

Pueblos indígenas y desarrollo: El rol de la consulta previa en los países andinos*

Indigenous peoples and development: The role of prior consultation in Andean countries

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Resumen

Los estados son garantes de los derechos indígenas al mismo tiempo que deben facilitar la explotación de los recursos naturales para mantener el crecimiento de las economías nacionales. Hoy los pueblos indígenas andinos utilizan el lenguaje de los colonizadores en los espacios políticos para expresar sus propias ideas sobre el desarrollo y resistir la explotación de los recursos naturales. Hay un proceso de coordinación política entre los pueblos indígenas que fomenta resistencia en contra de los cambios que promueve el desarrollo. En este artículo se propone una posición crítica frente a la consulta previa según la cual ella se constituye como una estructura que promueve el asentamiento progresivo de los paradigmas del desarrollo en territorio indígena. Tiene como objetivo llamar la atención sobre el carácter neutral de la consulta previa.

Palabras clave: Consulta previa, Identidad de los pueblos indígenas, Derechos de los pueblos indígenas.

Abstract

States are guarantors of indigenous rights at the same time they encourage the exploitation of natural resources to sustain the growth of national economies. Andean indigenous peoples use the language of the colonizers in political spaces to express their own ideas about development and resist the exploitation of natural resources. There is a political process of coordination among indigenous peoples that promotes resistance against the changes endorsed by development. In this article a critical position about prior consultation is proposed, according to which prior consultation constitutes as a structure that promotes the progressive establishment of development paradigms within indigenous territories. This article aims to draw attention to the neutral nature of prior consultation.

Keywords: Prior consultation, Indigenous peoples identity, Indigenous peoples' rights.

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1. The conflict: Development versus indigenous cultures

Development is an idea that allures developing nations because it promises an idealized Western state of perfection for all individuals. In this idea economics is the compass that points the strategies to improve the growth of the economy, a major concern for modern states. These basic notions are embedded in Constitutions, professional wisdom, the imaginary of state bureaucracies, etcetera (Cowen & Shenton, 1995). Development determines the reality around us, but indigenous peoples dare to challenge this notion of development. Their main argument to oppose development is that it is devastating their lands and cultures. Development encourages activities such as timbering, hydroelectric development, mining, and road building, among others, that destroys indigenous lands and attracts colonizers whose customs defies the traditional way of life of indigenous peoples.

Indigenous people have agency in the very international and national institutions that promote development (International Labour Organization; United Nations Development Programme, 2007). Currently is not possible to state that there is “lack of adequate political-legal participation of indigenous peoples, who hardly play any role in the political systems of the nation-states” (Cycon, 1990-1991). If indigenous peoples’ rights (IPRs) are lacking of progress, it is due to an abiding faith in societies that development is needed for progress

and consistency among people that development is related to economic growth. The relatively new views of indigenous peoples in the political arena have to compete with well-established ideas and institutions that oppose their interests. Is there a growing indigenous power in international and national grounds that defies the power of governments and industries?

1.1. In international institutions and public policies. Since the adoption of the Declaration on the Rights of Indigenous Peoples (DRIP) in 2007, United Nations may be considered a leader in international organizations regarding indigenous peoples’ issues (Venne, 2011). That declaration is the result of an effort of 40 years. After the adoption of the Universal Declaration on Human Rights in 1948 there were no clear reasons to support the adoption of specific rights for indigenous peoples. The issues of the indigenous peoples were partially known in the meetings of the Economic and Social Council but there was no real voice to speak for them (Willemsen, 2010).

The creation of the commission to create the Martínez Cobo report in 1970, the creation of the Working Group on Indigenous Populations in 1982 and the decision in 1985 to work on the draft of the DRIP (Stamatopoulou, 1994) are achievements that evidence the common backgrounds and goals that all indigenous peoples of the world have (Aponte, 2010) but also the interests that oppose them. The United States, Canada, Australia and New Zealand vo-

ted against the adoption of the Declaration on the Rights of Indigenous Peoples because they have concerns regarding the definition of indigenous peoples, self-determination, land rights and collective rights (Gilbert, 2007).

Development funds have also reached indigenous peoples with projects that aim to strengthen their capacity to exercise their rights and overcome the poverty conditions (World Bank, 2014). However, international financial institutions are usually more interested in projects of development that reduce poverty through economic growth (See Operational Policy 1.00. World Bank). The standards that should be met in order to obtain funds from international financial institutions when dealing with IPRs may be in explicit contrasts with the standards of the DRIP. According to the DRIP, article 32.2, prior consultation seeks to obtain free and informed consent of the indigenous peoples prior to the approval of any project affecting their lands, but in July 2005 the World Bank adopted the Operational Policy 4.10, which “requires the borrower to engage in a process of free, prior, and informed consultation”. The use of the expression consultation instead of consent has implications for indigenous rights and raises claims about the obligations of the World Bank regarding Human Rights (Skogly, 2001).

