</sup> UN doc. A/51/18, para. 4. Available at: <http://www1.umn.edu/humanrts/gencomm/genrexxi.htm> (consulted on: 08/07/2015).

<sup>55</sup> Ibidem.

which is representative of the whole population without distinction as to race, colour, descent, national or ethnic origin<sup>56</sup>.

Furthermore, the wording of CERD's general recommendation brings a new element to a better understanding of the internal aspect of the right of peoples to self-determination, the "right of persons of ethnic or linguistic groups to play their part in the government of their country and to engage in activities which are particularly relevant to the preservation of the identity of such persons or groups". In paragraph 5 the Recommendation reads "Governments should consider, within their respective constitutional frameworks, vesting persons belonging to ethnic or linguistic groups comprised of their citizens where appropriate, with the right to engage in activities, which are particularly relevant to the preservation of the identity of such persons or groups". The phraseology of this paragraph indicates that the recommendation has been influenced by the principles that guide the general comments of the HRC on the similarities between rights under Articles 1, 25 and 27 ICCPR<sup>57</sup>.

In the same line, Article 27 of the ICCPR, understood as the basis for the recognition of the right to cultural identity, has been interpreted to protect IP ability to collectively practice their culture and, thereby, to continue their traditional way of life. The same right finds protection under Article 15 of the ICESCR, which recognizes "the right (...) to take part in cultural life." In its interpretation of this right, the Committee on Economic, Social and Cultural Rights has noted that the "strong communal dimension of IP' cultural life is indispensable to their existence, well-being and full development<sup>58</sup>".

Accordingly, IP' perception of land and resources is intimately connected to the preservation of their spirituality, culture and traditional modes of subsistence. Characterised by their ability to subsist communally upon the use of their ancestral lands under tenure systems - that allow them self-sufficiency and rely on the use of conservation mechanisms - IP' worldview considers land and resources more than mere sources of economic wealth: there are sources of knowledge. In this line, it has been said that both their material and cultural survival depend on land rights, access to land

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<sup>56</sup> Cfr supra footnote 54.

<sup>57</sup> Ibidem.

<sup>58</sup> UN doc E/C.12/GC/21, 21 December 2009, para 36.

and control over its resources<sup>59</sup>. Therefore, IP' exercise of property rights is an important expression of their right to choose their priorities for development, in line with the internal dimension of the right to self-determination.

Moreover, IP' substantive and procedural land and resource rights are specifically recognized in ILO Convention 169, respectively in Articles 14 and 15 which recognize to IP' the substantive right of "ownership and possession over lands which they traditionally occupy" and the procedural right to prior informed consultation "in cases where the state retains ownership of mineral or sub-surface resources or rights to others resources pertaining lands".

Likewise, soft law mechanisms, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on its Article 26(2) expresses the recognition of IP' substantive rights to "own, use, develop, and control the land, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired". Having expressly mentioned in the terms of Article 8(1) that "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture" this document provide some rules that enable IP' autonomy and participation. Article 32(2) of the UNDRIP affirms that IP' procedural right to be consulted by states in order to "obtain free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". Accordingly to Article 32(3), States shall provide effective remedies if the case concern compensation and follow the appropriated measures "for just and fair redress for any such activities, in order to mitigate adverse environmental, economic, social, cultural or spiritual impact".

The claims of IP to self-determination often place sovereignty at risk and refrain states from recognizing IP' rights, in this regard self-determination has been referred to as a counter norm of state sovereignty<sup>60</sup>. The thematic of natural resources is particularly sensitive to these critics, as States recurrently seem to claim ownership or freely dispose of natural resources that belong to IP.

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<sup>59</sup> Ibidem, para. 37.

<sup>60</sup> Anaya, 2000, pp.13.

Such position is strongly reflected in Article 3 of the Convention on Biological Diversity, that recognizes sovereign rights to every state over their own biological resources. In the text of the convention, obligations not to destroy the natural world are prescribed, but not applicable between States unless damage is caused to the biodiversity of another State. However, there is no provision for compensation and responsibility to other States for damage to biological diversity in the convention, but a mere claim for future cooperation. Moreover, it has been pointed out that the rejection of the consideration of state sovereignty and the strengthening of international obligations alone will not ensure effective representation of local communities and the protection of their needs. Despite of the norms enshrined in the Convention that prescribe the safeguard of indigenous traditional knowledge<sup>61</sup>.

Furthermore, there is often the assumption that any destructive development would be a consequence of state initiative. Nevertheless, the core meaning of the concept of IP' right to self-determination is to choose their priorities for development and, despite the fact that it concerns either the management of natural resources or the protection of social and culturally embed institutions, we have no guarantee that the manner they choose to do it will be sustainable in terms of environmental preservation, particularly in the context of the paradigm that we proposed to address in this investigation: the state of cultural defragmentation and increased external dependence of several indigenous communities that rely on a monetary economy, which recurrently leads indigenous communities to dispose of their natural resources<sup>62</sup>.

A harmonious balance in between claims of state sovereignty (in a broader sense that does not only consider practices that degrade ecosystems) and IP' self-determination could result in a more direct political participation of indigenous communities and a renewed interest, on the part of the state, in supporting multiculturalism throughout the preservation of traditional and genuinely sustainable activities. Such policies, if accompanied by culturally adapted education, could result in a renewal of group pride that would impact the unity and participation of communities

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<sup>61</sup> Wiersema, 2010, pp. 165 – 175.

<sup>62</sup> Ibidem.

in decisions that affect their cultural identity, allowing them to exercise the internal dimension of the right to self-determination and decide their priorities for development.

Moreover, international law recognizes the importance of IP and local communities in environmental preservation, generically in what regards to the protection of their traditional knowledge and sustainable practices. Albeit from Article 4 ILO Convention 169, a norm that prescribes environmental rights for indigenous and requires special measures to safeguard their environment. Further ahead, Article 27 ICCPR has been broadly interpreted and used by the UN treaty bodies as argument to protect indigenous land and culture from environmental degradation<sup>63</sup>.

Additionally, attending to indigenous spirituality which sustains a differentiated approach of IP' rights strongly supported by the right to freely exercise their cultural identity, the protection of the right of indigenous peoples to self-determination might contribute to a healthy environment, according to a holistic comprehension of nature and human interaction.

### **3. The right to a healthy environment**

#### **3.1. The emergence of the recognition of the linkages between human rights and the environment in the international arena**

“Everything that influences the environment directly influences our human condition and a violation of the environment is a violation of human rights<sup>64</sup>”.

J. D. Taillant

In 1974, Nobel Prize winner René Cassin firstly defended that prominent concepts of human rights should be broadly interpreted in order to include the right to a healthful and decent environment. Two years later, Gromley argued that the right to a pure, healthful, or decent environment is essentially a human right and that the preservation of ecology and the environment should also be recognized as an

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<sup>63</sup> Shelton, 2010, pp. 18-19.

<sup>64</sup> Taillant, 2010, pp. 123.

inalienable right. This author advocated that in a philosophical level, “the right to a pure and clean environment falls within the scope of the right to a mere physical existence, and that the exhaustion of the earth’s resources, [is a] major threat to man’s continued existence on this planet”<sup>65</sup>.

In the UN Conference on the Human Environment of 1972<sup>66</sup> the linkages between human rights and environmental protection were discussed by the states, international organizations and representatives of civil society that met in Stockholm. As a result, it was registered in the beginning of the preamble of the final declaration:

“Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. (...) Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself”<sup>67</sup>.

Principle 1 of the Declaration further established that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”<sup>68</sup>. This formulation does not recognize a right to a healthy environment *per se* instead, it makes reference to existing civil, political and economic rights under the motto of *freedom, equality and adequate conditions of life*. Hence, the approach expressed in the Declaration conceives environmental protection as an implicit element present in the effort to secure the effective enjoyment of human rights<sup>69</sup>.

As a consequence of the Stockholm Conference, nearly all global and regional human rights bodies have considered the relation between environmental degradation and internationally guaranteed human rights, and the majority of UN member states have added to their constitutional frameworks guarantees concerning the environment, by declaring or adding an explicit right to a specified quality of the environment<sup>70</sup>.

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<sup>65</sup> Ibidem.

<sup>66</sup> The UN General Assembly convened the UN Conference on the Human Environment by GA Res. 2398 (XXIII) of December 3, 1968. The Conference took place in Stockholm from June 5 to 16 1972.

<sup>67</sup> UN Doc.A/CONF.48/14/Rev.1. Available at: <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503> (consulted on 07/07/2015).

<sup>68</sup> Ibidem.

<sup>69</sup> Taillant, 2010, pp. 119-121.

<sup>70</sup> Ibidem.

A human rights-based approach to the environment, adopted since 1992, views the exercise of certain human rights as an essential means to achieve the goal of environmental protection. The Rio Declaration on Environment and Development, adopted at the conclusion of the 1992 Conference of Rio de Janeiro on Environment and Development, reflects this perspective and stipulated the connection between human rights and environmental protection largely in procedural terms, declaring in Principle 10 that judicial and administrative proceedings, including redress and remedy, should be guaranteed because “environmental issues are best handled with the participation of all concerned citizens, at the relevant level<sup>71</sup>”. In addition, Principle 22<sup>72</sup> highlights the vital role that IP and local communities have in environmental management, the importance of their traditional knowledge and the state obligation to protect their rights towards a sustainable development<sup>73</sup>.

In 2001, the Organization of the American States (OAS) has adopted a similar approach to the one of Rio Principle 10 in its first draft resolution on human rights and the environment, addressing the need to promote environmental protection and the effective enjoyment of all human rights. The resolution defended the instrumental character of human rights to better environmental protection, stating the following:

“The effective enjoyment of all human rights, including the right to education and the rights of assembly and freedom of expression, as well as full enjoyment of economic, social and cultural rights, could foster better environmental protection by creating conditions conducive to modification of behaviour patterns that lead to environmental degradation, reduction of the environmental impact of poverty and of patterns of unsustainable development, more effective dissemination of information on the issue, and more active participation in political processes by groups affected by the problem”<sup>74</sup>.

In line with this exposition, it has been said that during the last quarter of the XXth century there was a considerable increase in human rights and environmental

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<sup>71</sup> Principle 10, Rio Declaration on Environment and Development, 1992.

<sup>72</sup> “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”.

<sup>73</sup> Kiss, 2010, pp. 33-40.

