Analysis of laws and policies that support Indigenous biocultural territories in Peru

Consultant: Mirtha Vásquez, Attorney

May 2026

Community dialogue at the Potato Park, in the Cusco region. Credit: Hugo Enrique Granados Rojas

Contents

Summary

Peru is a megadiverse and multicultural country that preserves centres of origin and diversity for various crops, especially in the territories of the Andean Indigenous Peoples. This biocultural heritage sustains community life and is closely linked to their identity and spirituality, as well as being vital for food security and adaptation to climate change at the local, national and global levels. In the southern Andean region, there has been a notable increase in mining concessions in recent years, given its abundant critical minerals, presenting economic opportunities but also social, environmental and cultural challenges.

This report examines various global and national environmental policies and laws that can help indigenous communities seeking to conserve their territories and biocultural heritage, such as the Potato Park in Cusco, which maintains a wealth of native potato varieties based on customary laws. Peru has relatively progressive human rights legislation which, despite its weaknesses, shortcomings and inconsistencies, offers opportunities to expand and contest collective rights and the conservation of biocultural heritage.

Convention 169 of the International Labour Organisation (ILO) protects the collective rights of Indigenous Peoples, including territorial, cultural, linguistic and labour rights and rights to participate in decisions that affect them. It was ratified by Peru in 1993, making it a binding instrument for the State. ILO Convention 169 recognises land ownership rights based on occupation and ancestral ties, rights to natural resources and their management, and rights to protect cultural and spiritual values. Peru also ratified the Convention on Biological Diversity in 1993, which requires the conservation and sustainable use of biodiversity and commits States to respect, preserve and maintain the knowledge of indigenous and local communities that maintain traditional lifestyles. Peru has also ratified the Framework Convention on Climate Change in 1993 and the Paris Agreement in 2016, which contain obligations on mitigation, adaptation and traditional knowledge, although this ratification has not made the entire contents of the Convention binding.

Other international environmental frameworks are not binding but guide public policies and the interpretation of rights and serve for political advocacy. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes an important international standard that recognises collective rights to self-determination, Free, Prior and Informed consent, and to territories and resources traditionally used or occupied. Also relevant are the UN Guiding Principles on Business and Human Rights and the Principles of the International Council on Mining and Metals (ICMM); the 2030 Agenda; the UN Declaration on the Rights of Peasants (UNDROP); and the Kunming-Montreal Global Biodiversity Framework (e.g., the goal of protecting 30% of territories and waters by 2030).

The Political Constitution of Peru is the country's fundamental law, and therefore all other laws and policies must be subordinate to it. The Constitution recognises that rural and indigenous communities are autonomous in their organisation and in the use and free disposal of their lands, and that “the ownership of their lands is imprescriptible” (Article 89). It also recognises customary law (Article 149) and fundamental rights such as the right to a healthy and balanced environment, the right to participation, and the state's obligation to protect biodiversity. This law has been upheld by several court rulings.

The General Environment Law (2005) recognises the right of every person “to live in a healthy, balanced environment suitable for the full development of life” and establishes important principles: the right to participate in decision-making, the principle of prevention and the precautionary principle. It also contains some important articles invoking the defence of territories and biocultural heritage: fragile ecosystems (wetlands, watershed) must be given special protection; the rights of Indigenous Peoples must be safeguarded “in the design and implementation of environmental policies and, in particular, in environmental land use planning” (Article 70); and “the State recognises, respects, registers and protects” the collective knowledge of Indigenous Peoples. It also establishes that “no consideration or circumstance can legitimise or excuse actions that could threaten or generate a risk of extinction of any species, subspecies or variety of flora or fauna” (Article 11c); and recognises the strategic role of biological diversity and associated cultural diversity for sustainable development (Article 97).

The Law on the Conservation and Sustainable Use of Biological Diversity (1997) establishes principles and mechanisms to ensure the protection, sustainable use and equitable access to the benefits of biodiversity, and recognises the importance of the knowledge, innovations and practices of peasant and native communities as their cultural heritage.

The Regulation on “Formalisation of the Recognition of Agrobiodiversity Areas for the Conservation and Sustainable Use of Native Species Cultivated by Indigenous Peoples” (2016) is one of the main legal tools for conserving ecosystems and strengthening collective rights to territory, granting a status that allows for the restriction of activities that negatively affect the agrobiodiverse ecosystem. It recognises the collective knowledge of communities that must be respected and protected.

The Law on the Promotion and Development of Family Farming recognises the strategic importance of family farming “in food security and the conservation of agrobiodiversity and the environment, as well as in rural territorial development”. The law stipulates that the State must consider an intercultural approach and promotes research, training and agricultural extension that values local knowledge and traditional innovation, recognising their importance in sustainable land management.

The Prior Consultation Law states that prior consultation of Indigenous Peoples must be applied with respect to legal or administrative measures and development projects; however, the current Constitutional Court does not consider it necessary before granting a mining concession if there is no reasonable evidence that it poses a risk or could generate direct changes in their territory and way of life. The Rural Communities Act establishes collective rights over the territory, autonomy in internal management and recognises their traditional organisation. The territories of rural communities are unseizable, imprescriptible, and inalienable, but they may be transferred with the agreement of the majority of the assembly or expropriated for reasons of necessity and public utility. However, the recognised autonomy (Articles 1 and 3) allows for the requirement of prior consultation, consent, and respect for communal self-government.

Peru's Water Resources Law protects watersheds and fragile ecosystems, particularly from megaprojects that affect them, and recognises the right of rural and Indigenous communities to use the water on their land and in the river basins where it originates. In addition, the Law for the Protection, Conservation and Sustainable Use of Wetlands (e.g., lagoons, lakes, marshes and springs) prioritises conservation over other economic uses and promotes community participation in their management, respecting “the different cultural visions, conceptions of well-being and development of the various ethnic-cultural groups, to ensure the preservation of traditional knowledge”. This law can be used to demand stricter environmental impact assessments and initiate processes for the legal recognition of wetlands of cultural value as “conservation areas” or “agrobiodiversity zones”.

There are also relevant rulings, such as the Inter-American Court of Human Rights case of La Oroya, whose interpretation becomes binding in similar cases. In this case, the Court declared the international responsibility of the State of Peru for violating the rights to a healthy environment, health, personal integrity, a dignified life, and the right to life, among others. This constitutes a regulatory milestone for the protection of human rights in cases of serious environmental damage.

Nevertheless, the General Mining Law establishes that mining activity is of “utility and national interest”. This prioritises mining over other uses of the land and allows the State to expropriate land for mining or impose so-called mining easements, even if the land is owned by peasant or Indigenous communities. The law only establishes some restrictions on mining in Protected Natural Areas, Archaeological Zones, border areas and tourist reserve areas. No other exclusions are contemplated, thereby ignoring laws that recognise territorial rights and protect fragile ecosystems, water sources and cultural heritage.

However, it is still possible to contest for territorial, environmental and collective rights protection based on the Constitution, ratified treaties and national laws. These regulations can also be used to strengthen community governance through communal management instruments such as internal statutes, regulations and biocultural protocols. In addition, regulatory reforms can be proposed, for example, to include the category of Biocultural Heritage Territories in the Protected Natural Areas Act, and to appeal to the supranational human rights system to protect territories of high biocultural value.

Introduction

Peru is a 'megadiverse' country with a high level of cultural diversity. The Andean region is home to the centres of origin or diversity of several crops, such as potatoes, quinoa and maize, which are key to national and global food security in the context of climate change. This great agrobiodiversity is closely linked to the traditional knowledge and cultural heritage of the Indigenous communities that have domesticated, improved and conserved it in their ancestral territories.

In recent decades, the Peruvian economy has been strongly influenced by extractive activities, particularly mining. This activity accounts for approximately 60% of the country's exports and is one of the main sources of tax revenue[1]. As a result, it has become a fundamental pillar of economic growth, generating a strong dependence on mining revenues.

The first mining development hub was located in the northern part of the country, specifically in the regions of Cajamarca and Huaraz. However, in the last two decades, there has been a geographical shift in investment, extending to new territories in the southern Andes, especially in regions such as Cusco, Apurímac and Arequipa. This expansion has given rise to what is now known as the "Mining Corridor."

The strengthening of mining investment in these regions — particularly in Apurímac and Cusco — is reflected in the notable increase in mining concessions in recent years. In the case of Apurímac, these concessions cover up to 50.8% of its territory (CooperAcción, 2004); while in Cusco, although the percentage is only 15%, mining has a significant influence on the territory and its dynamics. This is because mining activity no longer follows a focused logic but rather extends to various areas and territories.

The so-called "Southern Mining Corridor" has become a strategic hub for the development of mining in the country. This is a territory with a large number of rural and Indigenous communities: in Apurímac and Cusco alone, there are 886 and 442 communities, respectively. These communities have persisted historically by preserving their cultural identity and ancestral knowledge and acting as guardians of biodiversity.

However, the advance of mining, especially in the high Andean regions, poses a direct threat to territories rich in agrobiodiversity and ancestral culture. As Hoetmer (2013) points out, large-scale mining reconfigures territories not only in economic and legal terms, but also in political and cultural terms, even altering the identity of the populations. In this context, community resistance to the expansion of extractive projects is emerging, resistance that is expressed not only in protest mechanisms, but also in territorial protection initiatives that defend the biodiversity, environmental and cultural values of these spaces.