The application of the DRIP has also been a matter of controversy in the Inter-American Court of Human Rights (IACHR). In the opi-

nion of the Special Rapporteur on the Rights of Indigenous People in 2009 consent “should not be regarded as according indigenous peoples a general ‘veto power’ over decisions that may affect them, (...) but rather establishes the need to frame consultation procedures in order to make every effort to build consensus on the part of all concerned” (Anaya, 2009). This doctrine should be directly examined by the jurisprudence of the IACHR to ensure the legal certainty of the concept, even though is sometimes believed that the Court supports it (Ruiz-Chiriboga & Donoso, 2012). The sentence of the case *Saramaka vs. Suriname* in 2005 of the IACHR is sometimes considered to be too progressive for indigenous rights only for giving a literal lecture of the article 32.2 of the DRIP. The case *Sarayaku vs. Ecuador* in 2012 was expected to clarify the position of the Court towards consent but the evasion of the subject was noticed (Antkowiak, 2014), although in both cases the Court has condemned the state and protected IPRs. However, in general terms, “an analysis of their trajectories before these supranational bodies highlights the inequality of powers on which those agents can draw” (Farget, 2014).

1.2. Indigenous peoples facing multinational corporations in international law. Industries, supported by the Andean states, have destroyed the environment in indigenous peoples’ lands and their cultural spaces. The revenues obtained are an important driving force of their economies and an income for their

budgets, in the form of profits or royalties. Although prior consultation is required to exploit natural resources, governments and private investors usually press to do hurried consultations since private capital usually does not wait too long to be invested. The enforcement of the domestic legal instruments that protects indigenous peoples depends on governments that have shown to be negligent from time to time (Wagner, 2001). The sentences of the IACHR condemn the states when these consultations are not done properly and, as a consequence, industries must stop activities until the consultation is done. The state and the industries are economically affected by these sentences; nevertheless, multinational corporations are not subject to the jurisdiction of the Inter-American Human Rights system. The enforcement of IPRs in multinational corporations is a matter of advocacy through indigenous peoples' supporters. These kinds of lawsuits are sometimes filed in the United States courts under the Alien Tort Claims Act¹. The argument that IPRs fall under customary law of human rights can be used in these cases (Geer, 1998) but there are some conceptual controversies. Since human rights were originally created to protect individuals from states, what justifies that they are applicable to corporations? In 2013, however, the Supreme Court held that "nothing in the ATS's (Alien Tort Statute) text evinces a

clear indication of extraterritorial reach" (Kiobel v. Royal Dutch Petroleum Co., 2013).

1.3. In Andean legal systems and politics.

Partly due to the progress in international law regarding indigenous rights and partly due to crises of representation and legitimation, the Andean countries and many Latin American nations adopted multicultural constitutions during the 90's decade, embracing a social project of protection and inclusion of indigenous peoples. The current legal frameworks permit the indigenous leaders to defend their interests in institutional spaces where they can engage in democratic debates with the rest of political interests. However, gaining political power does not necessarily mean a peaceful implementation of indigenous rights. Bureaucratization, co-optation and fragmentation among indigenous peoples are factors that destabilize their political unity (Cameron, 2014). The IPRs in Andean countries highlight because there is noticeable progress in law and jurisprudence and continuous violation of those rights in reality (Due Process of Law, 2011).

The formation of indigenous peoples as a political force coincides with the introduction of neoliberal institutional changes into Latin American states. The indigenous political movements strongly oppose trade liberalization, concessions on natural resources and the entry of multinational companies into their lands with the argument of self-determination. They see free trade agreements as counter reforms

¹ "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" 28 U.S.C. § 1350.

that reverts the progress they have already achieved (Rosengren, 2002). Indigenous peoples have made clear that the neoliberal program proposes a global identity in which their traditional points of view do not fit (Yashar, 1999).

1.3.1. Peru. Is a highly indigenous populated country (45% approximately) with the biggest area of the Amazonas of the four Andean countries. The state generally ignored the rights of the indigenous peoples until the 90's decade, as the other Andean countries did as well. Indigenous peoples have low access to public services and some live in voluntary isolation. The legislation, institutional background, and political will to protect indigenous peoples' rights used to be considered the most backward of all the Andean countries (Due Process of Law, 2011) until the Law of the Right to Prior Consultation was approved in 2011. Before then, the recognition of indigenous peoples' ancestral land and the progress in adapting domestic laws to international standards was precarious due to vigorous promotion of industries (Bury, 2005). Mining used to take place without prior consultations and they merely informed the indigenous peoples about the projects. In 2009, in Bagua, various indigenous peoples died in the hands of the police during a protest after the entry in force of a trade agreement with the United States.

The Law of the Right to Prior Consultation in Peru has as framework the Convention

169 of the International Labour Organization and the mentioned doctrine of the Special Rapporteur on the Rights of Indigenous People. According to this law consultation seeks to reach an agreement between the state and the indigenous peoples but the final outcome rests on a motivated decision by the state, preventing the pro-veto position that the DRIP seems to embrace in article 32.2. This law has been criticized by industry representatives and the implementation has faced problems like the resign of two vice ministers who were in charge of consultations, perhaps due to a readjustment process of the executive branch to the new mandate. The data base of indigenous peoples (a list of the ethnic groups that must be consulted) was a matter of discussion and cause of internal turmoil among indigenous peoples' organisations since the consultations to be done on currently operating projects depended on what ethnic groups were actually going to be considered indigenous peoples by the state (Ministry of Culture of Peru, 2014). Although the on-going consultations seem to be still in precarious conditions and the future is uncertain, this is a necessary crisis that the country must face in order to succeed in the legal shock therapy strategy that is going through.