<sup>74</sup> OEA/Scr.G, Draft Resolution - Human Rights and the Environment CP/CG-1474/01 rev. 3, 25/05/2001. Available at: <http://www.oas.org/council/COMGRAL/VARIOUS.asp#human%20rights> (consulted on: 03/06/2015).



claims and legislation<sup>75</sup>, proportionately to the damages caused to the environment by the very same generation. Currently and in line with the human rights-based approach to development, it is commonly understood that human rights are the guiding principles for “all development cooperation and programming in all sectors and in all phases of the programming process<sup>76</sup>”. This perspective departs from the recognition that environmental adversities impact on the effective enjoyment of human rights, allowing us to infer that the protection of human rights does as well influence the quality of the environment. As a matter of fact, the basis of environmental law started to be built upon the assertion of an underlying concern for human rights. At the same time, human rights treaties [even when prior to the express recognition of the interrelatedness of human rights and the environment in the international arena] echo environmental protection.

On a global level, the ICESCR recognizes that all humans have the right to “enjoy the highest attainable standard of physical and mental health” (Article 12) and in particular that the “improvement of all aspects of environmental and industrial hygiene” (Article 12 (2)(b)) is one of the areas for state intervention in the realization of the right to health, immediately after prescribing the right to “adequate standard of living (...), food, clothing, housing and the continuous improvement of living conditions” (Article 11)<sup>77</sup>.

In what concerns to the regional systems for the protection of human rights, the African is known to be the only one that expressly recognizes environmental rights. In the wording of Article 16 and 24 of the African Charter on Human and Peoples’ Rights, peoples are recognized the right to the “best attainable standard of physical and mental health” and “a general satisfactory environment favourable to their development”. In the Ogoni case the Commission concluded that “an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of the fundamental ecologic equilibrium is harmful to physical and moral

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<sup>75</sup> Taillant 2010, pp. 124.

<sup>76</sup> The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies, The Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, Stamford, USA, 5-7 May 2003. Available at: [ftp://ftp.fao.org/upload/eims\\_object/Photo\\_library/212909.doc](ftp://ftp.fao.org/upload/eims_object/Photo_library/212909.doc) (consulted on: 03/07/2015).

<sup>77</sup> United Nations, VII. The recognition of the right to a healthy environment: The concern for environmental protection in international human rights instruments. Found at: <http://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee0q.htm>. (consulted on: 02/05/2015).

health”. Moreover, this case established a unique precedent in what concerns to the environmental obligations attributed to the states, applying for the first time Article 21, that prescribes the right of peoples to “freely dispose of their wealth and natural resources” in relation with Article 24, which imposes to the state the obligation of taking precautionary measures “to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources<sup>78</sup>”. This decision provides a challenging example on how to articulate human rights violations for environmental advocacy, despite the fact that no other treaty contains similar provisions and that the rights prescribed in the African Convention are collective rights<sup>79</sup>.

In Europe, it has been considered that the rights protected under the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union prescribe a certain standard for the protection of the environment. Attending to the advances in the case law of the Court and decisions of the Committee on Social Rights, the right to the protection of health (Article 11 European Social Charter) has been interpreted as including the right to a healthy environment<sup>80</sup>.

The Inter-American system has gone further, once it has recognized the right to a healthy environment, environmental claims have been more easily accepted and the connection between human rights and the environment recognized in a broader sense. This opens a bigger window for the recognition of IP’ right to a healthy environment in the Americas, the protection of their holistic worldview and traditional interaction with nature, that has proven to be of considerable use in the preservation of the Amazon.

### **3.2. The protection of the right to a healthy environment within the Inter-American System of Human Rights**

The inter-American human rights system (IAHRS) dates back to 1948, when the OAS was founded, on the same year of the proclamation of the ADRDM. In 1948 Peru

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<sup>78</sup> The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples’ Rights, Communication 155/96 (2002), para. 52-53. Available at: <http://www1.umn.edu/humanrts/africa/comcases/155-96.html>. (consulted on: 05/07/2015).

<sup>79</sup> Nwobike, 2005, pp.139.

<sup>80</sup> Council of Europe, 2012, pp. 21-52.

joined other states of the hemisphere in the process of transforming the conferences of the American States, held periodically for nearly a century, into the OAS<sup>81</sup>.

The Inter-American commission on human rights (henceforth, the commission) was created before the inter-American court of human rights in 1959 in order to further respect for human rights in the Americas<sup>82</sup>. Located in San José (Costa Rica), the court is in activity since 1979 and was established by the convention, with 22 out of the 35 member states to the OAS recognizing its contentious jurisdiction, including Peru<sup>83</sup>.

The commission first had its basis on the Charter of the OAS and was later transformed into a treaty body when the ACHR came into force. The ACHR established a two-tiered structure which includes the inter-American court, alongside the commission, with two different human rights documents as references, the ADRDM of 1948 (that all member states to the OAS have signed and ratified) and the ACHR of 1969 (which ever since twenty-four countries in the hemisphere have ratified including Peru, that signed it in 1977 and ratified it in 1978<sup>84</sup>)<sup>85</sup>.

A matter of interest in the terms of the IAHRs is that the commission has assigned obligations to the states based on the ADRDM. The system treats the declaration with extreme importance, recognizing it a special status. Unlike any other declaration, and despite the fact that it is not legally binding, it is mentioned on the charter of the OAS and, by means of Article 150, the commission is called to enshrine the rights listed in the declaration<sup>86</sup>. Moreover, Article 29(d) of the ACHR explicitly prevents an interpretation of the rights and obligations set forth in this legal document in a way that would limit the effect of the ADRDM.

In what concerns to the content of both documents, it is to be noted that the ADRDM prescribes the respect for various social and economic rights that states should observe and protect. In addition, the ACHR particularly provides that States are

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<sup>81</sup> Taillant, 200, pp. 125-127.

<sup>82</sup> Ibidem.

<sup>83</sup> Ratifying countries to the American convention on human rights, Organisation of American States. Found at: <http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>. Last accessed on: 29/06/2015.

<sup>85</sup> Cfr supra footnote 81 127-128.

<sup>86</sup> Ibidem.

committed to adopt measures aiming to achieve a progressive realization of cultural, social and economic rights (Article 26), as set forth in the additional protocol to the convention in this area, the San Salvador protocol.

A convention is an international treaty as such, once ratified by a state, it is a source of obligations and individuals may insist on compliance with its law before national tribunals, the commission and the court. Consequently, states are obliged not only to ensure the observance of rights and freedoms but also to guarantee their respect and effective exercise in order to protect its citizens from violations by private and state actors. For this reason, any act or omission by a public authority that unobserved guaranteed rights may violate state's obligations to respect, protect and fulfil human rights. This seems to be of particular importance in respect to the environment, as most damaging activities are undertaken by corporations and result from state's failure to implement existing legislation, for example in cases where the necessary preventive measures were not taken, the steps of the implementation processes and premises of the environmental impact assessments unconsidered<sup>87</sup>.

Unlike national jurisdictions, within the IAHR suits cannot be brought against corporations (individuals and states are allowed to bring suits against [other] states). Therefore, many cases of human rights abuses that derive from corporations' injurious conducts and the lack of social responsibility, arouse in the context of disputes between national governments and IP over land and natural resources and have contributed to broader the contours of a rights-based approach to environmental protection<sup>88</sup>.

The inter-American system for the protection of human rights is the only one that recognizes the right to a healthy environment, in the wording of Article 11 of the San Salvador protocol (SSP):

“1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The State Parties shall promote the protection, preservation and improvement of the environment”.

In the same line, Article 7 provides the basis for just, equitable and satisfactory working conditions so as to not to prejudice health.

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<sup>87</sup> Cfr supra footnote 81 pp.143-145.

<sup>88</sup> Ibidem.

Furthermore, in its preamble the symbiotic relation between human rights and the environment has been recognized under the reference to “the close relationship between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole”, alongside with the “right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources”. The SSP was signed by Peru in 1977 and ratified in 1978<sup>89</sup>.

Correspondingly, the Peruvian Constitution of 1979 adopted the formulation of the “right to a healthy and ecologically balanced environment” in Article 123. Furthermore, the present political constitution of Peru, that dates from 1993, refers to the right to a “balanced environment adequate to the development of life” itself in Article 2(22) as a fundamental right<sup>90</sup>.

It has been the joint interpretation of the rights to life, health and property (by the inter-American commission and court) that contributed to the understanding of the protection of the environment within the system, attending to the relation of environmental destruction and unsustainable development with human rights violations. In this sense, as previously mentioned, the IAHRs has gone further than the European one on accepting environmental complaints<sup>91</sup>. Accordingly, in order to complaint about violations that address the right to a healthy environment, the impacts on human life and health caused by the degradation of the environment must be sought.

In order to illustrate these considerations we will briefly address the activities of the Peruvian government and the lack of compliance with international human rights norms in what concerns to the release of industrial waste and contamination of the river Tiger<sup>92</sup>. Due to the high rates of contamination in the river, Peruvian citizens have started to suffer from related diseases and serious health problems, therefore their right to life and health is being violated. Since a decision concerning this case was not yet

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<sup>89</sup> Cfr. Supra footnote 86.

<sup>90</sup> Walter Valdez Muñoz, El derecho a un ambiente sano en el Peru. Available at: [http://saludmoquegua.gob.pe/Salud\\_pers/Normas\\_tecnicas/Arch\\_norm\\_tecn/METPES\\_derech\\_med\\_amb.pdf](http://saludmoquegua.gob.pe/Salud_pers/Normas_tecnicas/Arch_norm_tecn/METPES_derech_med_amb.pdf) (consulted on: 01/07/2015).

<sup>91</sup> Nwobike, 2005, pp.139.

<sup>92</sup> Mendoza, Luis Enrique, ‘Perú: indígenas viven en condiciones infrahumanas hace 40 años por explotación petrolera, in *Sophimania*, 5 February 2015. Available at: [http://sophimania.pe/index.php?option=com\\_content&view=article&id=23710:peru-indigenas-viven-en-condiciones-infrahumanas-hace-40-anos-por-explotacion-petrolera&catid=173&Itemid=725](http://sophimania.pe/index.php?option=com_content&view=article&id=23710:peru-indigenas-viven-en-condiciones-infrahumanas-hace-40-anos-por-explotacion-petrolera&catid=173&Itemid=725) (consulted on: 27/02/2015).

reached, and the contamination continued to occur, we can say that IP right to effective judicial remedy has been violated. In addition, and as a consequence, the right to a healthy environment has been violated for the environmental impacts of the contamination that directly compromise human rights<sup>93</sup>.

Moreover, in line with the recognition of the right to a healthy environment and the interrelatedness of fundamental human rights and environmental law, it was argued in the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), that the area of IP' rights is one of which that more largely reflects this intersection. The outcome of this case, concerning the recognition of IP' traditional lands, resulted in an influent precedent, set in the jurisprudence at the level of the Commission and Court, regarding the extent of a country's obligation to recognise and protect indigenous traditional land and resource tenure, in line with the particular importance of land rights that permeates IP' claims and lifestyles<sup>94</sup>.