These emerging processes in territories require actions to strengthen them, and these actions must be implemented through initiatives that recognise and assert the rights of communities to manage their territories sustainably, promoting alternative development models based on the protection of what is now known as biocultural heritage.

[1] Mining was the third largest contributor to income tax in the country, with a contribution of 16.1%. Mining and hydrocarbon revenues in Peru. Citizens' Proposal Group. Mining and hydrocarbon revenues in Peru. In: https://extractivas.propuestaciudadana.org.pe/reporte-2024/generacion-renta-sector-extractivo/creacion-renta-minera/impuestos-aporte-fiscal-mineria/

Chapter I. Biocultural heritage and its potential for the defence of territories

The defence of community territories against activities that threaten them, such as extractive industries, can be approached from multiple fronts: through community organisation and resistance, through purely legal strategies (lawsuits, guardianship, complaints), but also from environmental perspectives, defending spaces, fundamental resources and sustainable models of life.

One of the most interesting strategies may be based on the latter approach: the environmental one, which has become a global priority in the face of the climate and sustainability crises facing the planet, making the protection of certain territorial spaces, strategic resources and sustainable ways of life an unavoidable necessity. Biodiversity conservation, for example, has become a global priority due to the growing pressure on ecosystems caused by climate change, urban expansion, intensive agriculture and extensive exploitation of natural resources, which not only put the planet and human society at risk, but also directly affect nature and its capacity for conservation and regeneration.

This concern is reflected in various global environmental policies, such as the 1992 Convention on Biological Diversity (CBD), the 2030 Sustainable Development Agenda and the 2015 Sustainable Development Goals (SDGs). More recently, it is evident in the Kunming-Montreal Global Biodiversity Framework, adopted during the United Nations Biodiversity Conference (COP15) in 2022, which proposes the 30x30 initiative: to protect at least 30% of the planet's land and marine areas by 2030. The aim is to halt biodiversity loss, conserve key ecosystems and ensure essential ecosystem services such as water, clean air and climate resilience.

Indigenous communities play a fundamental role in achieving this 30x30 goal. Historically, they have not only demonstrated sustainable systems for protecting and managing their territories and biodiversity, but with their ancestral knowledge, spiritual connection to the land, and comprehensive practices, they have also developed increasingly holistic and innovative models of development. Hence, based on their experience, they have been rethinking basic concepts such as biodiversity, which today is often conceptualised as “biocultural diversity”, which as Salas (2015) argues, expresses the reciprocal relationships between human beings and biological diversity based on cognitive understanding, theoretical representations of the world, life practices and relationships with the natural world.

Based on this new concept and taking into account the impact of this commitment on the community environment, the concept of **collective biocultural heritage** (CBCH) has been introduced, understood as the knowledge, innovations and practices of indigenous and local communities that are collectively held and are inextricably linked to traditional resources and territories, the local economy, the diversity of genes, varieties, species and ecosystems, cultural and spiritual values, and customary laws shaped within the socio-ecological context of communities (Swiderska et al., 2006: 12).

These new approaches seek to introduce the proposal for territorial defence, based on community biocultural heritage, in which preserving cultural values and biodiversity is not only an ecological measure, but also a political stance that guarantees the defence of their cultures, their ways of life and the continuity of their existence as peoples.

The Potato Park as a pilot case study

In the context of defending territories from an environmental and sustainability perspective, various experiences have been developed that set interesting precedents. At the international level, notable examples include the Peasant Reserve Areas (ZRC) in Colombia, a concept created in the 1990s to protect rural peasant territories, prevent land grabbing and promote sustainable development. In Mexico, there are Voluntary Conservation Areas and Forest Ejidos, which prioritise certified community forest management, linked to the defence of the territory against drug trafficking and mining. More recently, also in Colombia, Food Production Protection Areas (APPA) have been implemented. These are territorial zones dedicated to the preservation and sustainable use of agricultural and livestock lands, with the aim of guaranteeing long-term food security and protecting territories from polluting activities.

In Peru, there are examples of territorial conservation, although these have been strongly influenced by the state parameters that have defined the conditions for their creation, management and development. Through the National System of Protected Natural Areas created by the State (SINANPE), Communal Conservation Areas have been promoted, for example, which are territories where the traditional use and sustainable exploitation of natural resources by local communities is promoted. However, they still have a Western approach, where technical conservation criteria are prioritised over biocultural conceptions of the territory. In many cases, management plans do not adequately incorporate the Indigenous worldview, and the role of the State can be dominant, limiting the autonomy of communities in the management of their own territories.

However, in recent years, much more significant proposals have been developed that arise from community initiatives. These proposals are based on the conservation and protection of species, ecosystems or elements that are closely linked to the territory, culture and worldview, thus asserting collective rights and community autonomy. The Potato Park is one such initiative.

The Potato Park is an initiative of five Quechua farming communities (Chahuaytire, Paru Paru, Pampallacta, Amaru and Sacaca) located in the district of Pisac, Cusco, which, with the support of institutions such as ANDES and IIED (International Institute for Environment and Development), have managed to consolidate a model of conservation and territorial protection based on their collective biocultural heritage.

Their proposal is based on the in-situ conservation of a species, the potato, an element that has profound cultural significance, especially in the Andean regions, where it is a staple food but also a symbol of identity. Its cultivation and consumption are intrinsically linked to the history, traditions and daily life of the communities that grow it. The potato is not only a food, but also an element of social and cultural cohesion, through which ancestral knowledge and sustainable practices are transmitted.

The Potato Park has become a community territory covering 7,238.33 hectares[2]. It is considered a park because it is home to more than 1,200 varieties of native potato seeds, many of which have been repatriated from the International Potato Centre (CIP), i.e. recovered as heritage and to be conserved in this community space. The Potato Park has articulated a state policy for the protection of genetic resources with the Andean worldview, where the territory should not only be protected as a productive space but also as the basis of identity, culture and collective well-being. This is the vision of community biocultural heritage.

The Park has implemented extremely interesting innovations; it coordinates state and non-governmental institutions, while also developing biocultural protocols based on its own practices and knowledge, establishing communal governance systems based on its Andean culture and promoting the autonomy of communities.

It represents a sui generis system of protection that does not contradict or deviate from state rules - the park has been legally recognised as an Agrobiodiversity Zone through Ministerial Resolution No. 0081-2020-MINAGRI and complies with global and state regulations, but is also based on customary law, which defends collective rights. As Argumedo points out, the Association of Communities of the Potato Park manages the park based on Andean values, laws and customary practices (Argumedo, 2012).

Thus, it constitutes a tool that not only has legal value but also vindicates customary and collective rights. The experience of the ‘Parque de la Papa’ offers key lessons for other communities seeking to protect their collective biocultural heritage from activities that may put their territories at risk, such as mining, in a context of increasing pressure from extractivism. Politically, it demonstrates that there are viable alternatives to these processes, based on sustainability, local knowledge and intergenerational justice.

[2] Parque de la Papa has also been registered with the community of Cuyo Grande, which together covers a total of around 9,000 hectares.

Basic premises for territorial protection through biocultural heritage conservation

Protecting territories through the conservation of biocultural heritage involves recognising that biodiversity and cultural diversity are deeply interrelated. In Indigenous and ancestral territories, this approach makes it possible to protect both nature and the traditional practices, knowledge and ways of life associated with it.

Based on the experiences and perspectives described above, it is possible to identify some minimum requirements for this model of effective territorial protection:

Recognition of the intrinsic value of biodiversity. The protection and conservation of territories begins with the recognition of the intrinsic value of nature. This implies overcoming a purely utilitarian view of nature, recognising that all forms of life have their own value, beyond the economic benefits they may offer. This is part of a non-anthropocentric perspective, essential for promoting respect and protection of the natural environment and its component values held by ancestral communities, especially Indigenous ones.

Under this approach, it is possible to identify the biocultural values that these territories possess and that can be considered community heritage. To do so, it is essential to start by identifying land use, integrating ecological variables, identifying priority areas, significant biodiversity, and ecosystems that support environmental services such as water regulation. It will be essential to determine which are essential to the continuity of communities and nature, according to not only the Western concept of sustainability but also their own worldviews. In the Potato Park, for example, the central element around which protection revolves is a species: this tuber that links territory, history, biodiversity, culture and subsistence. For this reason, the potato becomes the focal point around which the conservation and protection proposal is built.

Community organisation and participation is a second pillar. Community organisation and active participation in the process is a fundamental issue. Traditional knowledge and ancestral community ties to the territory make them strategic allies for the protection of biocultural heritage. Promoting organisation for active participation allows the community to play a leading role in the generation and management of the proposal and aims to strengthen community governance and autonomy.

Inter-institutional and intersectoral coordination is a necessary issue. Although the strength of this proposal lies in the vindication of ancestral knowledge, the community's worldview and collective rights, it must be coordinated with state sectors through the various levels of government and environmental and/or productive sectors. Coordination with government sustainability policies is strategic as a mechanism for generating complementarity in objectives and reducing vulnerabilities to state powers. This may also enable better management of the initiative with not only political support from the government but, in the best-case scenario, financial support as well.

Finally, a fundamental element is the **legal framework or intercultural legal instruments** that underpin the protection of territories, which requires a legal approach that integrates state norms but also customary norms specific to the community regulation system. This combination of state and customary laws is key to effectively protecting the rights of Indigenous communities, especially with regard to land ownership, governance, justice, and biocultural preservation. This articulation is part of legal pluralism, which is indispensable in multicultural contexts.