1.3.2. Bolivia. Is the most indigenous populated nation (60 %) and the poorest of the 4 Andean countries. The empowerment of indigenous peoples in Bolivia is remarkable since the indigenous elected government is a significant political force in the country that

has promoted indigenous culture. In 2009 a new constitution came into force that declared the Plurinational Bolivian State (Estado Plurinacional), recognising the existence of many indigenous nations within the Bolivian territory. This assertion follows the indigenous argument that each ethnic group is a nation. According to the Bolivian law 4021 there are 34 nations of indigenous origin. The constitution embraced indigenous principles like *suma qamaña*². The Law of the Rights of Mother Earth sanctioned in 2010 defines mother earth and gives it legal personality so it can be subject of certain principles like the principle of no commercial exploitation and certain rights like the right to equilibrium, the right to restoration and the right to live free of contamination. This law also creates a specialized ombudsman office (Defensoría de la Madre Tierra) to protect the rights of the mother earth. The DRIP was enacted as a law by the Bolivian Legislative Assembly but the country does not have a law to implement consultations.

The events in the Margarita oil and gas field in the Chaco deceive the pro-indigenous legal framework Bolivia has. The APG (Asamblea del Pueblo Guaraní) Itika Guasu is the organisation of the indigenous peoples inhabiting the Chaco. REPSOL-YPF, a Spanish-Argentinean merger, began consultations with the APG in 2006 without intervention of the state apart from the declaration of the project as strategic

national interest due to the large sums of incomes the projects promised (German International Cooperation Agency, 2011). In 2011 an agreement was reached between REPSOL-YPF and the APG consisting in a compensation of US\$14.8 million and the creation of an investment fund. The fair compensation is seen as an achievement by many, although according to international law and the article 30.II.15 of the Bolivian Constitution the consultations must be done by the state, since is presumed to be in a better position to protect IPR's during the process. The lack of controversy around the rights of mother earth is also noticeable. The priorities of the APG seem to be related with typical development concerns like education and health in coherence with their "wish to be intercultural in a pluri-cultural country" (Asamblea del Pueblo Guaraní, 2014). In fact, "industry controlled by an accountable, democratic, and transparent government, which contracts on fair terms with private companies, is a goal the vast majority of Bolivians would support" (Eviatar, 2006, p. 27). However, internal divisions in the APG raised and some movements claim the terms of the agreement with REPSOL-YPF are unknown and no development projects have been delivered. The pre-existing discrimination and exclusion in the Chaco has expanded as result of the extractive activities (Bebbington, 2013).

1.3.3. Colombia. The indigenous population is relatively low (approximately 1.3 million people, around 2.5 % of the total population

2 Good way of living (vivir bien).

in more than 80 ethnic groups). The collective property of indigenous lands is guaranteed by article 330 of the Constitution and the Constitutional Court has emphasized in the unalienable and imprescriptible features of these lands (Sentence T-282, 2011). The law 21 of 1991 embraces the Convention 169 of the International Labour Organization within Colombian legal system but there is no particular law in Colombia describing consultation procedures; therefore the implementation of consultation in Colombia has been done mostly through jurisprudence and administrative rules. The Colombian Constitutional Court has been pro-active in the defence of indigenous rights, suspending mining projects and declaring the unconstitutionality of laws when prior consultation did not happen and continuously ruling that “to pursue the free, prior and informed consent is mandatory” (Sentence T-129, 2011), following the position that consent does not include a veto power of indigenous peoples. The sentence SU-039 of 1997 was the first to foreclose an environmental permit given to a company by the Ministry of Environment for the exploitation of natural resources in a region where the U’wa indigenous people live, and considered that the consultation was not done properly. Thanks to the jurisprudence of the Constitutional Court, the action of tutela³ is frequently used to protect IPRs. The decree 1320 of 1998 covers the procedure of consulta-

tion and determines that consultation must be done whether the indigenous peoples inhabit indigenous lands or not. The presidential directive number 10 of 2013 contains a guide for prior consultation that identifies 5 stages: certification of existence of indigenous peoples by the Ministry of Internal Affairs, coordination and preparation, pre-consultation, consultation and monitoring of agreements.

Although the judicial protection of the IPRs is pro-active in Colombia, those rights are frequently menaced in the field and the organisations of indigenous peoples oppose resistance to the economic exploitation of natural resources in their lands because it destroys the economic bases of rural communities. That is the case of the Indigenous Regional Council of Cauca (CRIC). “According to the CRIC, the *resguardo*⁴ to some extent counteracted the process of proletarianization and helped former tenant farmers and small holders to maintain control over their own labour power” (Hristov, 2009, p. 48).

Currently there are approximately 130 projects in which consultations are taking place or were already done. One of these cases consists in the exploitation of natural resources in the Yaigojé-Apaporis National Park, in the amazon region of the country. The creation of this national park affected licenses of exploitation

3 This action pursues the protection of the imminent violation of fundamental rights.

4 Legal institution that recognises authority of indigenous peoples over determined lands.

given to the Cosigo Resources Canadian Company, hence that company is looking for to reverse the creation of the national park. Cosigo Resources has been promoting the massive gold exploitation in the region, is introducing the indigenous peoples to the western civilization, and is creating divisions among them (Molano, 2002). Paradoxically, a group of indigenous peoples initiated a tutela action to dismantle the creation of the national park in 2010 because there was no consultation, they argue. These indigenous publicly acknowledged they were influenced and assisted by Cosigo Resources to initiate the judicial measures (El Espectador, 2014). Now the Constitutional Court has to decide whether it forecloses or approves the creation of the Yaigojé-Apaporis National Park.