Environmental advocacy is divided into three different approaches: *transformation*, of environmental claims into human rights ones, focusing on the effect on human beings and their human rights – think of logging activities and deforestation as degradation of the environment, it can be argued that it compromises an important part of the food chain for IP in the area along with their cultural identity that relies upon communal hunting; *reinterpretation* of the understanding of human rights in order to include environmental issues - an example would be to expand the common understanding of the right to life arguing for the incorporation of new concepts on the interpretation of this right, such as “the right to a live in a healthy environment”; and the *interpretation* approach that allows for the inclusion of other national and international laws, treaties and declarations - the IAHRs has adopted this extensive approach, which finds support in Article 29(b) ACHR<sup>95</sup>.

In this sense, the Commission has explicitly stated that provisions of the ILO Convention 169 “provide evidence of contemporary international opinion concerning matters relating to indigenous peoples, and therefore that certain provisions are properly considered in interpreting and applying the articles of the American Declaration in the

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<sup>93</sup> Taillant, 2010, pp. 146-148.

<sup>94</sup> *Ibidem*.

<sup>95</sup> Taillant 2010, pp.148.

context of indigenous communities<sup>96</sup>”. This assertion makes clear that both the American declaration and convention are being interpreted and applied in line with the current developments in the field of international human rights law.

Further ahead, other interesting developments have been occurring considering IP’ rights and the environment. Likewise the UN, the OAS has appointed a working group to prepare the Draft American Declaration on the Rights of Indigenous Peoples, on track since 1997. Despite the fact that a proposal of the text of the preamble was presented during the current year, controversy remains over the text. The working group is to adopt each provision by consensus and, in case it is not reached, supposed to invite national delegations and representatives of IP in order to conduct informal consultations<sup>97</sup>.

In terms of conclusion, the general approach of the Commission to the protection of the environment has been to recognize that a certain standard of environmental health is required by the very nature of human rights law, as pointed in the report on the situation in Ecuador from 1996:

“The American Convention on Human Rights is premised on the principle that rights inhere in the individual simply by virtue of being human. Respect for the human dignity underlies the fundamental protection of the right to life and to preservation of physical wellbeing. Conditions of severe environmental pollution, which may cause serious physical illness, impairment, and suffering on the part of the local populace, are inconsistent with the right to be respected as a human-being<sup>98</sup>”.

Hence, both the Commission and the Court have heard different cases regarding the environment in OAS member states recognizing that environmental degradation jeopardizes the rights guaranteed by the ADRDM and the ACHR, in line with the ILO Convention 169 and other relevant national and international legislation. Most commonly, these cases are addressed in relation with violations of the right to life, health, property, cultural identity, access to justice and effective remedies. In addition,

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<sup>96</sup> Inter-American Court on Human Rights, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District v. Belize, October 12, 2004, footnote No.123. Available at: <http://www1.umn.edu/humanrts/cases/40-04.html> (consulted on: 03/05/2015).

<sup>97</sup> In accordance to the summary of the meeting held on 4 June 2015 of the Permanent Council of the Organization of American States, OEA/Ser.G, CP/CAJP/SA-571/15 and related documents of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. Available at: <http://www.oas.org/consejo/sp/cajp/Indigenas%20sesion%20especial.asp> (consulted on: 30/06/2015).

<sup>98</sup> OEA/Ser.L/V/II.96, doc. 10 rev. 1, 24 April 2007 para. 92.

some of them have mentioned guarantees of freedom of religion, a key concept that unifies the entire set of IP' rights and represents an important step towards an effective and anthropologically sound recognition of IP's right to a healthy environment. Such perspective fleshes a likely reciprocity in what concerns to the protection of the environment.

Placing these considerations in the context of an urgent need for the free and effective exercise of IP' right to self-determination, we believe that a joint protection of their rights would result in a potentiation of their culture, traditions and knowledge, that might have a repercussion in the choice of more sustainable priorities to development, instead of cultural fragmentation.

### **3.3. Monitoring human rights and the environment in the United Nations**

The UN system for the protection of human rights offers a wide range of expertise and monitoring mechanisms, through political bodies such as the Human Rights Council (that relies on the expertise of working groups or special rapporteurs that present abusive situations of human rights) or bodies created under the international human rights treaties, e.g. the HRC (that works in the implementation of the ICCPR) and the CERD. As discussed in relation to the right to self-determination, the HRC general comments have contributed to the evolving recognition of this right and to broaden the interpretation of its content. In the same line, the recommendations of the CERD have postulated the importance of IP' participation in decision-making processes and equal access to justice.

The Human Rights Council works together with an Advisory Commission (previously known as Sub-Commission) it started its work in 1974 and since that date it has considered environmental matters as human rights issues under different agenda items that include IP, economic social and cultural rights. In 1989 Fatma Zohra Ksentini, who became the special rapporteur on human rights and the environment on the following year, started to head a study on the problem of the environment and its relation to human rights. Five years later the report was presented however, the human rights commission (the equivalent to the human rights council at the time) and sub-commission did not reinforce her recommendations at the time, neither was attentively



discussed the draft declaration of principles on human rights and the environment that followed annexed to it<sup>99</sup>.

Besides the promotion of the entire set of human rights, as recognized in the UDHR, the expertise and the result of the investigations presented by the advisory commission, the council relies on the work of working groups and special rapporteurs to investigate human rights abuses and directly report violations to the council and GA. Since 1982 the international working group on indigenous populations has provided IP a sit in discussions that take place at the UN level. Apart from encouraging dialogue in between governments and IP, conducting investigation in topical areas and providing wide access to this information, of great relevance to experts in the field, indigenous leaders and civil society, the working group achieved the adoption of the UNDRIP in 2007<sup>100</sup>.

Moreover, in 2001 the commission on human rights appointed a special rapporteur on the rights of IP who works in close cooperation with the permanent forum on indigenous issues, this position previously belonged to Prof. James Anaya and since the last year belongs to Victoria Corpuz<sup>101</sup>. Apart from the work developed specifically in the field of IP, reports on different areas or countries have contributed to environmental and human rights protection. It is worth noticing that there is also a rapporteur on toxic wastes and the environment since 1995 and that this position has been intensively criticized, it is said that this mandate has been focused on generalities about the illegality of dumping dangerous products and wastes (to address which already exist more competent and better financed bodies), rather than on the human rights affected by such activities<sup>102</sup>.

The 1996 report of the special representative of the secretary-general for human rights in Cambodia makes specific recommendations regarding the right to a healthy

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<sup>99</sup> Dommen, 2010, pp. 107-108.

<sup>100</sup> International Group on Indigenous Populations, The Working Group on Indigenous Populations. Available at: <http://www.iwgia.org/human-rights/un-mechanisms-and-processes/working-group-on-indigenous-populations> (consulted on: 06/07/2015).

<sup>101</sup> United Nations Human Rights - Office of the High Commissioner for Human Rights, Special rapporteur on the rights of indigenous peoples. Available at: <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx> (consulted on: 06/07/2015).

<sup>102</sup> Cfr supra footnote 99.

environment and sustainable development, highlighting Cambodia's accession to the CBD and the fact that "concessions for logging and agribusiness, in addition to their environment impact, may have large potentially detrimental consequences for indigenous communities (...) [that] depend on their environment for their food, cultures and ways of life".<sup>103</sup>

Despite the fact that the UN human rights treaties do not recognize the right to a healthy environment *per se*, the treaty bodies have accepted claims for the right to life, health and property in a manner that drafts an understanding of the right to a healthy environment. States and treaty bodies have been considering that environmental issues are within the range of their obligations accordingly to human rights treaties. In addition, once environmental harm often falls upon vulnerable groups and is linked to discrimination, individual complaints regarding environmental discrimination have been brought to the CERD<sup>104</sup>.

In relation to environmental problems the HRC showed to be receptive in the case of *E.H.P. v. Canada*: a complaint submitted on behalf of present and future generations, as it concerned to the storage of radioactive waste near the residences of the applicants and claimed for a threat to their right to life. Despite the fact that the communication was declared inadmissible for non-exhaustion of domestic remedies, the Committee recognized that it did raise urgent environmental concerns that seriously compromise the right to life<sup>105</sup>. Furthermore, the Committee considered the applicants' reference to future generations as an "expression of concern purporting into due perspective the importance of the matter rose in the communication"<sup>106</sup>.

The inference that the HRC considered the contamination of the environment to be of particular grievance when the right to life of future generations is threatened is extremely interesting to the matters of this investigation. In line with this assertion, the abuses of IP' rights to life and health that compromise their right to a healthy environment in the Amazon are a paramount threat for their descendants and a matter of

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<sup>103</sup> UN doc. E/CN.4/1996/93, 26/02/1996, para. 24 and 26. Available at: <http://www1.umn.edu/humanrts/commission/country52/93-cambo.htm> (consulted on: 07/06/2015).

<sup>104</sup> Cfr supra footnote 99 pp. 110-111.

<sup>105</sup> Cfr supra footnote 99 pp. 112-113.

<sup>106</sup> UN Doc. CCPR/C/1 at 20 (1984). Para. 8(a). Available at: <http://www1.umn.edu/humanrts/undocs/html/67-1980.htm> (consulted on: 05/07/2015).

concern for the international community. Considering this, the protection of the right to a healthy environment will result in a better quality of the environment for future generations and the Amazon.

In terms of conclusion, the UN's human rights mechanisms offer a number of channels to complain about a violation of human rights. Moreover, these mechanisms receive the attention of the media and raise awareness within the international community for the claims of IP' rights violations and environmental harm.

### **3.4. Analysing the interdependence of the realization of the right to a healthy environment and the protection of the human right to life and health**

The right to life is the most fundamental of human rights doctrine, it is recognized in every international human rights instrument, including in Article 4 ACHR<sup>107</sup>. Read in conjunction with Article 1 of the convention, the guarantee of the right to have life respected and protected by law, results in positive obligations for the state. As a peremptory norm it is considered to be part of *ius cogens* from which no derogation is allowed, together with the prohibition of inhuman treatment in Article 5(2) ACHR<sup>108</sup>.

Alongside, the right to health has been recognized as fundamental for the exercise of human rights throughout international human rights law, it is prescribed in Article 11 of the ADRDM and Article 10 SSP. In the wording of the UN Committee on Economic, Social and Cultural Rights general comment no.14, on the right to the highest attainable standard of health, "every human being is entitled to the enjoyment of the highest attainable standard of health conducive to a life in dignity"<sup>109</sup>. The right to health is said to be "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupation and environmental conditions"<sup>110</sup>, this approach has been reflected in the IAHRs.