It is precisely this last point that this study addresses, and the rest of this paper provides the legal analysis for this.

Chapter II. Regulatory and jurisprudential analysis

Global frameworks for environmental protection and collective rights

Peru is home to extraordinary biological and cultural diversity, historically sustained by Indigenous Peoples and rural communities. However, their territories and biocultural values face growing threats from extractive activities, agricultural expansion, urbanisation and development policies that do not adequately recognise collective rights. In this context, global policies embodied in agreements, conventions and treaties signed at the global level take on particular relevance. Convention 169 of the International Labour Organisation, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Principles of the International Council on Mining and Metals (ICMM), and the Paris Agreement, among others, as commitments made by States, offer us regulatory frameworks that can guide public policies and support community initiatives, especially those in the field of environmental justice, collective rights, and ultimately human rights. Let us analyse each of them:

1. **The International Labour Organisation (ILO) Convention 169**

This is a binding international treaty that recognises and protects the collective rights of indigenous and tribal peoples, including their territorial, cultural, linguistic and labour rights and their right to participate in decisions that affect them. It was adopted in 1989 and is considered one of the most important international instruments on indigenous rights. It was ratified by Peru through Law No. 26253 in 1993, thus becoming a binding (mandatory) instrument for the State.

The Convention broadly develops a series of rights for ancestral peoples, but we must highlight some articles that contain special protection for collective rights, territory and biocultural values:

Rights over lands and territories

Convention 169 recognises that the relationship of Indigenous Peoples with the land is more than economic: it is cultural, spiritual and existential. Article 14.1 establishes that “the rights of ownership and possession of the lands they traditionally occupy shall be recognised for the peoples concerned”. Furthermore, Article 13.2 adds that “the term “lands” [...] includes the concept of territories, which covers the entire habitat of the regions that the peoples concerned occupy or otherwise use”.

In Peru, many indigenous communities lack formal titles to their ancestral territories, and on numerous occasions, attempts have been made to deny them property rights for this reason. Article 14 obliges States to recognise such rights of ownership and possession over the land they traditionally occupy; it does not require them to have formal titles, as recognition must be based on occupation and ancestral ties. In view of this, it is necessary to insist on defending the right to territory of communities, giving priority to the recognition of traditional occupation rather than the ordinary registration system for titling.

Prior consultation and participation

Prior, free and informed consultation is one of the pillars of the Convention. Article 6.1.a establishes that governments must “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever legislative or administrative measures are envisaged that may affect them directly”. These consultations must be conducted “in good faith and in a manner appropriate to the circumstances, with the aim of reaching agreement or obtaining consent” (Article 6.2). As we shall see below, Peru enacted the Prior Consultation Law in 2011 (Law No. 29785), which, although it has been considered a regulatory advance in the recognition of collective rights, faces serious criticism and resistance, especially from communities, who consider that it is not in line with the principles of Convention 169.

Natural resource management

The Convention also guarantees the right of Indigenous Peoples to participate in the management of the resources that exist in their territories. Article 15.1 establishes that “the rights of the peoples

concerned to the natural resources existing on their lands shall be specially protected" and that "these rights include the right of these peoples to participate in the use, management and conservation of these resources".

This article is fundamental in the Peruvian context, which maintains an extractivist economic model that tends to prioritise large-scale exploitation of resources, particularly mining and oil, through private interests.

Cultural identity and self-determination

The Convention requires respect for the cultural, spiritual, social and institutional identity of Indigenous Peoples. Article 5.a obliges States to "recognise and protect their own social, cultural, religious and spiritual values", while Article 8.1 states that Indigenous Peoples "shall have the right to retain their own customs and institutions", provided that they are not incompatible with human rights.

ILO Convention 169 provides a solid legal basis for the defence of the territorial, cultural and political rights of Indigenous Peoples in Peru. However, its implementation faces a lack of political will, institutional weakness and pressure from the extractivist economic model. Ensuring compliance with this regulatory framework will require different strategies to enable the State to fulfil its obligations.

2. The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD), adopted during the Earth Summit in Rio de Janeiro in 1992, came into force in 1993. It is one of the main multilateral treaties on environmental matters, with three fundamental objectives: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources.

The CBD recognises that countries have sovereignty over their natural resources and that access to genetic resources must be based on prior informed consent and equitable sharing of benefits. It also promotes the incorporation of the traditional knowledge of Indigenous Peoples into the conservation and sustainable use of biodiversity, thus aligning itself with intercultural and participatory approaches (Glowka et al., 1994).

Peru ratified the CBD on 7 June 1993 through Legislative Resolution No. 26185, committing itself to implementing national policies consistent with the objectives of the convention. Within this framework, in recent years the country has developed the National Biodiversity Strategy and has participated in global processes such as the Kunming-Montreal Global Biodiversity Framework (2022), reaffirming its commitment to the conservation and sustainable use of its ecosystems. However, the effective fulfilment of these commitments requires greater effort, especially in a country where extractive activities, including illegal mining and deforestation, are advancing in an uncontrolled manner, clearly jeopardising traditional knowledge and biocultural resources and generating strong social and cultural vulnerability, especially in communities.

This agreement contains important provisions that can be invoked for the protection of communities' biocultural heritage:

- Article 8(j) commits States to "(...) respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity (...)".
- Article 10(c) establishes that the State "shall protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with the requirements of conservation or sustainable use."
- Article 15.7 requires that the benefits derived from the use of genetic resources be shared "fairly and equitably" with the provider countries.

3. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly on 13 September 2007. This Declaration was approved with the favourable vote of 143 countries, including Peru.

It represents the most comprehensive international instrument on indigenous rights, establishing minimum standards for their survival, dignity and well-being, for which it develops a normative framework that recognises the collective and individual rights of Indigenous Peoples. Among the collective rights, it makes significant reference to the right to self-determination of peoples, which is the right to freely decide their political status and their own economic, social and cultural development; autonomous governance: the right to maintain and strengthen their own political, legal, economic, social and cultural institutions; the right to territory and resources: the right to the lands, territories and resources that they have traditionally owned or used or occupied; and it mentions the right to free, prior and informed consultation and consent: the right to be consulted before projects or legislative or administrative measures that affect them are adopted.

Among the individual rights it recognises are the right to non-discrimination; the right to maintain their language, traditions, customs and spirituality; and the right to education, health and other services with a culturally appropriate approach.

This is not a legally binding instrument (it is not a treaty and therefore lacks mechanisms to enforce compliance), but it represents an international human rights standard that has been guiding state policies and international actions on indigenous rights. Peru has partially incorporated these principles through the Prior Consultation Law (Law No. 29785).

Below are some articles that are fundamental to strengthening the defence of territories, particularly in the context of extractive industries, based on the biocultural values of the communities that inhabit them:

- Article 8.2.b condemns any state action that “has the purpose or effect of dispossessing them of their lands, territories or resources”.
- Article 26 establishes that “Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used” and that states shall “legally recognise and protect those lands”.
- Article 31.1. Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, traditional cultural expressions and manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora (...)
- Article 32.1. Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- Article 32.2. States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in relation to the development, utilisation or exploitation of mineral, water or other resources.

4. Guiding Principles on Business and Human Rights (UNGPs)

In 2011, the United Nations Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights (UNGPs), developed by Professor John Ruggie. This non-binding normative framework establishes a global architecture based on three pillars: (1) the State's duty to protect human rights, (2) the responsibility of companies to respect them, and (3) access to redress mechanisms in cases of abuse (United Nations, 2011).

Although not an international treaty, the UNGPs have been widely recognised and incorporated into public policies, corporate guidelines and international standards. Peru has expressed its support for these principles and in 2021 published its First National Action Plan on Business and Human Rights, becoming one of the few Latin American countries with an official implementation framework (MINJUSDH, 2021).

In relation to Indigenous Peoples, the UNGPs provide an important basis for protecting their territories, traditional knowledge and biocultural values, especially in the face of extractive and infrastructure activities. Principle 12 states that companies should respect internationally recognised human rights, including the “rights of Indigenous Peoples, as defined in relevant international instruments, such as the

United Nations Declaration on the Rights of Indigenous Peoples". Similarly, the Commentary on Principle 18 states that companies should conduct human rights due diligence that considers "the risk of adverse impacts on vulnerable or marginalised communities, such as Indigenous Peoples," including their culture, territory and ways of life.

In addition, Principle 7 requires States to adopt "additional protective measures" when companies operate in contexts where Indigenous Peoples are at greater risk. This involves adopting regulatory safeguards, such as free, prior and informed consent (FPIC), in projects that may directly affect the biocultural values of Indigenous Peoples.

In Peru, where many social conflicts are related to extractive activities in indigenous territories, the effective application of these principles is critical. Although there have been regulatory advances, such as the Prior Consultation Law (Law No. 29785), serious gaps in its implementation remain, and redress mechanisms continue to be weak.

The Guiding Principles on Business and Human Rights offer a useful and internationally recognised tool for protecting the collective rights of Indigenous Peoples in the face of business activities in their territories. Having signed and partially implemented them, Peru now faces the challenge of applying them in practice, ensuring the sustainability of ecosystems and the survival of indigenous cultures.

5. The 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development, adopted in September 2015 by the United Nations General Assembly, is a global framework for action aimed at eradicating poverty, protecting the planet and ensuring prosperity for all. This agenda is structured around 17 Sustainable Development Goals (SDGs) and 169 specific targets that seek to balance economic, social and environmental development by 2030 (UN, 2015).