1.3.4. *Ecuador.* Approximately 25 % of the population of Ecuador is indigenous and they pertain to 14 different ethnic groups. In 2008 Ecuador elected a government that promised to change the neoliberal policies of the country and strengthen the citizens' rights, idea that was generally conflicting with the indigenous peoples' social movements and organisations like the Confederation of Indigenous Nationalities of Ecuador (CONAIE) because the emphasises on citizens' rights excluded indigenous peoples. A constituent assembly was called by the people in referendum to reflect the turn in politics in the national constitution. "Although the oligarchy, as in most of Latin America, maintained control over most of the

country's political and economic mechanisms, the balance of forces definitely seemed to be shifting to the left" (Becker, 2011, p. 49). Regarding macroeconomic policies the rules in the constitution were shaped to privilege national economy without demotivating international trade. The article 304 of the Constitution reads as follows:

The trade policy shall have the following objectives:

1. To develop, strengthen and give impetus to domestic markets on the basis of the strategic objective set out in the National Development Plan.
2. To regulate, promote and implement actions conducive to boosting the country's strategic insertion in the global economy.
3. To bolster the domestic productive system and production.

Although the constitution of 1998 defined the state as pluricultural and multi-ethnic, the new constitution of 2008 is more pro-indigenous and defined the state as multinational, invoking harmony with nature and *sumak kawsay* (the good way of living) in its preamble. However, the indigenous peoples do not have a special circumscription for elections to the National Assembly as there are in the other Andean nations. In addition, the collective right "to free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing non-renewable resources located on

their lands and which could have an environmental or cultural impact on them” as stated in the article 57 of the Constitution of Ecuador, seems to be reductionist for indigenous peoples (Grijalva, 2009).

The current government initiated a nationalization process of the petroleum industry and the intention is to continue the exploitation of petroleum at the same pace and diversify the economy to overcome the traditional dependency on that industry (Ecuador National Plan 2013-2017). In the National Park Yasuní, for example, the government announced in 2007 that exploitation was going to be undertaken unless the international community allocated US\$350 million. This quantity was not reached and the government declared in 2013 that the exploitation would begin. During that time the argument of environment and indigenous peoples’ protection “reached an ambiguous and temporary form of hegemony over the otherwise prevailing option of oil extraction” (Espinosa, 2013, p. 34).

Although the consultation to indigenous peoples has been recognized since 1998, the implementation of the mechanism is biased because the environmental aspect has been over-emphasized and cultural issues are mostly ignored. In addition, the consultations are generally done for the exploitation of non-renewable resources only, as the constitutions orders (Chavez, 2012). Ecuador has institutional and legal weaknesses in face of the constitu-

tional mandate. The Constitutional Court decisions sometimes are seen as pro-industries, for example by ruling in 2009 that the enacted Mining Law was constitutional even though there was no consultation. As a result, mining projects proceed without prior consultation and indigenous peoples like Shuar, Junin and Sarayaku have been affected (Due Process of Law, 2011).

1.3.5 Deceived promises in the Andean countries. From the addressed facts, what general processes could be depicted? Although each Andean country has particular features, they have all been subject to similar economic and political conditions in the sense that they are all striving to take advantage of their natural resources to make their economies grow in a liberalized market scheme. The international political pressure put on Andean states to comply with the neoliberal policies since the 90’s came along with legal tools aiming to protect the vulnerable people from the injuries that development may inflict them. However, many responsibilities related to industrial activities affecting vulnerable people are only associated to state responsibility from the human rights perspective, not to private or corporative responsibility. The newly organized indigenous political movements saw the state as a conspiratorial actor of the environmental and cultural damages afflicted in their lands and opposed to their unilateral decision-making processes. In consequence, the different procedures that encourage participation in decision-making

such as prior consultation awake expectations among indigenous peoples, but the implementation of prior consultation has shown to be biased in order to benefit extractive industries over IPRs. The excessive litigation in international and national courts and the social discontent among indigenous peoples reveal that the hopes aroused by prior consultation have not been fulfilled. Could indigenous peoples be legitimized to propose a different view over development?

2. Indigenous peoples remake development

2.1 Collective and individual rights. Up to this point, it has been explained that development and indigenous peoples clash in different dimensions. From a historical perspective the conflict began with the invasion of lands by foreigners that claimed those lands as theirs in an unfair and violent colonial political discourse. All the other factors of the problem were tied to that principal issue. The colonial discourse has re-shaped and adapted to current international practices but the cultural tensions remain after hundreds of years. The adoption of multicultural constitutions or the creation of plurinational states entered into the political imaginary of the nationality relaxing those historical tensions and recognizing a reality of cultural interaction between local cultures and colonizers. The recognition of indigenous peoples' cultures into the framework of the nationality of each Andean country has moderated the problems around identity and has also

legitimized indigenous social movements and political actors. The criminalization of indigenous peoples for opposing the post-colonial project is illegitimate and unlawful nowadays.

The introduction of collective rights into modern law is an accomplishment of indigenous peoples' social movements in international and national spaces that is sometimes seen as a threat for individual rights, especially the individual property rights (Buchanan, 1993). Those kinds of rights are somehow conflictive since collective rights are "more social and communitarian, conception of society and the rights, roles and relations held by individuals and groups within society" (Clinton, 1990, p. 743). From the anthropocentric perspective of individual rights, mainly contained in the Universal Declaration of Human Rights, the individual may prevail over society or state since these institutions may be prone to systematic human rights violations.