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<sup>107</sup> Article 3 UDHR and Article 6 ICCPR.

<sup>108</sup> Article 5 UDHR and Article 7 ICCPR.

<sup>109</sup> UN doc. E/C.12/2000/4 para. 1. Available at: <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En?OpenDocument> (consulted on: 08/07/2015).

<sup>110</sup> Ibidem in para.11.

In this line, the inter-American commission on human rights noted, in a report of the situation of human rights in Ecuador, that the enjoyment of the right to life and health depends on environmental conditions and that the realization of the right to life, physical security and integrity is in permanent relation to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health these rights are at risk. In this sense, the right to health and life were considered linked to the right to a healthy environment<sup>111</sup>.

In the understanding of the inter-American commission, states are required to take positive measures to safeguard life and physical integrity once severe environmental pollution may pose a threat to human life and health. The commission highlighted Ecuador international commitments as party to the following human right instruments that recognize the connection between the sustenance of human life and the environment, including the ICCPR and the ICESCR, the Stockholm Declaration, the Treaty for Amazonian Cooperation, the Amazon Declaration, the World Charter for Nature, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the Rio Declaration on Environment and Development, and the Convention on Biological Diversity<sup>112</sup>.

In what concerns to IP, it has been studied by anthropologists how the well-being of the individual is intrinsically linked to that of the community and the environment as a whole. This echoes in international law, in what concerns to the right to health, it has been said to have a communal dimension and that "health services should be cultural appropriate", so that the protection of their ecosystem, "vital medicinal plants, animals and minerals [is] necessary to the full enjoyment of health". Further ahead, development policies often force displacement from their traditional territories and environment denying IP self-sustainability and breaking their symbiotic relationship with their lands have a "deleterious effect on their health"<sup>113</sup>.

Accordingly, a report on the situation of human rights in Brazil on the following year, the Commission devoted special attention to the rights of IP'. Among the

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<sup>111</sup> Report on the Situation of Human Rights in Ecuador, OEA/Ser. L/V/II.96, Chapter IV.

<sup>112</sup> Cfr supra footnote 99.

<sup>113</sup> Cfr supra footnote 109 para. 27.

addressed issues are those of environmental destruction leading to severe damage to health and cultural integrity. In particular, cultural and physical integrity is said to be under constant threat and attack from invaders and the contamination they create. State protection against the invasions was said to be “irregular and feeble”, leading to “constant danger and environmental degradation”<sup>114</sup>.

In addition, in a report on the situation of human rights in Cuba, from 1987 the Commission recommended that the state should take specific action and adopt environmental measures to comply with its obligations to ensure the right to health. In line with the recommendations made in the report on Ecuador, the Commission insisted on the need for positive measures to protect life and health from contamination. It referred to the state’s obligation to respect and ensure these rights and the responsibility of the government to implement measures to deal with the existing pollution and to prevent future contamination.

The Commission has established another link between environmental quality and the right to life in the case of the Yanomami Indians. The petitioners claimed that the Brazilian government violated the ADRDM by its own means while constructing a highway through Yanomami territory and authorizing the exploitation of natural resources, within a historical context of exploitation and the scarce recognition of their right to land within the extensive area of their ancestral lands, twice the size of Switzerland<sup>115</sup>. These actions led to the spread of contagious diseases to members of the community (the largest relatively isolated tribe in South America) that remained untreated due to lack of medical care. The Commission found that the rights to life, liberty and personal security (guaranteed in Article 1 ADRDM), the right to residence and movement (Article 8 ADRDM) and the right to preservation of health and well being (Article 11 ADRDM) had been violated in this case<sup>116</sup>. Furthermore, this was one of the first resolutions of the inter-American commission that defined the construction

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<sup>114</sup> OEA/Ser.L/V/II.97, para. 82 f).

<sup>115</sup> [Survival International. The Yanomami. Available at: http://www.survivalinternational.org/tribes/yanomami](http://www.survivalinternational.org/tribes/yanomami) (consulted on: 08/07/2015).

<sup>116</sup> Inter-American Commission on Human Rights, Resolution No. 12/85 – Case No 7615, Coulter et. al. v. Brazil, March 5 1985. Available at: <http://www.cidh.org/annualrep/84.85eng/Brazil7615.htm> (consulted on 26/05/2015).

of the right of IP to receive special protection in order to enable the preservation of their cultural identity, in line with their special vulnerability<sup>117</sup>.

In terms of conclusion, the obligation of the states to respect, protect and fulfil the most basic human rights, to life and health, requires the protection of the environment. Therefore, a cautious regulation of industrial activities and appropriate implementation of development policies that might result in contamination or degradation of the environment must be sought. So far, in order to safeguard the right to a healthy environment in the Amazon, fundamental in the terms of the Peruvian constitution, the state must protect the right to life and health, effectively providing the dignifying living conditions that ensure the survival of IP and the cultures that have been living in the forest since ancestral times.

#### **4. The protection of indigenous peoples rights within the Peruvian state**

##### **4.1. Overall situation: environmental conflicts in Peru**

The present circumstances in the Amazon are a threat to IP' living conditions, industrial advances and the construction of infrastructures immediately affect their right to a healthy environment and are translated into abuses of the right to life and health. This compromises communal and cultural cohesion alongside with the preservation of the environment upon which their lives depend. We shall now address some of the present controversies in the territory.

The Purus-Manu Conservation Corridor (PMCC)<sup>118</sup> is the largest preserved area in Peru, it represents 10 million hectares of forest and spreads around the regions of Ucayali, Cuzco and Madre de Dios in Southern Peru. Home to some of the last IP in isolation and initial contact, it has been referred as “one of Peru’s most important natural heritage areas that maintains excellent conservation conditions”. The PMCC encompasses Alto Purus and Manu National Park, Purus Communal Reserve, Amarakaeri Communal Reserves, the Megantoni National Sanctuary and four out of the five existing reserves for indigenous communities in isolation in Peru - *Murunahua*,

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<sup>117</sup> Cfr supra footnote 109.

<sup>118</sup> See Annexes, Image 1: Map of the PMCC.

*Mashco-Piro*, *Nahua-Nanti-Kugapakori* and *Madre de Dios* (that occupy 30% of the corridor area)<sup>119</sup> - as well as one research station, eight conservation and ecotourism concessions, one hundred and twenty forest management concessions and private lands. This ancestral territory is home to several indigenous communities from fifteen different ethnic groups<sup>120</sup>.

Moreover, further communities in isolation and initial contact are found in the neighbouring protected areas of Brazil in the Eastern border of the PMCC<sup>121</sup>. It is worth noting that there are at least 77 isolated groups in Brazil, more than in any other country in the world, according to Brazil Indian Affairs Department (FUNAI)<sup>122</sup>. In recent years, more unknown uncontacted tribes have been discovered: planes overflying the forest took pictures from the skies that were published in 2011, strongly divulged in the media and used to raise awareness on the issue of uncontacted tribes in the Amazon<sup>123124</sup>. Since 1987, the FUNAI has a department dedicated to isolated tribes and a policy only to enter in contact with those whose survival is at risk<sup>125126</sup>.

Nevertheless, issues regarding isolated tribes have shown to be transboundary: these tribes exclusively rely upon the availability of natural resources for their sustainable and peaceful livelihoods, which are prior to the definition of international borders. In 2014, agents of the Brazilian government documented the arrival of 7 members of uncontacted tribes in Brazil, this was their first contact with our civilization, and they had evaded their lands in order to escape from Peruvian industrial

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<sup>120</sup> WWF – Peru factsheet 2014, ‘Indigenous people in isolation and initial contact: WWF-Peru efforts to protect people and forests’. Available at: <http://peru.panda.org/en/?228691%2Findigenouspeopleinisolacionandinitialcontactwwfperueffortstoprotepeopleandforests> (consulted on: 03/03/2015).

<sup>121</sup> Ibidem.

<sup>122</sup> Survival International, ‘The Uncontacted Indians of Brazil’. Available at: <http://www.survivalinternational.org/tribes/uncontacted-brazil> (consulted on: 01/03/2015).

<sup>123</sup> See Annexes, Image 2: Isolated tribes in Brazil

<sup>124</sup> These images were even used as the motto for the documentary *The tribe in the picture*. See Annexes, cinematographic references.

<sup>125</sup> Cf. Supra footnote 143.

<sup>126</sup> Another interesting movie piece was made for the Brazilian television, *Primitive Tribes Uncontacted Amazon Tribes 2015*, that documents a visit to the isolated tribes that have been last contacted by Brazil and to whom, after 8 years of initial contact, clothes were introduced. See Annexes, cinematographic references.

advances<sup>127</sup>. We know very little about these peoples, what we do know is that they wish to stay uncontacted, for they have shot arrows at strangers and airplanes and simply avoid contact with invaders<sup>128</sup>. The massacres that occurred during the colonization process, along with the devastating effects of the first contact experiences were common throughout the different centuries<sup>129</sup> and might as well explain such behaviour. In addition, IP in isolation are extremely vulnerable against diseases such as flu, malaria and diarrhea that easily become epidemic and have shown, as early as the first missionary missions kept their records, to result in the death of a tantamount slice of the population<sup>130</sup>.

One mediated case of indigenous communities suffering from the negative effects of industrial activities in their territories concerns the *Kichwa* people within the Cuatro Cuencas region, whose quest for effective remedies now lasts for forty years. The issue relates to oil exploitation and related prospections, along with the release of toxic waste into the river and forest – that led to claims for the restitution of dignifying living conditions, effective remedies and reparations<sup>131</sup>.

According to local sources, the *Kichwa* and other IP (*Quechua*, *Achuar*, *Urarina*, and *Kukama Kukamiria*) within the *Cuatro Cuencas* region have been suffering from the deathly impacts of oil exploitation during the last forty three years, under the government concession for oil exploitation (in the areas designated as Lote 1AB and Lote 1) in the basins of the rivers Pastaza, Corrientes, Tigre and Marañón to Pluspetrol<sup>132</sup>. In 2013, a state of environmental emergency was declared in the basins of river Pastaza, Tigre and Corrientes by the ministry of the environment<sup>133</sup>.

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<sup>127</sup> See Annexes, Image 3: Members of Peruvian uncontacted tribes arrive at Brazil escaping from industrial advances.

<sup>128</sup> Survival International, 'Más indígenas aislados emergen en Brasil huyendo de ataques en Peru', in *Noticias Survival*, 14 August 2014. Available at: <http://www.survival.es/noticias/10396> (consulted on: 05/03/2015).