Peru has officially signed up to the 2030 Agenda and, since 2017, has been aligning its national policies with the SDGs, under the coordination of the National Centre for Strategic Planning (CEPLAN) and the National Institute of Statistics and Informatics (INEI). In addition, the country presented its Voluntary National Review to the High-Level Political Forum in 2020, reaffirming its commitment to meeting the goals (CEPLAN, 2020).

The 2030 Agenda recognises a number of fundamental aspects that can support the defence of communities' territory and biocultural resources, including:

- SDG 2 promotes the achievement of food security and sustainable agriculture, recognising the need to "ensure access to land and other productive resources" (Target 2.3).
- SDG 15, on life on land, sets the target of "ensuring the conservation of ecosystems and biodiversity," including traditional knowledge and the sustainable use of natural resources (Target 15.6).
- Target 1.4 of SDG 1 expressly states that it is necessary to "ensure that all men and women, in particular the poor and vulnerable, have equal rights to economic resources, ownership and control over land and other assets".

The Agenda promotes the approach of leaving no one behind, which implies addressing the historical demands of actors such as Indigenous Peoples, including recognition of their ancestral territories, protection of their biocultural knowledge, and their effective participation in decision-making processes.

6. The Framework Convention on Climate Change (UNFCCC) and the Paris Agreement

The Framework Convention on Climate Change (UNFCCC) and the Paris Agreement recognise the role of Indigenous Peoples and local communities in responding to climate change. The UNFCCC was adopted in 1992 and entered into force in 1994. It is an international treaty that seeks to stabilise greenhouse gas concentrations in the atmosphere to prevent dangerous interference with the climate system.

One of the main developments within the UNFCCC framework was the adoption of the Paris Agreement in 2015, during the 21st Conference of the Parties (COP21). This agreement marked a milestone by establishing binding commitments for all signatory countries, not just developed ones, with the aim of

keeping the global average temperature rise well below 2°C above pre-industrial levels and pursuing efforts to limit that increase to 1.5°C. It also promotes adaptation to climate change, climate resilience and fair climate finance for developing countries.

Peru ratified the UNFCCC in 1993 and then the Paris Agreement in 2016 through Legislative Resolution No. 30310. Although these ratifications should generate binding obligations with respect to the entire content of the agreement, what has been established is that they only apply to formal obligations, i.e., submitting reports on Nationally Determined Contributions (NDCs), reporting, participating in international processes, etc., but not to specific obligations such as self-imposed targets. For example, Peru has set a target, through its Nationally Determined Contributions (NDCs), to reduce its greenhouse gas emissions by 30% by 2030, with a possible extension to 40% if international support is available. However, this target is not binding and, if not met, is not subject to direct sanctions. As part of these commitments, national adaptation plans and sectoral climate policies have been developed. However, the effective implementation of all other commitments is still a challenge and a pending task.

These instruments contain several articles that highlight the importance of protecting territories and biocultural resources:

Article 3 of the Climate Change Convention refers to a fundamental principle, that of Precaution, “the Parties should take precautionary measures to prevent or minimise the causes of climate change and mitigate its adverse effects. Where there is a threat of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures.”

- Article 7.5 of the Paris Agreement emphasises that adaptation should be based on “traditional knowledge, indigenous knowledge and local knowledge systems”.
- Paragraph 135 of Decision 1/CP.21 (Adoption of the Paris Agreement) establishes the creation of a platform for indigenous knowledge (LCIPP).

7. United Nations Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (UNDROP)

The United Nations Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (UNDROP) was signed on 17 December 2018. This declaration seeks to protect the human rights of millions of people who live and work in rural areas, recognising their contribution to food security, biodiversity and the fight against climate change.

UNDROP affirms a series of fundamental rights for peasant populations, including the right to land, water, seeds, food sovereignty, decent working conditions and participation in the development of public policies that affect them. It also establishes principles against discrimination, especially on the grounds of gender, ethnic origin or social status.

Like other instruments such as the Declaration on the Rights of Indigenous Peoples, UNDROP is not legally binding, but it constitutes an international normative framework that guides signatory states in the formulation of equitable and sustainable policies in rural areas.

Peru voted in favour of adopting UNDROP at the United Nations General Assembly, which represents an important political gesture towards the rights of peasants. However, there has been no formal ratification, nor have any structural reforms been implemented to ensure its effective application. Even so, we can invoke this declaration as a reference point for collective rights, the protection of territories and biocultural heritage. Here are some important articles from this instrument:

- Article 17 recognises the right to land, stating that “peasants [...] have the right to access land and natural resources on equitable, secure and sustainable terms”.
- Article 19 protects the right to conserve, use, exchange and sell traditional seeds, which are fundamental to food sovereignty and the conservation of agrobiodiversity. It establishes “the right to protect traditional knowledge relating to plant genetic resources for food and agriculture” and recognises the right of peasants and those living in rural areas “to maintain, control, protect and develop their own seeds and traditional knowledge”.
- Article 26.1 recognises that farmers and other people working in rural areas have the right to enjoy their own culture and to work freely for their cultural development without interference or

discrimination of any kind. They also have the right to preserve, express, control, protect and develop their traditional and local knowledge, such as their ways of life, production methods or technologies, and customs and traditions. No one may invoke cultural rights to violate human rights guaranteed by international law or to limit their scope.

8. The ICMM Principles

The International Council on Mining and Metals (ICMM) is a global organisation comprising 28 mining companies and 35 industry associations. In 2001, it developed and launched a series of Sustainable Mining Principles with the aim of improving social and environmental standards in the sector.

The International Council on Mining and Metals (ICMM) Principles are voluntary, but they are statements that commit to respecting human rights and Free, Prior and Informed Consent. Among the main ones are:

- Principle 3 requires respect for the rights of Indigenous Peoples and their prior consent in projects that affect them.
- Principle 6 promotes biodiversity conservation and proper management of environmental impacts.

In 2020, the ICMM updated its regulatory framework by incorporating 10 Principles and 39 performance requirements. Two of these are particularly relevant:

- Principle 3: “Respect the human rights and interests and aspirations of communities affected by mining activities. Support the effective implementation of the UN Guiding Principles on Business and Human Rights.”
- Principle 7: “Contribute to the conservation of biodiversity and fair and equitable access to the benefits derived from the use of genetic resources.”
- Requirement 3.5 requires companies to obtain the free, prior and informed consent (FPIC) of Indigenous Peoples when their activities affect their territories, in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The ICMM Principles represent an important step forward by incorporating respect for human rights and the consent of Indigenous Peoples as part of corporate responsibility. Although these principles are intended to determine performance for the mining industry in general, they are driven by a group of companies and partners that do not represent the entire sector. Furthermore, their voluntary nature, lack of independent oversight and weak articulation with national regulatory frameworks limit their effectiveness in the Peruvian context (several of the companies that have adhered to these principles continue to fail to respect them). For these principles to have a real impact, it would be necessary to strengthen citizen oversight mechanisms and promote harmonisation with binding international standards. At the same time, the state must take a more active role in ensuring respect for collective rights, especially in territories affected by extractive activities.

9. The Kunming-Montreal Global Biodiversity Framework

In December 2022, during the 15th Conference of the Parties (COP15) to the Convention on Biological Diversity (CBD), held in Montreal, the Kunming-Montreal Global Biodiversity Framework was adopted. This international agreement, signed by 196 countries, including Peru, establishes a roadmap with four global objectives and 23 specific targets to halt and reverse biodiversity loss by 2030 and achieve harmonious coexistence with nature by 2050.

One of the most notable commitments in the Framework is Target 3, known as the 30x30 strategy, which seeks to protect and conserve at least 30% of the planet's territory by 2030: “ensure and facilitate that, by 2030, at least 30% of terrestrial and inland water areas, as well as marine and coastal areas, especially those of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through protected area systems and other effective area-based conservation measures that are ecologically representative, well-connected and equitably governed, recognising indigenous and traditional territories, where appropriate, and integrating them into broader terrestrial and marine landscapes and the ocean, while ensuring that any sustainable use, where appropriate in these areas, is fully consistent with conservation outcomes, recognising and respecting

the rights of Indigenous Peoples and local communities, including over their traditional territories" (Target 3, CBD, 2022).

This target recognises the importance of protected areas and other effective area-based conservation measures, managed in an equitable and representative manner.

Peru has reaffirmed its commitment to implementing the Kunming-Montreal Global Biodiversity Framework. Through the Ministry of the Environment, actions have been initiated to align national policies with the Framework's objectives, including the expansion and strengthening of protected natural areas and the promotion of local and indigenous community participation in biodiversity management.

The effective implementation of the 30x30 strategy in Peru would involve not only the expansion of protected areas, but also the recognition and respect of the rights of indigenous communities over their ancestral territories, given that they play a crucial role in biodiversity conservation and the protection of biocultural resources through their traditional knowledge and sustainable practices.

The Kunming-Montreal Global Biodiversity Framework and the 30x30 strategy represent an opportunity to strengthen the commitment to biodiversity conservation, integrating approaches that respect and value the rights and knowledge of indigenous communities and promote sustainable and equitable resource management.