From the perspective of collective rights the individual is imperfect when not part of a group that provides culture and identity that makes him/her different from other cultures and identities, and so is the legal resource to support the democratic resistance of indigenous peoples against oppressive states, corporations and international policies that with or without intention ignore those differences, and are sometimes encompassed with the discourse of development. Hence, collective rights cer-

tainly challenge individual rights in spaces like industrial exploitation of natural resources.

The state emerges like a mediator between the interests of private companies that are looking for profits and the protection of indigenous peoples. Its interests are divided between economic growth that diminishes poverty according to mainstream development theory and the commitment towards IPRs assumed through international instruments. Hence, there is an effort to create approaches that moderate the differences between collective and individual rights (Newman, 2006-2007).

2.1.1. Indigenous cosmovision and resistance. Even though the indigenous peoples are different among them⁵ to the point that they consider themselves to pertain to different nations in the Andean countries, they share the conviction that their knowledge is linked to the land they inhabit and that the destruction of it carries the destruction of their traditional knowledge as well. They have sacred places inhabited by spirits of nature with whom they develop particular relations after time and the elders orally transmit their experiences to the rest of the members of the tribe. The knowledge they have comes from the natural world they interact with. Some indigenous peoples of the Andean countries define *ayllu* as the relationships of all members of the *pachamama*⁶, inclu-

ding humans, animals and geographic spaces like rivers and mountains. All the members of the *ayllu* play a role for the continuation of the existence, meaning that if one of the members does not play its part, existence itself is threatened. They see that the things in nature are partly human because the spaces they inhabit have social meaning (Whitt, Roberts, Norman, & Grieves, 2001). “This is the Guarantee of Aymara people: we declare to the whole world that the Aymara people live in harmony with all our natural elements, which are our brothers, foundation of our lives and fundamental principles” (Alarcon, 2001-2002, p. 450). How to explain this to the industries and governments without being disregarded or ridiculed by them? By explaining it with concepts that they cannot ignore and should be taken seriously such as the concept of collective rights.

The process of colonization of indigenous peoples’ lands has driven them to take one of three options: to adapt the socio-political realities of the colonizers into their lives and lose their identities; to retreat deeper into the forests and jungles to conserve their identities, or to maintain their identities and be aware of the historical moment of transition they face as races and resist the colonizers. The indigenous peoples have used their traditional organisations to resist the projects that menace the integrity of their lands and culture and such organisations have affiliated to federations and confederations that fought for legal recognition in national and international spaces. Having a

5 In international law this is recognised but not implemented (Fodefla, 2005-2006).

6 Mother earth.

legal framework is essential for them so they can use the language of the colonizer to make arguments that are valid for them, but their fight for social recognition still continues since the enforcement and social consciousness of the IPRs is still problematic. Now that they have a legal framework supporting their cause they are more legitimized than before but some of their notions like 'way of life' (or good way of living) might be considered as "polysemic, relating to an imprecise vocabulary that does not lie in the sphere of judicial terminology, but instead refers to representations that have a tentacle-like content that can be artificially swollen or manipulated" (Farget, 2014, p. 239).

2.1.2. Land versus territory. Land has singular importance for development. The basic theories of development are made on the assumption that land is a factor that influences agricultural productivity, industrial growth and wealth distribution. According to Arthur Lewis there are unlimited supplies of labour in the agricultural sector, a sector that is rural and only produces what is consumed. Therefore, the agricultural sector is trapped in subsistence conditions and, under these circumstances, is predetermined to have diminishing returns. According to Lewis, the subsistence sector has to release labour force so it can be absorbed by the industrial sector, stimulating capital accumulation, production, reinvestment and the growth of industry (Lewis, 1954), which is the sector that really encourages economic growth. "For the agricultural sector to supply food, re-

lease labour, provide savings, contribute to the market for industrial goods and earn foreign exchange, it must generate a steadily rising surplus of production in excess of subsistence needs" (Thirlwall, 2011, p. 183). A system of property rights is also essential to make an economy grow since is indispensable to obtain credit for investment (Feder & Feeny, 1991). Many arguments suggest that unequal distribution of land is as a source of inefficiency in agriculture (Vollrath, 2007), can lead to political instability (Russett, 1964), and affects negatively economic growth (Alesina & Rodrik, 1994) and income distribution (Deiningera & Squire, 1998). Hence, the land reforms that have been done in the less developed countries have the objective of making the reality fit into the theoretical frameworks designed by development experts.

In contrast, indigenous movements claim land to maintain it unproductive in the form of national parks, natural reserves or indigenous lands. The collective tenure of land intimidates economic notions because land in these terms is not productive, is not malleable and cannot be owned or traded. Indigenous peoples in the Andes still preserve their traditional way of communal work, called *minka*. This is a collective system for accomplishing domestic or agricultural work. The economic approach that indigenous peoples have to land is distinctive from the one of development, because is not necessarily linked to productivity or capital accumulation. Furthermore, land is not a

good for indigenous peoples, the earth is not expendable (Whitt, Roberts, Norman, & Grieves, 2001); is a natural space where they cohabit with other creatures. Land is the space of nature and the knowledge of indigenous peoples is related to the nature. They know how to use land to assure the succession of the forest (Macdonald, Irvine, & Arand, 1993). For these reasons, territory is a more appropriate term to use from an indigenous perspective regarding indigenous lands, since territory implies the existence of government and politics over it. The indigenous territories are in fact tied to an indigenous cosmovision that organises the world according to historically constructed notions and defines indigenous as a race. This cosmovision is reproduced through the organisation of spaces as it will be explained.