<sup>129</sup> As documented in the movie *Xingu*, a recreation of the historical events that lead to the creation of the Xingu National Park in 1961 in Brazil. See Annexes, cinematographic references.

<sup>130</sup> Carvajal, 1955.

<sup>131</sup> Hill, David, 'Peru's indigenous people protest against relicensing of oil concession', in *The Guardian*, 2 February 2014. Available at: <http://www.theguardian.com/environment/2015/feb/02/peru-indigenous-people-protest-against-re-licensing-of-oil-concession>. (consulted on: 21/02/2015).

<sup>132</sup> See Annexes, Image 4: Map of the concessions for oil exploitation in the basin of river Pastaza, Corrientes, Tigre and Marañón in the Peruvian Jungle.

<sup>133</sup> Mikkelsen, 2014, pp.163.



As a result of the efforts of indigenous associations, they have in recent years been dialoguing with the state. Nevertheless, three years passed and no entity was made responsible for the contamination, neither as the state guaranteed potable water to the populations. Consequently, indigenous federations have presented a manifesto under the premise “We only want to live in peace, dialogue without health is not a dialogue”<sup>134</sup>.

The social, environmental and living conditions of the communities speak for themselves. In the river Tigre 100% of waters for human consume are, sediments are contaminated up to 98%; the soil is contaminated up to 96% and superficial waters are contaminated up to 86%<sup>135</sup>. Despite the fact that the Peruvian state is addressing these questions under a multi-sectorial commission, there is an evident lack of political will to balance the relations between Pluspetrol and indigenous associations. Several indigenous associations have asked for the integral solution of environmental issues in the area, in search for the protection of the right to health and for compensations regarding their cultural and environment loss without further success. Accordingly to Article 6 of the ILO Convention 169 it constitutes the legal category of bath faith to appear to be member of a multi-sectorial commission on indigenous affairs and still negotiate informally with natives in asymmetric conditions.

This situation illustrates a bigger picture concerning Peruvian reality. Defensoria del Pueblo has divulgated that 66,7% of the social conflicts (140) that take place in Peru correspond to socio-environmental conflicts, from which 68,8% (96) refer to mining activities and 15% correspond to hydrocarbons activities (21, in between which occurred in the *Cuatro Cuencas region*), in line with the conflicts documented in *Del vent al blau*. The system flaws evidence the lack of mechanisms to articulate demands and IP needs within transversal development policies. The Cuatro Cuencas issue calls for an immediate solution, recalling the state of Peru obligation to protect its citizens, by creating the necessary conditions for the enjoyment of the most fundamental human rights, as well as to intervene in case of discrimination and social injustice<sup>136</sup>.

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<sup>134</sup> Servindi, ‘Nativos de Cuatro Cuencas intensifican protestas por desatención del Estado’, in *Servindi Actualidad*, 9 June 2015. Available at: <http://servindi.org/actualidad/106721> (consulted on: 09/07/2015).

<sup>135</sup> See Annexes, Image 5: Contamination levels in the basin of the river Tiger

<sup>136</sup> Cfr supra footnote 92.

Moreover, the Peruvian government is planning to build a highway through the Manu national park, an area that has been pointed out as one of the most biodiverse place on earth<sup>137</sup>. This land is the territory of various indigenous communities, some of which in isolation and initial contact, such as the *Mashco-Piro*. It has been highlighted by scientists that building these type of infrastructures in such fragile environments as tropical forests can have devastating impacts. These include physical disturbances to the soil, vegetation and water-flows, pollution, and opening up previously inaccessible areas to colonization, hunting and the exploitation of natural resources<sup>138</sup>.

Another frightful government decision was the approval of the construction of twenty hydroelectric dams along the main trunk of the River *Marañón*, back in 2011. It has been said that such projects might result in biological death along the Marañón basin's area. The concerning law declared the construction of the dams, on the main trunk of the Marañón river, to be of national interest and that the project will launch the country's long-term project *National Energy Revolution*. This issue is controversial, as it is believed that the political interests behind the planned damns are more concerned with guaranteeing energy to mining companies and exporting to neighbouring countries, than about meeting the national demand for electricity<sup>139</sup>.

A 2014 report by the non-governmental organization (NGO) International Rivers states that these plans might lead to ecosystem collapse, especially given to the fact that neighbouring countries have similar plans for other rivers. The absence of a transboundary environmental impact assessment, studies on the impact that these projects would have in IP' livelihoods, food production and on how climate change might affect such plans were said to be missing. In the context of the negative social and environmental impacts of large dams that represent a threat to the entire ecosystem of the river and the surrounding regions, compromising the right to food and housing of the neighbouring communities. Furthermore, this would force thousands people, many

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<sup>137</sup> Hill, David, 'Peru planning highway through most biodiverse place on earth' in *The Guardian*, 12 February 2015. Available at: <http://www.theguardian.com/environment/andes-to-the-amazon/2015/feb/12/peru-highway-most-biodiverse-place-on-earth> (consulted on 06/04/2015).

<sup>138</sup> Hill, David, 'Peru mega dams threaten Amazon River source and ecosystem collapse' in *Mongabay News*, 28 March 2015. Available at: <http://news.mongabay.com/2015/0428-sri-hill-peru-dam-projects.html> (consulted on 04/04/2015).

<sup>139</sup> Ibidem.

of which from the *Awajuns*<sup>140</sup> and *Wampis* tribes, to abandon their homelands and sources of livelihood, not only because of the flooding of their territories, but also as a consequence of the interruption of fish migrations and soil nutrition that will compromise fishing and agricultural activities, alongside with the conservation of biodiversity and the survival of endemic species<sup>141</sup>.

The present circumstances in Peru are a threat to IP living conditions and survival. Industrial advances and the construction of large-scale infrastructures in the Amazon highlight the lack of compliance with national legislation and international human rights law, particularly in what concerns to the planning and implementation of projects that highly compromise the environment and the survival of local communities. Hence, IP do not see their right to previous consultancy protected alongside with the right to a free, prior and informed consent that would enable them to be part in decision-making processes and to choose their own priorities for development. Instead, they are suffering from contamination, facing forced evictions, water and food deprivation along with other human rights abuses that result in severe damages to the right to health, often compromising their right to life and most definitely disregarding the right to a healthy environment.

In addition, the lack of consideration for indigenous knowledge of the environment, natural cycles and adequate resource management techniques leads to a continuous process of cultural assimilation, which has shown not to be working in favour of the protection of the Amazon.

#### **4.2. Environmental protection in the Amazon**

The Amazon forest is known to be the largest rainforest in the planet, spreading across around 40% of South America<sup>142</sup>, it plays a major role in balancing the world's climate scene. As discussed, industrial advances and development policies that take place in the Amazon are responsible for environmental degradation that affects the

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<sup>140</sup> The movement of the *Awajun* people and they strive for protecting both their culture and ancestral territories is very interestingly portrayed in the documentary *Amazonia for sale*. See Annexes, cinematographic references.

<sup>141</sup> Cfr supra footnote 138.

<sup>142</sup> Mongabay, 'The Amazon: The World's Largest Rainforest'. Available at: <http://rainforests.mongabay.com/amazon/> (consulted on: 07/07/2015).

quality of the waters, fertility of the lands and availability of natural resources that provide food and shelter to IP. Moreover, disturbances to the environment lead to deforestation and desertification and debilitate the complex ecosystem of the tropical rainforest, making it especially sensitive to the consequences of climate change<sup>143</sup>.

As a consequence of the intensive rhythm of deforestation, the Amazon has recently reduced its capability of absorbing carbon dioxide (CO<sub>2</sub>) from the atmosphere. If we compare current numbers to the absorption rate in the nineties, it is now reduced to the half and the CO<sub>2</sub> emitted by the use of fossil combustibles in Latin America has overcome the amount of carbon absorbed by the forest per year. A scientific study held by the University of Leeds highlights that the increase of CO<sub>2</sub> in the atmosphere, a key ingredient to photosynthesis, was expected to result in the growth of trees in the Amazon. However, it did not - scientists believe that the unexpected consequences of the extra carbon might be related with other phenomena related with climate change, such as draughts and high temperatures<sup>144</sup>.

Furthermore, it has been said that in case the carbon absorption continues on decreasing globally and temperatures rise four degrees Celsius, 16% of animals and plants will be lost. This means that one in every six species on earth faces the threat of extinction if nothing is done to fight climate change. Moreover, extinction risk in South America is estimated to be 23%, the highest in the global picture, followed by Australia and New Zealand, due to the fact that they are extremely biodiverse regions. It was also found that the rate of biodiversity loss is likely to increase in the same proportion of global temperature. If future temperatures rise by 2°C, global extinction risk will rise from 2.8% to 5.2%.<sup>145</sup>

In this regard, debates are being held in relation to international cooperation concerning climate change mitigating policies and ecologically sound premises for development at the conference of the parties, the governing body of the UNFCCC. The UNFCCC is an international treaty that aims at strengthening global action against

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<sup>143</sup> Cfr supra footnote 16.

<sup>144</sup> RPP Noticias, 'El Amazonas redujo a la mitad su capacidad para absorber CO<sub>2</sub>', in *RPP Noticias – Ciencia y Tecnología*, 18 March 2015. Found at: [http://www.rpp.com.pe/2015-03-18-el-amazonas-redujo-a-la-mitad-su-capacidad-para-absorber-co2-noticia\\_779198.html](http://www.rpp.com.pe/2015-03-18-el-amazonas-redujo-a-la-mitad-su-capacidad-para-absorber-co2-noticia_779198.html) (consulted on: 06/07/2015).

<sup>145</sup> Brigs, Helen, 'Climate Change risks 'one to six species'', in *BBC News*, 30 April 2015. Available at: <http://www.bbc.com/news/science-environment-32532518> (consulted on: 06/05/2015).

climate change and reducing greenhouse gases emissions, created at the Earth Summit in Rio back in 1992. It will enter into force in 2020 and replace the Kyoto Protocol of 1997. The first objective of this convention is to take global action for preventing global temperature from rising two degrees Celsius. To maintain such temperatures a change in the economic market is sought to take place towards more sustainable industrial models based on reduced carbon emissions<sup>146</sup>.

The understanding of climate change mitigation has significantly grown since the Kyoto Protocol: it can no longer be reduced to an issue that affects several economic activities once the international community, at the cost of major ecological disasters, now understands it to be caused for human activities<sup>147</sup>. Accordingly, anthropologists have addressed it as a human, not a natural problem. In a report recently released by the American anthropological association on global climate change, accompanied by a statement on humanity and climate change, anthropologists recognized that to overcome the challenges of climate change – a phenomenon that results from our social reality and cultural practices – the contribution of social sciences, humanities and the teachings of cross-cultural perspectives for the protection of human rights must be considered<sup>148</sup>.