The international instruments analysed here offer powerful regulatory tools to strengthen the defence of communal territories and the protection of biocultural values in Peru. Emerging global recognition provides avenues for conservation, but its effectiveness is conditioned by the political will of the state, the correlation of social forces, and the capacity of communities to demand compliance. It is therefore important to articulate these instruments with national regulations, customary practices, and intercultural justice mechanisms, while developing other strategies for their implementation.

The hierarchy of international law and its legal validity in the domestic system

Finally, it is necessary to clarify a fundamental point: the legal value and binding nature of international treaties, agreements, conventions, protocols and/or declarations such as those we have just reviewed, for the purpose of claiming their mandatory compliance or in their defence.

In this regard, Article 55 of the Political Constitution of Peru establishes that: "Treaties entered into by the State and in force form part of national law." However, not every document signed at the international level is a treaty in the strict sense or has binding or mandatory value. Only treaties in the strict sense, ratified by Peru, enter into the legal system and have the force of law. International declarations, principles and agendas are "soft law": they guide public policy and the interpretation of rights but are not legally binding. Private or corporate commitments are only voluntary.

International treaties in the strict sense (hard law) are formal agreements between states, concluded in accordance with public international law (Vienna Convention on the Law of Treaties, 1969). They require: signature, approval, ratification, publication and entry into force (Articles 55-57 of the Peruvian Constitution). Once in force, they have the force of law in Peru. For example:

- ILO Convention 169
- Convention on Biological Diversity (CBD)
- Framework Convention on Climate Change and Paris Agreement.

International declarations, principles and agendas (soft law), are not treaties, but rather political or regulatory instruments of a guiding nature. They are adopted by the UN, OAS or other multilateral forums, but do not go through the approval and ratification process required by the Peruvian Constitution. They do not have the force of law because Peru does not assume a formal legal obligation, but rather a political or moral commitment. Examples:

- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Agenda 2030 – SDGs

- Declaration on the Rights of Peasants (UNDROP)
- Guiding Principles on Business and Human Rights (UNGPs).

Self-regulation standards or private commitments. These are rules adopted by companies, associations or international networks, not by states. They are only binding on those who voluntarily adhere to them. They do not have the force of law in Peru.

- Example: ICMM (International Council on Mining and Metals) Principles.

Table 1 below provides a more didactic overview of the differences between these instruments and their binding or referential value.

Table 1. International instruments and binding or reference value

International instrument	Type of regulation	Legal status in Peru	Comments
ILO Convention 169	International human rights treaty	**Mandatory (binding)**	Ratified in 1994. Direct application. Basis for prior consultation.
Convention on Biological Diversity (CBD)	International treaty	**Mandatory (binding)**	Ratified in 1993. Legal framework on biodiversity.
UN Declaration on the Rights of Indigenous Peoples (UNDRIP)	UN Declaration	**Reference (soft law)**	It is not a treaty. It serves as an interpretative guide and for political advocacy.
Guiding Principles on Business and Human Rights (UNGPs)	UN guidelines (soft law)	**Reference framework**	Provide guidance to States and companies. Basis for national action plans.
2030 Agenda – SDGs	Multilateral political commitment	**Reference point**	Global public policy framework. No legal sanctions.
UNFCCC and Paris Agreement	International treaties	**Mandatory (binding)**	Ratified by Peru (1993 and 2016). National climate commitments (NDCs).
UN Declaration on the Rights of Peasants (UNDROP)	UN Declaration	**Reference**	Recognises peasants' rights. Not legally binding.
ICMM Principles	Corporate self-regulation standards	**Reference**	Only binding on ICMM member companies. Not a state regulation.
Kunming-Montreal Global Biodiversity	Policy implementation agreement (within the framework of the CBD)	**Reference**	Guides compliance with the CBD. It is not an autonomous treaty.

In conclusion, approved and ratified treaties do have the force of law in the domestic legal system. Thus, the jurisprudence of the Constitutional Court indicates that human rights treaties have enhanced value, even above ordinary law. For example, in Constitutional Court Ruling No. 0025-2005-PI/TC, the Court affirmed that the rights recognised in international treaties "are immediately applicable"[3]. This would allow Indigenous Peoples to invoke this instrument directly.

In Judgment 00022-2009-PI/TC, the Constitutional Court recognises that ILO Convention 169 forms part of the constitutional framework and, therefore, has constitutional status and is binding on all State bodies: "(...) the international treaty complements – normatively and interpretatively – the constitutional clauses on Indigenous Peoples, which, in turn, specify the fundamental rights and institutional guarantees of Indigenous Peoples and their members (...)". This jurisprudence reinforces the position of

[3] STC N.° 0025-2005-PI/TC. Item 25

communities that demand the application of basic rights, such as the right to be consulted before concessions are granted in their territories.

In this context, social actors, lawyers, environmental defenders and community leaders have in the Constitution a powerful tool to defend their territory, life and dignity against extractive activities that do not respect the current legal framework.

National legal frameworks

Peru is one of the most biodiverse countries in the world and has a rich cultural heritage represented by indigenous and rural communities that have historically coexisted with nature in a relationship of respect and reciprocity. Despite this, the protection of these peoples, their territories and, even more so, their biocultural values are constantly threatened by the prioritisation of economic activities that not only destroy the environment and the most essential resources but also attack their ways of life and threaten the continuity of their culture. It is therefore necessary to review the Peruvian regulatory framework to compare the existing legal tools that recognise these rights, to demand their application and enforcement, and to invoke them in specific cases.

1. Political constitution of Peru

The Political Constitution of Peru is the basis of the country's legal system, and therefore all other laws, decrees, public policies and administrative acts must be subordinate to it. The Peruvian Constitution recognises collective rights, especially those of rural and indigenous communities, including their autonomy, territory, collective property and justice system. It has also recognised fundamental rights such as the right to a healthy and balanced environment, establishing the state's obligation to protect biodiversity. These rights constitute clear limits on extractive activities (such as mining) and can be invoked to defend communal territories, biocultural values and ecosystems.

Protection of collective rights

One of the constitutional pillars of these rights is found in Article 89, which states, "Peasant and indigenous communities have legal existence and are legal entities. They are autonomous in their organisation, in communal work and in the use and free disposal of their lands, as well as in economic and administrative matters, within the framework established by law. The ownership of their lands is imprescriptible."

This article recognises the existence of communities and guarantees their autonomy and right to decide on the use of their territory. The provision that their lands are inalienable and imprescriptible reinforces their collective nature and protects communities from dispossession or the imposition of other activities without their consent. This principle has been reinforced by the jurisprudence of the Constitutional Court. For example, in Judgment No. 00022-2009-PI/TC, the Constitutional Court stated: “The property rights of rural and indigenous communities enjoy special constitutional protection insofar as they are linked to the cultural identity, way of life and survival of these peoples.”

This right is reinforced by Article 149 of the Political Constitution of Peru, which establishes regulations on the special jurisdiction of rural and indigenous communities, including rural patrols, recognising their autonomy in the exercise of jurisdictional functions within their territorial and cultural sphere. “The authorities of rural and indigenous communities, with the support of rural patrols, may exercise jurisdictional functions within their territorial sphere, in accordance with customary law, provided that they do not violate fundamental human rights. The law establishes the forms of coordination of this special jurisdiction with the courts of peace and other instances of the judiciary.”

This rule is fundamental not only because it reaffirms the recognition of customary law (customs and norms specific to the communities), but also because it recognises the autonomy of the communities not only in organisational or economic terms (as in Article 89), but also in the jurisdictional sphere, that is, the right to apply their own justice in accordance with their culture. This is important in order to establish the existence of cultural diversity and the recognition of legal pluralism, allowing the national legal system to coexist with communal legal systems based on their customs and customary laws.

This rule has been upheld by the Constitutional Court in several rulings, one of which is Case No. 00024-2009-PI/TC, which stated that “the special jurisdiction recognised in Article 149 of the

Constitution does not constitute a concession by the State, but rather a recognition of a right that pre-exists the state organisation."

On the right to participation

Article 2, paragraph 17 grants every person, individually or collectively, the right to participate in matters that affect their lives: "To participate, individually or collectively, in the political, economic, social, and cultural life of the Nation." This right is directly related to the principle of free, prior and informed consultation, also enshrined in international treaties such as ILO Convention 169, which, as we will analyse later, has constitutional status.

Natural resources and protection of the environment and biodiversity

Article 66 of the Constitution establishes that: "Renewable and non-renewable natural resources are the heritage of the nation. The state is sovereign in their use. Organic law shall establish the conditions for their use and their granting to private individuals."

This article establishes that the state is the sole determiner of the conditions for the use and disposal of natural resources, based on state sovereignty. However, this power is not absolute. The constitutional framework, in accordance with international treaties ratified by the State, establishes limits, one of which is the collective rights of ancestral communities, which must be valued in order to prevent the exercise of this power from being arbitrary and coming into conflict with those rights.

Article 89, as we have pointed out, recognises the autonomy of communities and their right to own their land, and by recognising these rights, it establishes a limit on the state's power over resources found in communal territories. Although the subsoil remains the property of the nation, the land and territory belong to the communities, and any act of disposal that affects their rights must go through consultation and consent processes. This has been established by the Constitutional Court itself: "the public interest cannot serve as a justification for disregarding fundamental rights, in particular those of Indigenous Peoples. Prior consultation is not a formality, but an essential instrument for ensuring the legitimacy of state decisions." (Judgment of Case No. 00022-2009-PI/TC)

Another limitation is respect for the fundamental right to a healthy and balanced environment recognised in Article 2(22). The Constitutional Court has stated in this regard in the Judgment of Case No. 1417-2005-PA/TC that "the right to enjoy a balanced environment suitable for the development of life is directly linked to the public interest, given that its impairment compromises the health, quality of life and survival of individuals."