2.1.3. Problematizing indigenous territories.

The cosmovision of the indigenous peoples is linked to the traditional spaces where they have inhabited since memorial times as much as capitalism is linked to the production of urban spaces (Elden, 2007) (Butler, 2009). The different ideas that indigenous peoples have over nature and themselves are actually political in the sense that produce spaces that reproduce those ideas. Therefore, to elaborate a discourse about indigenous spaces as 'lands' is a linguistic reductionism from an economic perspective that do not acknowledge the political implications of those spaces. The destruction of indigenous lands does not only have environmental implications but is also the des-

truction of the indigenous cosmovision. The fight that indigenous peoples endure in order to conserve their territories as natural spaces is actually the defence of their historically constructed racial identities (Lopez, 1994). Therefore, the indigenous peoples claim that their knowledge is linked to their territory and the destruction of their territory is the destruction of their knowledge. That is an argument that any Western individual could also raise towards capitalism if the production of urban spaces were menaced for some reason.

By producing new spaces in indigenous territories the traditional political configuration changes among indigenous peoples. The spaces produced by extractive industries in indigenous territories, for example, aggressively impose an economic view of the indigenous territory and might replace the cosmovision of indigenous by economic notions. The imposition of these new spaces problematizes the indigenous cosmovision regarding their own territory. Development also problematizes the poverty of indigenous peoples and their difficulties to participate in markets although those concepts have a different meaning among indigenous peoples. How could indigenous peoples denounce a Western individual for ignoring the cry of the spirits of nature? The struggles and divisions that exist within specific indigenous ethnic groups are partly explained because some members of the group are tempted by the Western life style once they are offered economic benefits during the im-

plementation of development projects in their territories (McNeish, 2002).

Prior consultation is the mechanism that regulates the communication among the different actors in the process of creating spaces for development within indigenous territories. Prior consultation is a neutral mechanism but is susceptible to be manipulated through the promotion of specific mind-sets endorsed by powerful actors who benefit from it. Therefore, prior consultation has to be analysed from the perspective of power, interests and knowledge (Hoffman, 1987). From this perspective, prior consultation can be seen as the problematization of political indigenous spaces in the language and perspectives of development. In a broader picture, prior consultation could be seen as a piece of a strategy where different actors in international and national arenas have constructed structures to implement development in indigenous territories. The intention might not be to entirely prevent the violation of IPRs, but to administrate the casualties, damages or incidents that inevitably happen as development settles in indigenous peoples' territories.

If prior consultation is instrumental for the economic perspective of development, this mechanism becomes the arena to define the conditions for the wielding of IPRs to eventually make them weak or inexistent. The instrumentalization of prior consultation by multinational corporations, development agencies

and other profit seekers is possible because the states of the less developed countries work in a space of dependence with them since they have funds, knowledge and technology to implement mining projects. Prior consultation, therefore, can be used to subjugate the indigenous peoples' interests to economics and to transform their territories in land.

2.2. Deconstruction of development, deconstruction of the indigenous peoples. Culture is believed to play an important part for development since there is awareness that development cannot be achieved through structural or macro approaches (Tödtling & Trippl, 2005). Culture is considered to potentially affect the outcomes of development. From this developing approach culture is not the result of the values brought by development and the different existing cultural backgrounds should be taken into consideration when thinking and planning development. This progress is due to the deconstruction of the notion of development by the developing countries from its original monolithic Western paradigmatic form (Radcliffe, 2006). The result is a notion of development that does not only promotes certain knowledge but is also reshaped itself by local cultures. From this perspective local culture is more powerful, more engaged and more perceived when programs and projects for development are implemented. "When the efforts for development are based in local values, aspirations and social organization, culture becomes a strength instead of a weakness for

development” (Deruyttere, 2001). Therefore, cooperation agencies and other development organizations have adopted policies to integrate indigenous peoples’ cosmovision to the planning and implementation of projects concerning indigenous peoples (See Emery, 2000).

Indigenous peoples have transformed also in many ways to communicate effectively with development in a transnational process not entirely controlled or consented by them since is partially the result of the identity crisis brought by the production of development spaces in indigenous peoples’ territories. The political claims that indigenous peoples endured to obtain the recognition and protection of their rights in national and international institutions during the last decades have contributed to the making and validation of transnational indigenous identities. Narratives and imageries created during this struggle generate processes of boundary crossing and boundary drawing of the ideas promoted by networks (non-governmental organizations, indigenous leaders, funders) that support indigenous peoples’ protection. Particularly in Bolivia some representatives of the indigenous peoples identify themselves with neoliberal goals as a consequence of the unexpected ways that identities may constitute. “The discursive remaking of neoliberalism with concepts like social capital, grassroots empowerment and good governance has been especially significant, as it overlaps with ayllu movement emphases on cultural difference and density, local identities and ins-

titutions, and traditional leadership practices” (Andolina, Radcliffe, & Laurie, 2005, p. 698). In addition, some funding institutions are willing to allow the management of development projects to indigenous peoples’ organisations but “this effort also requires that they play by the rules of projectism and adopt a sustainable development discourse, even when this was not part of their lexicon” (Little, 2005, p. 466).

Although indigenous peoples defend their traditional territories and knowledge, they usually do request access to public services from the state in a way that does not menace their identities because they are aware that education, health services, etc. helps to the welfare of their communities but threatens their identities. ‘Development with identity’ is the kind of development they expect. There is a certain amount of development that indigenous people are willing to accept within their territories.