In addition, anthropologists made mention to some aspects of climate change research that scientists do not usually address such as the disproportionate impacts upon vulnerable populations, the fact that the challenges we are currently facing derive from cultural choices, and how a retrospective analysis of the development of our civilization might raise awareness to the likely consequences of our choices for the future<sup>149</sup>.

The statement and report suggest that solutions require social adaptation, highlighting the local dimension of the capacity of resilience and the vital role of enabling communities to provide knowledge and social capital to construct viable solutions. The proposed recommendation questions the effectiveness of top-down policies, especially due to the fact that the consequences of climate change, apart from being a global issue, and alike other social problems, fall more harshly upon the most

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<sup>146</sup> Zou, 2015, pp.8.

<sup>147</sup> Ibidem.

<sup>148</sup> Fiske & all, 2014. Available at: <http://www.aaanet.org/cmtes/commissions/upload/GCCTF-Changing-the-Atmosphere.pdf> (consulted on 07/05/2015).

<sup>149</sup> Ibidem.

vulnerable sectors of the society. Moreover, as its impacts become more intense, there is an increasing need for investment in emergency aid and restoration alongside with an increase awareness and regulation in terms of prevention<sup>150</sup>.

In this sense, it is necessary that concerns for climate change mitigation echo in politics worldwide, so that governments implement consonant policies and the private sector complies with them. Last November, China and the United States surprised the international community with a bilateral cooperation agreement for the reduction of green house gases emissions, built under premises of clean energy cooperation. This is a big announcement as the US and China together produce one third of the world's CO2 emissions<sup>151</sup>.

Under the effort of grouping the involucrate parties into thematic groups within the UNFCCC, indigenous representatives were organized under the international IP forum on climate change<sup>152</sup>. In this context, IP presented proposals for the official climate summit at the last session of the conference of the parties carried out from the 26th to the 28th of November 2014 in Lima, Peru. Their contributions allowed Peru, in the words of the minister of the environment, to demonstrate an “open hands attitude” in the dialogue maintained with IP, at least in an international level<sup>153</sup>.

IP expressed their general concern for guarantees that respect a rights-based approach to all climate change interventions and specific provisions for the recognition, respect and promotion of IP' rights as enshrined in the ILO Convention 169, UNDRIP and other international human rights norms, alongside with the respect of their right to free, prior and informed consent in decisions that affect them and the effective participation of IP in discussions in the matter. Furthermore, IP highlighted the need for respecting and promoting indigenous traditional knowledge and its potentialities to mitigate and adapt to climate change. In regards to technology transfer, IP safeguarded

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<sup>150</sup> Ibidem.

<sup>151</sup> The White House, 'Fact Sheet: U.S. – China Joint Announcement on Climate Change and Clean Energy Cooperation', November 2014. Available at: <https://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-us-china-joint-announcement-climate-change-and-clean-energy-c> (consulted on 08/06/2015).

<sup>152</sup> Mikkelsen, 2014, pp. 537-538.

<sup>153</sup> Servindi, 'Indigenous peoples fine-tune key proposals at the COP 20', in *International Work Group for Indigenous Affairs (IWGIA) News*, 8 December 2014. Available at: [http://www.iwgia.org/news/search-news?news\\_id=1141](http://www.iwgia.org/news/search-news?news_id=1141) (consulted on: 08/03/2015).

that it must be made in harmony with mother earth, their culture and cosmovision in order to avoid losing the rights achieved on technology transfer within the trade agreements, in respect of Article 16 of the CBD<sup>154</sup>. This goes in line with the concerns expressed at the World's People's Conference on climate change and the proposal universal declaration on the rights of the mother earth were the respect towards peoples' socio-economic and cultural systems was highlighted<sup>155</sup>.

Despite the fact that indigenous rights and relevant issues that have an impact on them pervade all areas of negotiation, they have been addressed mostly under the program Reducing Emissions from Deforestation and Forest Degradation (REDD), one of the mitigation measures adopted by the convention<sup>156</sup>. This program consists in the attribution of a financial value to the carbon stored in forests and relies on economic incentives for developing countries towards low-carbon sustainable investments, in order to prevent deforestation and the degradation of forested lands<sup>157</sup>.

Several policy alternatives for REDD have been under negotiation. One approach is for developed nations to capitalize funds to reduce greenhouse gases emissions in developing countries. For example, the Amazon Fund, initially capitalized by Norway, will help to finance REDD efforts in the Brazilian Amazon. A second one is related with compliance markets and aims that nations or regulated entities reduce their emissions or buy offsets from others. The implementation of such approach will take more time, but negotiations are being held in order to develop compliance markets for REDD within the UNFCCC, the European Union, and the United States. A third possibility that we believe to be one of the most straightforward potentialities of this program is the creation of indigenous lands protected areas. This policy offers multiple benefits, beyond reducing the emission of greenhouse gases: it safeguards indigenous traditional livelihoods, land rights, protection of the environment and biodiversity

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<sup>154</sup> In line with the 'Proposed draft document by Indigenous Peoples' representatives from different regions of the world', International Indigenous People's Technical Workshop with States on the UNFCCC negotiations. Available at: [http://www.iwgia.org/news/search-news?news\\_id=1141](http://www.iwgia.org/news/search-news?news_id=1141) (consulted on: 08/03/2015).

<sup>155</sup> World People's Conference on Climate Change and the Rights of Mother Earth, 'Proposal Universal Declaration of the Rights of Mother Earth'. Available at: <https://pwccc.wordpress.com/programa/> (consulted on: 03/04/2015).

<sup>156</sup> Cfr. Supra footnote 152.

<sup>157</sup> UN-REDD Programme, About REDD+. Available at: <http://www.un-redd.org/AboutREDD/tabid/102614/Default.aspx> (consulted on 06/04/2015).

Furthermore, indigenous lands protected areas provide food and water supplies to local communities and have shown to regulate regional climate and water cycles, preserving natural elements crucial to maintain indigenous cultural identity. Moreover, in some cases they have employed IP in the conservation of forest resources. We believe that these reasons highlight the potentialities of such program within the Amazon forest, of major importance in such considerations for its carbon stocks and advanced network of indigenous lands and protected areas<sup>158</sup>.

REDD+ goes even further and aims at environmental conservation, sustainable management of forests and enhancement of forest carbon stocks. The concept behind REDD+ was firstly proposed by the Coalition for Rainforest Nations during the UN FCCC negotiations in 2005 as a mechanism for compensating tropical forest countries that reduce greenhouse gases emissions from deforestation. The secretary general Ban Ki-Moon launched it as complementary to the UNFCCC in 2008. Projects to test the viability of REDD+ were developed soon after with the sponsorship of the World Bank and UN REDD, along with national governments<sup>159</sup>.

Despite some significant involvement of IP in key aspects of REDD+, several basic unsolved questions prevent their effective participation and compromise their contributions in the policy making process. As a matter of fact, the effects of REDD+ on IP will depend on the effectiveness of the legislation that prescribes it. In addition, partnerships with environmental NGOs, such as Environmental Defence Fund and Conservation International, have proved to enhance the capacity of these tribes and organizations to successfully engage REDD+, as they support IP' efforts to address environmental concerns by providing expertise in international policies and law<sup>160</sup>.

Nevertheless, some existing projects are known to be very controversial, especially in what regards to implementation, e.g. the project Guaraqueçaba Cimate Action in Brazil, which is known to have relied on the military to enforce restrictions imposed by forest carbon projects, interfering with the traditional activities of the *Guarani* people. Despite the fact that it has been referred to as a “model of environmental protection” by the NGO Nature Conservancy it has been very criticised

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<sup>158</sup> Randal & Kronk, 2013, pp. 151-152.

<sup>159</sup> Cfr. Supra footnote 157.

<sup>160</sup> Cfr. Supra footnote 158.



by human rights activists, who claim “REDD+ protects forests at the expense of local populations”<sup>161</sup>.

We believe that key considerations for securing IP’ free exercise of the right to self-determination, participation and autonomy concerning the adoption of measures towards environmental protection and climate mitigation, pass by gathering their free, prior and informed consent, ensuring solid land rights and establishing a clear and equitable distribution of economic benefits. If these concerns were to be unanimously addressed, REDD+ could become of major utility in terms of the protection of the right to a healthy environment within the Amazon.

Furthermore, deforestation and the degradation of forest resources, throughout agricultural expansion, conversion to pastureland, infrastructure development, logging activities and fires account approximately for 20% of global greenhouse gas emissions, more than all the cars, trains, planes, ships, and trucks on earth<sup>162</sup>. These numbers are particularly relevant when speaking about the Amazon and the protection of the rights of IP, as it has been said that, if we fail to reduce emissions from the forest sector, it would be practically impossible to prevent the collapse of the world’s climate.

Accordingly, the adoption of international commitments and their concrete absorption in the national sphere shows to be of an added importance in both the South American and Peruvian context. Once government policies and the activities of the private sector are responsible for the industrial activities in the Amazon, they deepen fragmentation of the environment and cultures of the forest. This reality places IP in great danger in regard of the amount of natural resources available in the Amazon forest. However, it highlights the high nutritive level of their ancestral knowledge and sustainable practices as food for thought in an era where environmental problems are making us re-thinking actual premises for development and sustainability.

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<sup>161</sup> Ibidem.

<sup>162</sup> Van der Werf, 2009, pp. 737-738.

### **4.3. Development policies and their impact on indigenous peoples**

In recent years, the increasing demand to finance global development goals such as the protection of the environment, the reduction of poverty and hunger have resulted in state inversions of public money, often more focused on political and economic interests than the benefit of the people<sup>163</sup>. As a matter of fact, development policies in the Amazon usually work in benefit of the private sector and industrial activities, at the cost of IP' rights, social unity and welfare, specially in what concerns to the implementation stage.

Accordingly to data made available by Greenpeace, governments worldwide are paying around 1 to 2 trillion United States dollars per year for subsidies that cause social and environmental negative impacts. Moreover, it is common that subsidies in benefit of a sector of the population have a nefarious effect on other sectors' social and environmental backgrounds. This leads to a controversial assertion that inversions for global development seem to exist but sums are often spent in a way that might not ensure, and instead negatively impact human rights and environmental protection. At the same time, the "money spent in a wrong way" compromises future financial returns<sup>164</sup>.

Despite the fact that there is no universally accepted notion of subsidies, they are understood as a means of government support for the promotion of certain activities that are considered to boost a certain economic sector or the economy as a whole. Apart from the complex specificities of the theme, one can generally say that subsidies promote economic activities that envisage supporting disadvantaged members of the society under different policies and financial transfers, that might widely vary depending on the sector. Up to date, industries related to forests are one of the major areas subjected to financial incentives<sup>165</sup>.