Similarly, in Case No. 0025-2005-PI/TC, it has established that "the public interest is not necessarily identified with economic interest or private investment. It must be interpreted in light of the principle of human dignity and general welfare."

Therefore, the right to a healthy environment as a "public interest" is a fundamental aspect that must be taken into account when defending the provision and use of natural resources, especially in extractive activities; the power of the State must always be assessed taking into account its limitations.

In this regard, specific regulations on environmental rights must be considered: With regard to environmental protection, Article 68 establishes: "The State is obliged to promote the conservation of biological diversity and protected natural areas." This constitutional mandate is not merely declarative; it imposes a binding legal obligation. Any policy or activity, including extractive activities, that has been proven to jeopardise these values should be reviewed in light of respect for constitutional rights. For this reason, the Constitutional Court has ruled in various judgments as follows: "The right to the environment not only protects human beings, but also nature for its intrinsic value. The State has an obligation to guarantee biological diversity through public policies and preventive measures." Judgment of Case No. 1417-2005-PA/TC

Similarly, Ruling 3826-2006-PA/TC stated that "The use of natural resources in areas of high biodiversity requires a rigorous environmental impact assessment, since the State cannot abdicate its constitutional obligation to conserve biological diversity (Article 68)."

Finally, in another ruling, corresponding to Case No. 01417-2007-PA/TC, noted: "The right to a healthy and balanced environment is implicitly recognised by Article 2 (22) of the Constitution, and its protection requires the adoption of preventive and precautionary measures against activities that may affect it".

Article 69 reinforces this duty, although particularly only in relation to Amazonia: "The State promotes the sustainable development of Amazonia with appropriate legislation." This implies a constitutional commitment to the rational and sustainable use of natural resources in this region, which is particularly important in terms of biodiversity and reserves, and is often affected by illegal or uncontrolled extractive activities.

General principles of protection of persons and their dignity

Article 1 defines the State's fundamental objective: "The defence of human beings and respect for their dignity are the supreme purpose of society and the State." This is perhaps the most important article because the entire legal system, the State's actions and social life are based around it, all aimed at protecting the dignity of human beings. As the cornerstone of the Constitution and the ultimate criterion for interpreting rights and resolving conflicts, it should determine that any policy, including economic policy, must be evaluated in light of this foundation, discarding activities that cause situations such as forced displacement, pollution, damage to resources such as water, harm to culture, etc.

2. The General Environmental Law (Law No. 28611)

The General Environmental Law, enacted in 2005, constitutes the main legal framework for environmental management in Peru. Although this law has undergone a series of modifications and the deletion of important articles that protected the environment over time, this law remains the main set of rules on the environment in the country. It is based on important principles, including sustainability, intergenerational equity, prevention and participation, and acknowledges communities in their role in the conservation of the environment and biodiversity.

Article I of the Preliminary Title of the law regulates the right and duty of every person to live in a balanced and adequate environment, in addition to the duty to contribute individually or collectively to the conservation of biological diversity: "Every person has the inalienable right to live in a healthy, balanced and adequate environment for the full development of life, and the duty to contribute to effective environmental management and protect the environment, as well as its components, in particular ensuring the health of people individually and collectively, the conservation of biological diversity, the sustainable use of natural resources and the sustainable development of the country."

Following Article II, the principles under which this law is governed are incorporated, citing some that are fundamental for the protection of territories and biocultural assets:

- The principle of citizen participation, which establishes that every person (understood in a personal or collective way) has the right to participate responsibly in decision-making processes, as well as in the definition and application of policies and measures relating to the environment and its components. (Article III)
- The prevention principle, which states that environmental management has as its primary objectives the prevention, monitoring, and avoidance of environmental degradation. (Article VI)
- The precautionary principle, which allows for halting activities that pose an environmental risk in the absence of scientific certainty (Article VII), and
- The principle of sustainability, which states that the management of the environment and its components, as well as the exercise and protection of rights, are based on the balanced integration of social, environmental and economic aspects, and on the satisfaction of the needs of current and future generations. (Article V)

The General Environmental Law has some important articles that can be invoked regarding the defence of territories and natural heritage:

- Article 19: Refers to the need for territorial planning as key management instruments, specifying that this includes environmental territorial planning with environmental criteria and indicators that condition the allocation of territorial uses and the orderly occupation of the territory.

- Article 20(f): Establishes that fragile ecosystems (wetlands, forests, watershed or high Andean zones) should be subject to special protection.
- Article 70 explicitly recognises that "the design and application of environmental policy and, in particular, the process of environmental territorial planning, must safeguard the rights of Indigenous Peoples, peasant and native communities recognised in the Political Constitution and in international treaties ratified by the State. Public authorities promote their participation and integration in environmental management."
- Article 71: The State recognises and promotes the use of traditional collective knowledge in environmental management, linking it to the rights of Indigenous Peoples: "The State recognises, respects, registers, protects and contributes to the wider application of the collective knowledge, innovations and practices of Indigenous Peoples, peasant and native communities, as they constitute a manifestation of their traditional lifestyles and are consistent with the conservation of biological diversity and the sustainable use of natural resources. The State promotes their fair and equitable participation in the benefits derived from such knowledge and encourages their participation in the conservation and management of the environment and ecosystems."

These articles underpin the claim that communities have the legitimate right to protect their territories, contributing to land-use planning and protecting fragile ecosystems, which the State must respect as they are spaces for cultural reproduction and biodiversity.

Regarding the protection of biodiversity

The law sets out the guidelines on which Public Policy should be based. Among them, Article 11(c) indicates that consideration must be given to "The sustainable use of natural resources, including the conservation of biological diversity, through the protection and recovery of ecosystems, species and their genetic heritage. No consideration or circumstance can legitimise or excuse actions that could threaten or generate risk of extinction of any species, subspecies or variety of flora or fauna."

Whereas Article 11(d) establishes that said Public Policy must consider "the sustainable development of urban and rural areas, including the conservation of peri-urban agricultural areas and the environmentally sustainable provision of public services, as well as the conservation of the cultural patterns, knowledge and lifestyles of traditional communities and Indigenous Peoples."

Article 97 establishes that the State promotes the conservation of biological diversity and its policy is governed by guidelines such as: "a) The conservation of the diversity of ecosystems, species and genes, as well as the maintenance of the essential ecological processes on which the survival of species depends; and b) The strategic role of biological diversity and the cultural diversity associated with it, for sustainable development."

Regarding Participation and Consultation, Article II, Article 42 and Article 46 guarantee access to environmental information and the right to citizen participation in decision-making processes relating to policies, plans and projects that have an environmental impact. These articles reinforce the right of communities to be consulted, complementing the Prior Consultation Law (Law No. 29785).

In conclusion, Peru's General Environmental Law, although a weakened law, offers a general framework for the protection of collective rights, communal territories and biodiversity. Its principles allow indigenous and peasant communities to invoke fundamental environmental rights to halt or challenge extractive projects that threaten their environment. This regulatory framework must be promoted and strengthened through public policies and strategic judicialisation that recognise the biocultural dimension of the territory and the ancestral rights of Indigenous Peoples.

3. Law No. 26839 – Law on the Conservation and Sustainable Use of Biological Diversity

Enacted on 6 July 1997, this legislation represented a crucial advance in the treatment of biological diversity. This law establishes principles and mechanisms aimed at ensuring the protection, sustainable use and equitable access to the benefits of biodiversity. Its objective is to regulate the actions of the State and individuals to conserve biological diversity and ensure its sustainable use.

Article 3 recognises the importance of conservation in maintaining ecological processes: "Within the framework of sustainable development, the conservation and sustainable use of biological diversity

implies: a) Conserving the diversity of ecosystems, species and genes, as well as maintaining the essential ecological processes on which the survival of species depends"

This law generates recognition of the role of indigenous communities and traditional knowledge:

- Article 23. The importance and value of the knowledge, innovations and practices of peasant and native communities are recognised for the conservation and sustainable use of biological diversity. It also acknowledges community knowledge and practices as cultural heritage.
- Article 24. The knowledge, innovations and practices of peasant, native and local communities associated with biological diversity constitute their cultural heritage; therefore, they have rights over them and the power to decide on their use.

This begins to introduce the biocultural protection approach, in line with the Convention on Biological Diversity (CBD), ratified by Peru, which also promotes this respect in Article 8(j).

4. Regulation on Formalisation of the Recognition of Agrobiodiversity Zones (2016)

The approval of the Regulation on "Formalisation of the recognition of Agrobiodiversity Zones directed at the Conservation and Sustainable Use of Native Species Cultivated by Indigenous Peoples" issued through Supreme Decree No. 020-2016-MINAGRI (Ministry of Agriculture and Irrigation), represents a significant regulatory advance in the protection of native cultivated species and associated traditional knowledge. It is established as one of the main legal tools to conserve ecosystems, strengthen collective rights and prevent activities that threaten the integrity of indigenous territories, such as extractive activities.

Supreme Decree No. 002-2016-MINAGRI defines agrobiodiversity as: "The variety and variability of animals, plants and microorganisms that are used directly or indirectly for food and agriculture, including the diversity of ecosystems, species and varieties" (Article 2).