Since the quantity of indigenous peoples who interact with non-indigenous realities increases all the time, the argument that indigenous peoples are rather descendants of pre-Columbian civilizations than authentic indigenous peoples is sometimes heard. The issue concerning the characterisation of who is indigenous and who should be protected by those rights is used to attempt the exclusion of ethnic groups from the benefits of being considered a minority by the law (Cabrera, 2012). Whatever the case, the constant interaction between indigenous peoples and development

indicates that none of the arguments are isolated and the positions of indigenous peoples, governments and organizations in general are not static. They are developing notions that are constantly subject to deconstruction, validation and suppression.

2.2.1. Western benefits for indigenous peoples and acculturation process. The attendance of indigenous children to school to learn a different kind of knowledge in the dominant national language is a way of development presence in indigenous territory because education impacts the perception those children have of their own territory. Learning Spanish, the prevailing language, provides more opportunities to assimilate the dominant culture but entails the loss of traditional knowledge. However, indigenous peoples have benefited from the knowledge they receive in school since their incomes can increase (Chiswick, Patrinos, & Hurs, 2000) as well as their capacity to defend their rights and their general well-being (Godoy, Reyes-Garcia, Byron, Leonard, & Vadez, 2005). Nevertheless, they see monolingual Hispanic education as a hegemonic policy and under the notion of ethno-education they are claiming for bilingual education in Andean countries so indigenous children can learn from teachers who speak their language. Some Colombian universities, for example, offer academic programs for teachers with this approach (Castillo & Triviño, 2008).

Western culture in general terms is appea-

ling for indigenous peoples. Technology, public services and funds coming from states and international organizations are without doubt beneficial for them in despite of the loss of their traditions. Access to public services and the incorporation of indigenous peoples' products into the markets makes them less environmental-friendly and seek for profits to the detriment of their territory (Henrich, 1997). In short, Western culture creates spaces of development in indigenous territories and changes the identity of indigenous peoples, and this change is portrayed as a success of development according to macroeconomic indicators. Should the loss of culture and the consequences for an ethnic group be measured?

The acculturation process, nevertheless, is different in each Andean country and even in each ethnic group because the extent of assimilation and integration varies among societies and is different in urban and rural spaces. A homogenous global society constructed as a result of globalisation is a theoretical unrealistic approach to acculturation. Integration and separation models explain better the dynamics of intercultural contact. In the integration model there is an evolving continuity of the indigenous peoples' culture that produces new social structures in a process of incorporation. In the separation model the indigenous peoples avoid interaction with Western people to resist and revitalise their culture (Berry, 2008). Both kinds of interactions are visible in Andean

countries, even though integration seems to be the one that development encourages.

The problem that development faces in Andean countries is not precisely indigenous peoples but the cosmovision they have over natural resources and land. Therefore, if the agencies of development manage to make indigenous believe in development and Western paradigms, as happens in some cases, exploitation of natural resources in indigenous territories could be done without indigenous resistance. Prior consultation is a mechanism that legitimizes the acculturation process of indigenous peoples. As a result of the incorporation process of indigenous peoples within the dominant culture, there is a shift of mentality happening among them in a slow but constant pace without much awareness. Sometimes it is argued that indigenous peoples will benefit from the process. "Some may call this cooptation; others may call it empowerment" (Little, 2005, p. 466). Hence, the problem cannot be reduced to a conflict of two confronted sides since some indigenous groups or individuals have already changed their perception and are willing to participate in the profits of the extractive industries.

2.2.2. The meaning of development for indigenous peoples: Good way of living. Even though development has brought benefits for indigenous peoples, the experiences they have had with development projects are generally traumatic. Development aggression is the proper expression to label those traumatic ex-

periences that have impoverished indigenous peoples (Permanent Forum on Indigenous Issues, 2005). The benefits of development for indigenous peoples, nevertheless, are not necessarily appreciated as such by them in all cases, but they are exhibited as achievements by development agencies anyway. The understanding that indigenous peoples have of wellbeing is related to community harmony and social identity and so is different from the usual notion that development uses which emphasises more on poverty alleviation (Benavides, 2010) (Copestake, 2011). The indigenous peoples' notion of wellbeing has evolved and strengthened to resist the Western version, and currently supports the indigenization of development (Ramos, Guerreiro, & Pimenta, 2009). The indigenization of development is progressively being constructed and proposes diverse views on the basic notions of development, for example, about poverty, since indigenous peoples traditional economic and labour systems do not seem to have problems living at subsistence level as Western economics does. "We may not produce a lot of surplus from our agricultural production but our wellbeing as distinct peoples is not compromised" (Tauli-Corpuz, 2010). From this perspective, the measurement of indigenous poverty should comprise the factors that do not allow indigenous peoples to participate in community the way they want to instead of using income indicators (Permanent Forum on Indigenous Issues, 2005).

Indigenous peoples in the Andean coun-

tries have built a socio-legal approach to development called good way of living (*suma qamaña*). The good way of living is one of the efforts of indigenous peoples to use the language of the colonizer to construct meaningful concepts for the Western world they are progressively assimilating at the same time they want to conserve their identity. The good way of living suggests a humble life in peace with the environment and the rest of the people but in original languages (Quechua and Aymara) has deeper spiritual meaning. That concept is related to harmony with the cycles of mother earth and plenitude of existence. Regarding human communities, *suma qamaña* comprises solidarity among humans and competitiveness is not a virtue if benefits are obtained at the expense of others. Thus is opposed to 'living better' and wealth accumulation. It also proposes 'pluriversal politics', "the possibility of adversarial relations among worlds" (De la Cadena, 2010, p. 360), since *suma qamaña* does not exclude the political value of the natural world as western politics does.