Furthermore, the CBD distinguishes positive from perverse incentives, those that incentivize biodiversity decline and are directly linked with forest loss and degradation. Some might not be so evidently attributed but are still related to forest loss and degradation, such as the construction of roads by governments that will be used

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<sup>163</sup> Knirsch & all, 2006, pp. 9-12.

<sup>164</sup> Ibidem.

<sup>165</sup> Cfr supra footnote 163 pp. 13-15.

exclusively by logging companies, the costs of the public administration of forest territories exploited by the private sector, the granting of loans to logging companies that cover planning costs, public funding of mitigating policies in relation to the negative impacts of wood processing industries and the provision of energy and water at prices lower below the market's<sup>166</sup>.

Since the Earth Summit, held in Rio de Janeiro in the context of the Conference on Environment and Development in 1992, the UN has been recognizing that development and environment are inextricably linked. The lack of coherence of the practices of global institutions reflects a lack of political will to address the reciprocity of this relation, particularly in what concerns to the environmental issues that derive from development policies. As expertise increases in the area, new relations are being established and understandings of the global situation deepen. In this respect, the UN Environmental Program recognized poverty as one of the major causes of environmental degradation. In the same line, the German advisory council on climate change made a recommendation focused on “fighting poverty through environmental policy”, where the links between “poverty, diseases, malnutrition, lack of education and environmental changes, such as climate change, water pollution, scarce water resources, soil degradation, loss of biological diversity and resources, and air pollution<sup>167</sup>” were exposed<sup>168</sup>.

Furthermore, the world resource institute recognized as essential elements of sustainable economic growth: ecosystem management, democratic governance and poverty reduction. In accordance, the millennium ecosystem assessment underlined that these factors are intimately connected and lead to environmental discrimination. This is a pointy question in the Amazon, as IP often suffer from the effects of ecosystem degradation, government decisions are translated into social conflicts and sometimes into the abusive use of force<sup>169</sup>.

Accordingly, the inter-American commission has recognized that states are free to decide upon the exploitation of natural resources, by granting industrial

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<sup>166</sup> Cfr supra footnote 163 pp. 19.

<sup>167</sup> Ibidem.

<sup>168</sup> Cfr supra footnote 165.

<sup>169</sup> Ibidem.

concessions and incentives to national and international investments for related projects. Noting that the norms of the inter-American human rights system neither prevent nor discourage economic development, the Commission noted that regional human rights norms require development projects to respect, protect and fulfil state obligations related with human rights and the environment. In addition, absent or inappropriate regulation, as well as the lack of supervision in the application of environmental norms, may create serious problems with respect to the environment, which can be translated into violations of human rights<sup>170</sup>.

Moreover, the Commission has expressed a formulation of the right to development in a way that it allows for sustainable premises that intrinsically embrace environmental protection. Quoting the declaration of principles of the summit of the Americas, “social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly”. As we have seen before, country studies by the inter-American commission have sustained the same argument by suggesting that strategies to fight poverty should include the protection of the environment<sup>171</sup>.

This goes in line with the concept of environmental justice that relies on the understanding of the environment as a social good, rather than a strictly economic asset, aiming at an equitable distribution of benefits and burdens and taking into consideration the consequences for the following generations. This understanding has shown to be of great importance in linking the protection of human rights and the environment, as it recognized that favourable natural conditions, the quality of the environment and ecological well being are essential to the fulfilment of human rights and development goals<sup>172</sup>.

The same believes emerge from indigenous cosmovision, their perception of the territory, environment and human behaviour as a whole. Therefore, the protection of IP’ right to self-determination allows them to comply with a set of communal rules of conduct that provide sustainable roots for development and the protection of the environment. Consequently, we can say that in order to grant the conditions towards the

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<sup>170</sup> Shelton, 2010, pp. 20-22.

<sup>171</sup> Ibidem.

<sup>172</sup> Ibidem pp.23.

exercise of the right to a healthy environment, there is a need to safeguard the protection of the right to life and health of IP and that would result in the protection of the environment and necessary conditions for a development that does not compromise future generations.

#### **4.4. The challenges for multiculturalism in the age of globalisation**

Indigenous cultures belong to the cultural identity of Peru as they have been present in the territory before its foundation as a colony and independent state. The historical inequities and cultural assimilation were fought under the shape of discrimination, that lead to the disregard of indigenous property, cultural and participatory rights in spite of third party's interest.

There was a long process of struggling for the recognition of IP' rights and it was until recent years that the Peruvian state assumed its multicultural dimension and made further commitments for complying with international human rights norms in order to guarantee the protection of IP' rights and the continuity of their traditional lifestyles. However, the state not always ensures its obligations to respect, protect and fulfil the rights of its citizens. In this regard it is worth mentioning the fact that conservative policies and monoculture logics have caused an aggravation of IP social problems and resulted in further restrictions to indigenous cultural expressions and traditional lifestyles, often translated in the abuse of human rights<sup>173</sup>.

The dictatorship of Alberto Fujimori in the nineties perfectly evidences this, having contributed to the forced sterilization of more than two thousand peasant and indigenous women in the country<sup>174</sup>. Moreover, the government of Alan Garcia perpetuated several human rights abuses and witnessed the unfortunate events that occurred in 2009 in Bagua when, in the consequence of the granting of an industrial concession for oil exploitation in benefit of Pluspetrol, the members of the indigenous communities that inhabited the region upheld a demonstration that resulted in road-

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<sup>173</sup> Barco & Zambrano, 2015.

<sup>174</sup> Amnistía Internacional, 'Perú reabre la investigación sobre las esterilizaciones forzadas de mujeres', in *Amnistía Internacional Noticias y Actualidad*, 31 October 2011. Available at: <https://www.es.amnesty.org/noticias/noticias/articulo/peru-reabre-la-investigacion-sobre-las-esterilizaciones-forzadas-de-mujeres/> (consulted on: 09/07/2015).

blocking<sup>175</sup>. In answer to three days of blockade and the pressure of the industries in the region, that saw the production compromised by the lack of distribution of their production, the government authorized the military to shoot over the demonstrators<sup>176</sup>. According to IWGIA, this resulted in the death of thirty indigenous demonstrators, including which two children<sup>177</sup>. The brutality of the images made public caused a wave of indignation and solidarity across the country, civil society initiatives and demonstrations that asked for a change in the political discourse towards the need of protecting IP' cultures and territories in the national context. Furthermore, three members of indigenous communities were unjustly deprived of their freedom since 2009, in the words of IWGIA<sup>178</sup>.

These occurrences are often mentioned as background to the increasing national awareness concerning the topic of IP in Peru. In this context, and despite the present social and environmental problems in the Amazon, claims for the incorporation of multicultural approaches in public policies started to be defended as adequate and necessary in order for the state to act in compliance with the standards provided by international human rights law for the protection of the rights of IP in issues concerning the management of their territories and priorities for development<sup>179</sup>.

At the same time, and as *globalisation* advances were intensified, the international community has been expressing an increasing concern for topics of cultural diversity, the protection of ethnic minorities, the preservation of their ancestral knowledge and the study of their languages. We here refer to the concept of *globalisation* as defined by Boaventura de Sousa Santos: “the process by which a certain condition or local entity spreads its influence around the globe and, while doing so, develops the capacity of designating as local another social condition or rival entity”<sup>180</sup>. It is known to be a multifaceted phenomenon in what concerns to political

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<sup>175</sup> ‘Bagua video de la ONG IWGIA 3, 4, 5 de Junio 2009’. Available at: <https://www.youtube.com/embed/e0TLB7CfAk> (consulted on: 09/07/2015).

<sup>176</sup> Ibidem.

<sup>177</sup> Ibidem.

<sup>178</sup> Cfr supra footnote 4 pp. 163

<sup>179</sup> Cfr supra footnote 173.

<sup>180</sup> Santos, 2013 (a) pp. 29.

concepts and cultural orientations, nevertheless it has a unanimously recognized global dimension built upon transnational networks and corporations.

The same author refers to *hegemonic and neoliberal globalisation* as the contemporary era of capitalism, followed by international politics, social tendencies and translated into the rule of law, the liberalisation of economy, privatizing policies, and increasing industrial concessions accompanied by the reduction of state sovereignty, liberal democracy and human rights. It has to its service powerful and differentiated institutions, from central states to the European Union, the World Bank, International Monetary Found, transnational corporations and the World Trade Organization. This author defends that the economic crisis that burst in 2008 highlighted the structural contradictions of the neoliberal globalisation model and the way the crisis is to be solved will determine weather there will emerge a new economic and financial model<sup>181</sup>.

On one hand, Boaventura makes mention to a very interesting assertion by Michael Novak:

“It is easy to understand who the practical case for capitalism is easy to grasp. No other system so rapidly raises up the living standards of the poor, so thoroughly improves the conditions of life, or generates greater social wealth and distributes it more broadly. In the long competition of the last 100 years, neither socialist nor third-world experiments have performed as well in improving the lot of common people, paid higher wages, and more broadly multiplied liberties and opportunities.<sup>182</sup>”

On the other hand, the author defends the proposal of a *counter hegemonic globalization* that consists in the articulation of transnational social movements and NGOs, such as IWGIA, Greenpeace, World Wildlife Fund, Amnesty International and Survival International along with networks for advocacy and support to specific themes of resistance against colonialism, the social inequalities, discrimination and destruction of the environment that has been perpetuated by schemes of hegemonic globalisation. This implies the organised work of intellectual and political mobilisation, willingly to

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<sup>181</sup> Ibidem pp. 30-31.

<sup>182</sup> Novack, 2004. Excerpt of a speech delivered before the Mont Pelerin Society in Sri Lanka on January 11, 2004. Available at: <http://www.nationalreview.com/article/209555/wealth-virtue> (consulted on: 15/05/2015).

discuss the hegemonic social schemes and reflect on alternatives to the dominant social organisation<sup>183</sup>.

It is most certainly an interesting concept that finds support in alliances between the global North and South, relying on the combined efforts of groups and movements that fight for the same objectives of social emancipation and liberation, aiming not at transcending the local and national contexts, but instead at transforming, re-organizing and re-thinking them<sup>184</sup> towards a sustainable future, anthropological and ecologically sound, built upon the universal recognition of human rights and the respect for all cultures.

As mentioned before, the arrival of the first colonisers to the Amazon brought hegemonic practices of globalisation and the understanding of natural resources strictly as economic assets. This drafted the counters of the current paradigm of cultural and ecological defragmentation in the Amazon, deepen in recent years as the adoption of the neoliberal capitalistic model and delocalisation practices towards cheaper production costs have resulted in the dilapidation of the natural and cultural background to indigenous communities.