This definition recognises not only native crops and breeds, but also the role of traditional agricultural ecosystems and indigenous knowledge in genetic conservation. The regulation is framed within Law No. 30355 (Law for the Promotion and Development of Family Farming) and is aligned with international agreements such as the Convention on Biological Diversity.

One of the main innovations is having introduced the official recognition of Agrobiodiversity Zones. Article 4 of the regulation establishes that Agrobiodiversity Zones can be requested by regional, local governments or peasant and indigenous communities, and must comply with technical criteria such as the presence of genetic diversity and relevant traditional knowledge.

Article 5 specifies the minimum content of the request, including: description of cultivated native species and varieties; identification of traditional management practices; and a georeferenced map of the area.

This procedure formalises the legal protection of the territory, granting a status that enables limiting activities that may negatively affect the agrobiodiversity ecosystem.

It also establishes in situ conservation, recognising the right of Indigenous Peoples as guardians of biodiversity: "In situ conservation allows the evolutionary processes of native species to be maintained in their natural and cultural environment" (Article 7).

Furthermore, Article 10 explicitly recognises the collective knowledge of communities, which must be respected and protected in all activities related to the recognised area.

The regulation represents an innovative and effective legal instrument for the defence of indigenous territories and the conservation of the country's biocultural values. Its implementation not only safeguards native species and traditional knowledge but also strengthens the collective right to decide on the use of the territory, offering a legitimate way to limit the expansion of extractive activities. The recognition of an agrobiodiversity zone creates an administrative and environmental barrier that can be used as a legal argument, reinforcing territorial protection against incompatible activities. It is under this type of regulation that it has been possible to support successful experiences such as the "Potato Park".

5. Law No. 30355 on the Promotion and Development of Family Farming

Family farming comprises production systems based on the relationship between peasant or indigenous families and their territories, where traditional agricultural practices, local knowledge and an integral worldview of resource use are interwoven. Law No. 30355, enacted on 4 November 2015, explicitly recognises this link.

Article 3 of the law establishes that the strategic importance of family farming is recognised “in food security, in the conservation of agrobiodiversity and the environment, as well as in rural territorial development”. This article is key, as it directly links family farmers with the protection of the environment and the territory, highlighting their active role in the ecological balance.

“The strategic importance of family farming is recognised [...] in the conservation of agrobiodiversity and the environment.” (Article 3, Law No. 30355)

Likewise, Article 6, on the intercultural approach, stipulates that the State must consider the cultural diversity and the particularities of Indigenous Peoples and peasant communities. This approach strengthens the defence of biocultural values, as it protects traditional agricultural knowledge systems and promotes their articulation with public policies: “the State considers the intercultural approach, respecting the cultural diversity of the country and the particularities of indigenous, native and peasant communities.” (Article 6).

Biocultural values, understood as the interrelation between biodiversity and traditional cultural systems, find important regulatory support in Law No. 30355. Article 8 promotes agricultural research, training and extension with an approach that values local knowledge and traditional innovation, recognising the importance of this knowledge in the sustainable management of the territory.

Furthermore, by establishing a classification of family farming in Article 4, the law allows for differentiated attention that recognises the socioeconomic and cultural particularities of producers, enabling fairer and more relevant policies for those who live in and care for fragile ecosystems and areas of high cultural diversity.

Thus, Law No. 30355 not only strengthens the country's rural productive base, but also contributes significantly to the defence of territories and the protection of biocultural values, by recognising the central role of family farming in the conservation of biodiversity and ancestral knowledge. By articulating cultural rights, territorial development and environmental sustainability, this regulation embodies a strategic instrument to address the growing pressure on ecosystems and rural cultures in the current context of climate change and globalization.

6. Prior Consultation Law – Law No. 29785

The Law on the Right to Prior Consultation of Indigenous or Native Peoples, enacted on 7 September 2011, and its Regulation (DS 001-2012-MC), respond to the commitments made by the Peruvian State after ratifying ILO Convention 169, and seeks to guarantee that Indigenous Peoples can participate effectively in decisions that affect their rights, territories, ways of life and culture.

This law has been perceived as an advance, since its content develops a right that for years had neither explicit recognition nor development. However, it has also been criticised on several occasions for not being in accordance with the standards of Convention 169, for its restrictions and for not fully recognising the rights to which ancestral communities should be entitled. Even so, some articles of this law can be cited which, together with the jurisprudential development, represent legislative protections that can be invoked for the protection of territories and collective rights and for safeguarding the biocultural heritage of peoples.

Article 2 of the Right to Consultation recognises that this right applies to indigenous or native peoples with respect to legislative or administrative measures that may directly affect their collective rights, but also to national or regional projects that may generate this risk: "It is the right of indigenous or native peoples to be consulted in advance on legislative or administrative measures that directly affect their collective rights, on their physical existence, cultural identity, quality of life or development. It is also necessary to consult on national and regional development plans, programmes and projects that

directly affect these rights. The consultation referred to in this law is implemented in a mandatory manner only by the State. (Article 2, Law No. 29785)

Article 4, on the purpose of the consultation, emphasises that it must ensure respect for cultural identity and contribute to guaranteeing collective rights. This includes the protection of traditional knowledge, cultural practices, and biological resources associated with their ways of life: “The purpose of prior consultation is to reach an agreement or obtain consent regarding measures that directly affect indigenous or native peoples, ensuring respect for their cultural identity.”

Likewise, the regulation establishes that the process must guarantee access to sufficient and culturally appropriate information (Article 13), thus enabling communities to make an informed appraisal of the possible impacts on their territories and knowledge.

Article 4 of the regulation states that “the content of the legislative or administrative measure that is agreed or enacted, on which the consultation is made, must be in accordance with the powers of the promoting entity, respect the rules of public order as well as the fundamental rights and guarantees established in the Political Constitution of Peru and in current legislation. The content of the measure must comply with environmental legislation and preserve the survival of Indigenous Peoples.”

Article 6 expressly states that “(...) since natural resources, including subsoil resources, are National Heritage, the Peruvian State is obliged to consult with the Indigenous Peoples whose collective rights could be directly affected (...)”

The law does not explicitly establish what the basis for the application of the right to consultation is, however, the Constitutional Court has been clarifying this in some rulings. Thus in Constitutional Court Judgment No. 03343-2007-PA/TC, f. j. 33 establishes that “this self-determination, together with the conception that Indigenous Peoples have about the land, serves as the basis for the configuration and support of the right to prior consultation. This right, which is also a materialisation of Article 2(17) of the Constitution, is explicitly included in Articles 6 and 7 of Convention 169”. Accordingly, it is understood that prior consultation is based on the right to self-determination of peoples.

On the other hand, the law states that prior consultation must be applied not only to legislative or administrative measures, but also to development projects. Along these lines, the Constitutional Court has precedents in which it defines that “The right to prior consultation must be carried out before the State adopts decisions that enable the execution of extractive activities, insofar as they may directly affect the rights of Indigenous Peoples.” (Case No. 05436-2014-PA/TC (Lot 116 – Amazonas). However, the question of whether it should be applied before or after granting the concession is presently under debate. According to the current Constitutional Court, the concession does not generate harm “per se” to the communities and therefore cannot be considered an act that affects their right to the territory or to participation. In that sense, it requires proof of the impact beforehand, “(...) that is, when there is reasonable evidence that a situation is embodied that places at risk or that in addition to the environmental impacts could generate relevant and direct changes that produce modifications in its territory, mode and lifestyle (...)” STC. 3326-2017.

Therefore, it is essential to generate processes of prior recognition of biocultural values that determine the configuration of the territory and its conditioning with respect to the life of the communities (such as the Potato Park), since the risk or the impact on the territory and the ways of life could be argued when a concession is granted in these spaces.

In this regard, the Inter-American Court of Human Rights (IACHR) has endorsed a comprehensive criterion of indigenous territory. The judgment in the case of the Yakye Axa Indigenous Community vs. Paraguay, paragraph 146, connects the latter with the survival of the indigenous people, consequently establishing that States must take into account that indigenous territorial rights encompass a broader and different concept related to the collective right to survival as an organised people, with control of their habitat as a necessary condition for the reproduction of their culture, for their own development and to carry out their life plans. Land ownership ensures that members of indigenous communities retain their heritage.

In a megadiverse country like Peru, where indigenous knowledge and biocultural values are fundamental to environmental sustainability, this law can be used as a strategic tool for balancing

development and conservation; however, it is essential that it be complemented with conservation initiatives.

7. Law of Peasant Communities

Law No. 24656, the General Law of Peasant Communities, enacted in 1987, establishes collective rights over the territory, autonomy in internal management, and recognition of their traditional organisation.

Regarding legal recognition and communal autonomy, this law recognises peasant communities as legal entities under public law with full capacity to exercise rights over their lands, natural resources and internal organisation.

Article 2: “Peasant Communities are organisations of public interest, with legal existence and legal personality, made up of families that inhabit and control certain territories, linked by ancestral, social, economic and cultural ties, expressed in the communal ownership of the land, communal work, mutual aid, democratic government and the development of multisectoral activities, whose purposes are directed at the full realisation of their members and the country”

This article recognises that communal territory is not only an economic asset, but a collective space of historical cultural identity. Article 1 recognises their autonomy: “The State recognises them as fundamental democratic institutions, autonomous in their organisation, communal work and land use, as well as in economic and administrative matters (...)”