The different expressions of indigenous peoples thought in the arena of Western knowledge, from the DRIP to *suma qamaña*, are reductionisms because the part of indigenous thought that is considered to be irrational is dismissed and ignored in the language of the colonizer. The loss of meaning in the translation is not accidental, is strategic because it is known in advanced that certain beliefs of the indigenous peoples are incompatible with be-

liefs of Western thought. The approach that Western thought make to indigenous peoples' knowledge has a cultural or folkloric perspective although it has political transcendence for them and proposes an alternative way of living that challenges capitalism and even sustainable development, but seems to have empathy with the literature on sustainable degrowth (Thomson, 2011). Sustainable degrowth suggests that the progressive reduction of production and consumption can increase human well-being and sustains that human progress can be achieved without economic growth (Schneidera, Kallisa, & Martinez-Alier, 2010). Development pretends to have the cure for the indigenous peoples' needs but perhaps those needs are only apparent. "Is essential to recognise the ignorance about the indigenous and to admit from the beginning that they ignore what is the best for indigenous communities" (Ramos, Guerreiro & Pimenta, 2009).

2.2.3. Indigenous identity, a complex evolving reality. Biological features are not fundamental to build identity but common backgrounds, imaginaries and social struggles seem to be very influential (Lopez, 1994). Therefore, the problematization of the indigenous cosmovision in international and local debates has fostered a process of universal integration of indigenous identities, regardless of the cultural differences among ethnic groups (Martina & Wilme, 2008). "Races are peoples created by history" (Lopez, 1994). History permits individuals to identify themselves among people

with similar social constructions. The socio-legal categorization processes the indigenous peoples have been subject strengthens the production and reproduction of their social identities (Jenkins, 1994). The universal indigenous identity renews the identity of indigenous individuals but, since ethnicity is a decision of the individual, there is also an implicit invitation coming from development to abandon the indigenous identity and accept Western paradigms. Multiculturalism challenges the biologic notion of ethnic identity which is better defined as “the result of a dialectical process involving internal and external opinions and processes as well as the individual’s self-identification and outsiders’ ethnic designations” (Nagel, 1994). Furthermore, multiculturalism discreetly enshrines the right of every individual to embrace, choose strategically or even decline ethnic identity and demands a correlative obligation from other individuals to respect that decision.

The current moment in the history of indigenous peoples of the Andean countries is actually determining what are the ideas and symbols that identify them now and in the future. They are in a process of assimilation of their different ethnic identities through a political and social project, even though they preserve their ethnic distinctions. This process, nevertheless, is part of the deconstruction of the indigenous identities in order to be understood in the language of the colonizer and is progressively accepting and demanding more Western culture. It is naïve to defend that indigenous

peoples can conserve their traditions in a pristine form as their territories are being occupied with Western culture.

Indigenous peoples who are immersed in Western development do not reject it outright, in spite of its hegemonic, bureaucratic, and modernizing traits, but rather place it within the context of their own agency that provides for their differential incorporation of development, even though this occurs in situations of asymmetrical power (Little, 2005, p. 464).

Prior consultation is the forum where is possible to think in the proper socio-political spaces where indigenous peoples can maintain their race, culture, history and identity. Therefore, prior consultation must remain as a neutral mechanism and not as an instrument at the service of development. The struggle to conceptually control prior consultation is a political warfare that confronts powerful interests and may be biased when implemented to favour industries and projects of development at the expense of IPRs. The process of deconstruction of indigenous peoples’ identity and of development should be taken into account in the process of implementation of prior consultation because the mechanism itself affects the history and identity of indigenous peoples and contributes to the acculturation process.

The indigenous peoples have the right to

define to what extent they are willing to accept Western influence as development descends in their territories and prior consultation is the mechanism to achieve that. When development projects take place in indigenous territories without proper consultation the Western paradigms of development are imposed to indigenous peoples and their right to self-determination is violated. Even when consultation is properly done the culture of indigenous peoples is at risk because the integration of the alien culture is inevitable. Indigenous peoples should be as aware as possible of this process of integration so the integration of alien culture obeys to a mindful decision made by them.

Conclusions

Prior consultation is the mechanism that indigenous peoples have to participate in the decisions that affect their rights. This mechanism is indispensable in order to safeguard the culture of indigenous peoples since the exploitation of natural resources in indigenous territories by states and private mining companies unleashes a process of acculturation. This process of acculturation consists in the interaction of indigenous and western paradigms within indigenous territories that provokes the reinvention of indigenous identities. Indigenous politics have become more complex and they have found in prior consultation a tool to fight for their interests, whether they consist in the protection of their culture or in an economic compensation.

The power of governments, international organizations and private mining companies in the process of definition and implementation of prior consultation is essential for the analysis of this mechanism. In the article was argued that prior consultation can be used to serve the interests of extractive industries because it can contribute to the progressive acculturation of indigenous peoples. Prior consultation is the forum where is possible to think in the proper socio-political spaces where indigenous peoples can preserve their race and identity, and accept the introduction of western paradigms as a result of a free decision. Development and indigenous peoples are evolving realities and both seem to be more open to welcome the point of view of the other side during prior consultation, but prior consultation must be a neutral mechanism and not an instrument that favours development over indigenous peoples' rights.

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