In this sense, we believe in the potentialities of the proposed *counter hegemonic globalisation*, particularly in the stress put on the fact that resilience is best addressed locally, and that its most challenging dimension to this investigation relies upon indigenous communities' empowerment and emancipation towards the protection of the Amazon forest as an ecosystem.

## 5. Conclusion

In this investigation we refer to cultural identity while first defining IP, accordingly to Article 27 ICCPR and Article 5 ILO Convention 169, which goes further and specifically safeguards the protection of traditional lifestyles and spiritual values. Moreover, a continued existence as peoples prior to colonialism, voluntary perpetuation of cultural distinctiveness and determination to preserve, develop and transmit to future generations ownership over their ancestral territories, culture and spirituality are

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<sup>183</sup> Santos, 2013(a) pp. 30.

<sup>184</sup> Ibidem pp. 31-32.



determinant features of indigenous self-identification. This provides the understanding of IP' holistic worldview, particular perception of land, natural resources and traditionally harmonious interaction with nature, in line with the understanding of culture so as to include means of adaptation to the physical environment<sup>185</sup> and to be manifested in "a particular way of life associated with the use of land and resources"<sup>186</sup>.

In the same line, the right to self-determination establishes freedom to pursue economic, social and cultural development and to freely dispose of natural wealth and resources without outside interference, as provided in common Article 1 to the ICCPR and ICESCR. This establishes a link between exercising cultural diversity through differentiated perceptions of land and resources, acknowledging indigenous spirituality. In accordance the CERD has recognized the right to self-determination to enclose not only the right of ethnic groups to enjoy their own culture, but also to profess and practice their own religion. Therefore, the protection of IP' right to self-determination guarantees the protection of indigenous worldview, lifestyles and traditions, the main expression of which is the oral narrative, its purpose to be heard and perceived by the young generations: it is a certain way to educate, such as planting a seed.

Disregarding the direction to which indigenous spirituality and cosmovision seems to point, we cannot guess upon the nature of the consequences of the protection of the right to self-determination. Particularly in regard of cultural defragmentation and increasing dependence on a monetary economy that is common to several Amazonian indigenous communities, the free exercise of this right might lead indigenous communities to dispose of land rights and natural resources in accordance with the available opportunities for economic prosperity and result in an increased number of industrial concessions in the Amazon, compromising the living conditions of present and future generations.

What we do know is that the core meaning of the internal dimension of IP' right to self-determination is to choose the priorities for development - as safeguarded in Article 7 ILO Convention 169 - and that this right can only be effectively implemented if accompanied by culturally adapted educational programs, which have a positive

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<sup>185</sup> Cfr supra footnote 38.

<sup>186</sup> Cfr supra footnote 39.

effect on group pride, unity and participation of communities in decisions that affect their cultural identity. In addition, local empowerment contributes to the appreciation of traditional lifestyles, subsistence activities and resource management techniques, living dimensions of indigenous traditional knowledge recognized to be of utmost importance for environmental preservation in terms of Articles 8(j) and 10(c) CBD.

Furthermore, international human rights law recognises the importance that IP have in environmental preservation generically, when mentioning the contribution that traditional sustainable practices have in the conservation of nature, and specifically in Article 4 ILO Convention 169 that requires special measures to safeguard the environment of IP. Alongside, Article 27 ICCPR has been broadly interpreted and used by UN treaty bodies as an argument to protect indigenous land and culture from environmental degradation. Consequently, the exercise of the right to self-determination represents a window for a culturally differentiated approach to the participation of IP in environmental management<sup>187</sup>. This idea finds support in the human rights based approach to development, the recognition by the OAS of the instrumental character of human rights to better environmental protection and the progressive realization of human rights, in the wording of Article 26 ACHR.

On the ground of the right to a healthy environment in terms of Article 11 SSP and its understanding as a fundamental right, accordingly to Article 2(22) Peruvian Constitution, dignifying living conditions should be guaranteed by the Peruvian state, which implies preventing and guaranteeing effective remedies to cases of environmental degradation that compromise the respect of the human right to life and health, the survival of indigenous communities and the forest. Furthermore, the recognition of this right would result in the increasing protection of environmental quality in the Amazon.

In contrast, on-going environmental conflicts in Peru evidence lack of compliance with international human rights law, namely IP' right to previous consultancy and to free, prior and informed consent in the terms of Article 5 and 6 ILO Convention 169. Moreover, environmental degradation that results from industrial advances, causes severe damages to IP' environment and health conditions, compromising their right to life and healthy environment while recurrently postulating

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<sup>187</sup> Cfr supra footnote 80.

cultural assimilation. The situation calls for a change of state policies towards a rebalance in the relations between third actors and indigenous communities.

This goes in line with the main objectives of the UNFCCC: prevent global temperature from rising and impose changes in the economic market in order to achieve more sustainable industrial models. In this context, the international forum of IP highlighted the need of protecting traditional knowledge and its potentialities to mitigate and adapt to climate change. Regarding that deforestation and degradation of forest resources account for 20% of greenhouse gas emissions, preserving the Amazon forest might play an important role in preventing climate collapse. The possibilities of REDD, particularly in what concerns the creation of IP lands protected areas and engaging community members to work for the protection of forest resources, are of interest to this investigation as they safeguard indigenous traditional livelihoods, the protection of the environment and biodiversity, despite their controversial nature.

This is a matter of concern attending to the fact that the forest sector is one of the major areas subjected to subsidies for development goals, which often benefit industrial activities instead of preserving the environment and improving the living conditions of local communities. However, claims for environmental justice and the understanding of the environment as a social good that shall be managed in perspective of an equitable distribution of benefits and burdens, taking into consideration the following generations are consonant with indigenous cosmovision, perception of the territory and human behaviour as a whole.

In this sense, we believe that to aim for a *counter hegemonic globalization*<sup>188</sup> we must overcome the conception of self-determination as a counter norm of state sovereignty<sup>189</sup>, shifting the stress when speaking of natural resources from sovereignty towards management, which is best addressed locally and would allow a more direct political participation of indigenous communities and a renewed will on part of the state to embrace multiculturalism, respecting cultural and social institutions.

In terms of conclusion we would like to recall the respect of “cultural diversity

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<sup>188</sup> Cfr supra footnotes 183 and 184.

<sup>189</sup> Cfr supra footnote 60.

as an ethical imperative<sup>190</sup>” - upon which depends the empowerment of local communities and their cultural emancipation - in order to propose a reflection on how the (inter) national community could conceive an intercultural dialogue with different peoples and worldviews, so as to address local concerns and learn from IP’ ancestral knowledge while rethinking alternatives for the management of natural resources and sustainability.

“In indigenous cosmovision, territory is composed by natural and supernatural, it represents the entire universe, what we ourselves are, what is above and under the surface, it includes renewable and non-renewable natural resources. More than physical space, it is where we make our living and where all relations are reproduced: life, existence, growth.<sup>191</sup>”

Ancestral knowledge of the Uitoto-Muni

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<sup>190</sup> In the terms of Article 4 UNESCO Universal Declaration on Cultural Diversity.

<sup>191</sup> Transcript of the text as recorded by Giovanni Micarelli. Published in a presentation of her field work in the context of the research projects: IEIPWA - Indigenous Epistemologies and Images of Public Wealth in Amazonia and ALICE: strange mirrors unsuspected lessons.

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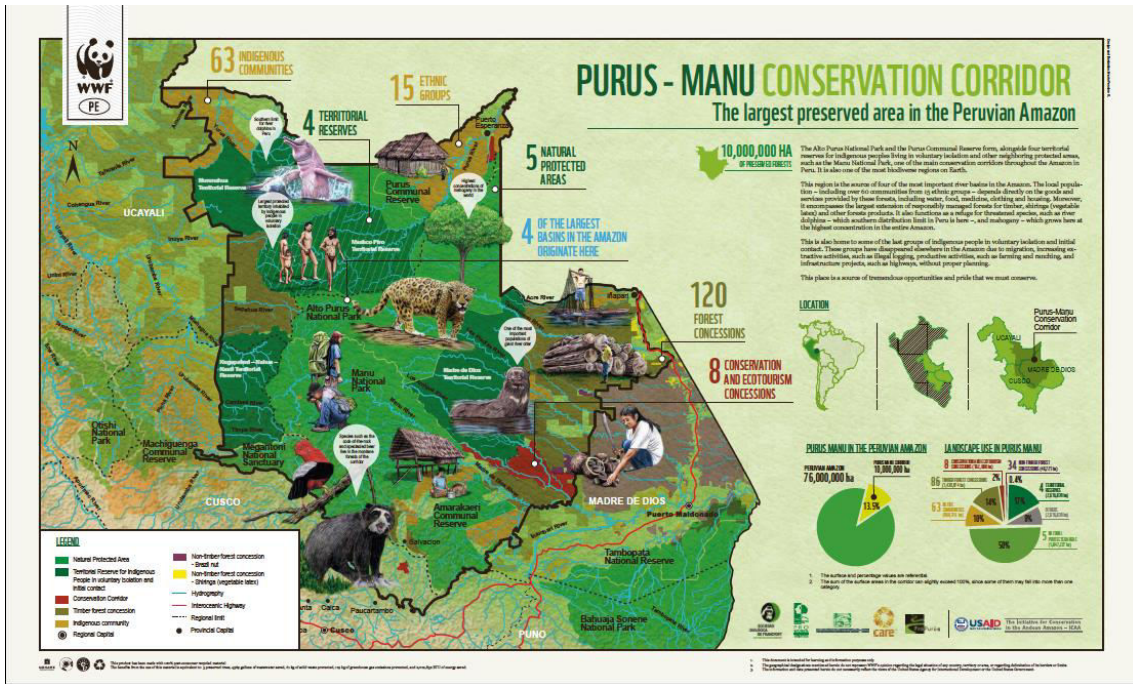
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## **Annexes**

Image 1: Map of the PMCC



Source: WWF Peru.

Image 2: Isolated tribes in the Brazil



Source: G. Miranda, Survival International.

Image 3: Members of Peruvian uncontacted tribes arrive at Brazil escaping from industrial advances



Source: FUNAI/Survival International.

Image 4: Map of the concessions for oil exploitation in the basin of river Pastaza, Corrientes, Tigre and Marañón



Source: Pueblos Unidos Amazónicos en Defensa de sus Tierras y Territorios.



Image 5: Contamination levels in the basin of the river Tiger



Source: Federación de las Comunidades Nativas del Alto Tigre.

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