Communal autonomy determines the power to decide on their territory and therefore, based on this, communities could argue against activities that affect them, such as extractive projects that threaten biodiversity and collective knowledge.

The law has been amended regarding rights over the territory. Initially, the lands of peasant communities were non-transferable, imprescriptible, inalienable and unseizable. This was subsequently modified to enable the transfer of these territories with the agreement of the majority of the assembly. Article 7 of the Law of Peasant Communities currently states the following: “The lands of the Peasant Communities are those indicated by the Law of Demarcation and Titling, and are unseizable and imprescriptible. They are also inalienable. As an exception, they may be alienated, with the prior agreement of at least two-thirds of the qualified members of the Community (...)” It is also established that “The communal territory may be expropriated for reasons of public necessity and utility, after payment of the fair price in money. When the State expropriates lands from the Peasant Community for irrigation purposes, the allocation of the irrigated lands will be made preferentially and under equal conditions to the members of said Community.”

Regarding resources, Article 3 establishes that one of the principles of the peasant communities is "the defence of the ecological balance, the preservation and the rational use of natural resources”. This article promotes the sustainable use of natural resources, aligned with principles of ecological conservation. Although the law does not explicitly mention biodiversity, it can be interpreted that its protection derives from the traditional and sustainable use of the territory. This legal framework can be complemented by other regulations, such as Law No. 28350 (protection of collective knowledge) or Supreme Decree No. 002-2016-MINAGRI (Agrobiodiversity Zones), which recognise the role of communities in genetic conservation.

Regarding the implications for extractive activities, the autonomy recognised by Articles 1 and 3 can be invoked by communities that oppose mining concessions granted without their consent. In accordance with the Constitution (Article 89) and ILO Convention 169, these provisions allow for prior consultation, informed consent and respect for communal self-government. The Constitutional Court’s case law has recognised the constitutional value of these rights, in Case No. 03343-2007-PA/TC: The Constitutional Court reaffirms that the right to land is essential for the enjoyment of cultural identity and the development of peoples.

In conclusion, the Law of Peasant Communities not only establishes formal territorial rights, but also recognises the collective, cultural and historical dimension of communal territory. Its articles, although modified, provide a margin for the protection of the land and for rejecting activities incompatible with collective values. In a context of mining expansion and ecological degradation, this law still represents a

tool for communities that defend their autonomy, their knowledge and the biodiversity they have safeguarded for generations.

8. Water Resources Law (Law No. 29338)

The Water Resources Law enacted in 2009 recognises the strategic, social and cultural value of water, and establishes a legal framework that can be invoked to protect community territories, traditional water sources, and fragile ecosystems which may be threatened by activities such as extractive ones.

This law recognises water as a national asset - with Article 2 establishing that “ownership over it is inalienable and imprescriptible. It is a public asset and its administration can only be granted and exercised in harmony with the common good, environmental protection and the interest of the Nation. There is no private ownership of water”. This article is key to preventing the privatisation of water resources and strengthening the communal defence of water as a collective good.

Management is based on important principles such as integrated use and management, which considers that “water has sociocultural value, economic value and environmental value” (Article III.1); the principle of priority in access “access to water for the satisfaction of the primary needs of human beings is a priority as it is a fundamental right over any use, including in times of scarcity” (Article III.2); the principle of respect for the uses of water by peasant communities and native communities “the State respects the uses and customs of peasant communities and native communities, as well as their right to use the waters that flow through their lands, as long as this does not oppose the Law. It promotes ancestral knowledge and technology of water (Article III.5); the principle of sustainability “the State promotes and controls the sustainable use and conservation of water resources, preventing the impact on their environmental quality and the natural conditions of their surroundings, as part of the ecosystem where they are located. The sustainable use and management of water implies the balanced integration of sociocultural, environmental and economic aspects in national development, as well as the satisfaction of the needs of current and future generations” (Article III.6); and the precautionary principle which establishes that “the absence of absolute certainty about the danger of serious or irreversible damage that threatens water sources does not constitute an impediment to adopting measures that prevent their degradation or extinction” (Article III.8).

Article 3 states the integrated management of water resources to be of national interest and public necessity, for the purpose of achieving efficiency and sustainability in the management of watersheds and aquifers for the conservation and increase of water, to generate a new water culture, and to guarantee the demand of current and future generations. This would be used to challenge its priority against extractive uses such as mining**,** which cannot be favoured over social or environmental uses.

Participation in water management is provided for in Article III.3 which establishes that “the State creates mechanisms for the participation of users and the organised population in decision-making that affects water in terms of quality, quantity, opportunity or other attribute of the resource. It promotes the institutional strengthening and technical development of water user organisations”. This article strengthens the role of communities in water governance, especially in contexts where there are tensions with extractive companies.

Regarding protection, Article 75 asserts that the State, through the National Water Authority (ANA), must ensure the conservation and protection of its sources and ecosystems, and is obliged to exercise surveillance and control in order to prevent and combat the effects of pollution of the sea, rivers and lakes insofar as this is under its responsibility. A key issue is that it points out that "The State recognises watersheds where rivers or streams originate as environmentally vulnerable areas. The National Authority, with the opinion of the Ministry of the Environment, may declare intangible zones in which no rights are granted for the use, disposal or discharge of water”. This article has been complemented by Law No. 30640, amending the Water Resources Law (Law No. 29338). This regulation incorporates the establishment of technical criteria for the identification and delimitation of watersheds, in order to evaluate the implementation of special measures for their protection and conservation according to their vulnerability. This regulation is crucial to protect watershed and fragile ecosystems, especially from megaprojects that affect them, such as dams, roads or mining activities, among others.

Finally, the connection with collective and territorial rights is expressed in Article 64, in which the "State recognises and respects the right of peasant communities and native communities to use the waters existing in or flowing through their lands, as well as the watersheds from which said waters originate, for economic, transportation, survival and cultural purposes, within the framework established in the Political Constitution of Peru, the regulations on communities and the law."

Peru's Water Resources Law provides important instruments for the defence of collective rights, communal territory and biodiversity, especially in contexts of water conflict. The recognition of water as a public good, the protection of fragile ecosystems, and community participation in water management are pillars that allow communities to actively defend their territories and ways of life against projects that place these common goods at risk.

9. Law establishing the System for the Protection of the Collective Knowledge of Indigenous Peoples Linked to Biological Resources

Law No. 27811, enacted in 2002, establishes a system of protection of the collective knowledge of the Indigenous Peoples of Peru related to biological resources. This regulation arises in response to the growing threats of biopiracy, misappropriation of ancestral knowledge, and extractive economic activities that violate the collective rights of Indigenous Peoples. Its application not only protects traditional knowledge, but also strengthens the legal link between culture, territory and biodiversity, by recognising the indivisibility between these elements. This legal framework establishes rules for the use, preservation and fair distribution of benefits. It recognises that this knowledge cannot be separated from the territory, cultural practices and worldview of the native peoples.

This law begins by acknowledging the rights of peoples and communities over their knowledge. Article 1 states that "the Peruvian State recognises the right and power of Indigenous Peoples and communities to decide on their collective knowledge."

Article 5 establishes the main objectives of this law, among which the following can be highlighted: "to promote respect, protection, preservation, wider application and development of the collective knowledge of Indigenous Peoples", and, "to promote the fair and equitable distribution of the benefits derived from the use of this collective knowledge."

Article 10 defines ownership of collective knowledge, establishing that "Collective knowledge protected under this system is that which belongs to an indigenous people and not to specific individuals who are part of said people. They may belong to several Indigenous Peoples." "Because they are part of their cultural heritage, the rights of Indigenous Peoples over their collective knowledge are inalienable and imprescriptible" (Article 12). This recognition strengthens collective rights over territory and knowledge, preventing their fragmentation or appropriation by third parties.

Regarding prior informed consent, Article 6 establishes that "those interested in accessing collective knowledge for scientific, commercial and industrial application purposes must request prior informed consent from the representative organisations of the Indigenous Peoples who possess collective knowledge."

Through the development of its content, Law No. 27811 recognises the indigenous worldview, where there is no separation between nature, culture and spirituality. From this perspective, knowledge cannot exist without the territory in which it is produced and applied. The conservation of resources such as seeds, medicinal plants, soils and water is directly associated with the maintenance of traditional knowledge and this will allow for legal resistance to the expansion of mining, hydrocarbon or agro-industrial projects that affect the biodiversity used and valued by the communities.

Despite its normative value, Law No. 27811 faces implementation challenges such as limited access for communities to legal information and technical support for registration; difficulties in intercultural articulation with the State; and threats of extractive expansion in indigenous territories. It is necessary to strengthen community autonomy and governance capacity, ensure the full implementation of consent mechanisms, and promote the valuation and revitalisation of traditional knowledge.

10. Law for the Protection, Conservation and Sustainable Use of Wetlands in National Territory

The recently enacted Law No. 32099 (01/07/2024), “Law for the protection, conservation and sustainable use of wetlands in national territory”, represents a significant advance in the protection of these critical ecosystems. This standard recognises the fundamental role of wetlands in water regulation, biodiversity conservation, and the support of local communities. Furthermore, it promotes community participation in the management of these spaces and prioritises conservation over other economic uses.

Wetlands are strategic ecosystems that fulfil fundamental functions for water regulation, biodiversity conservation, and the sustenance of local and indigenous communities. Recognising the vulnerability of wetlands to climate change, pollution, and the advance of extractive activities, this law was enacted to guarantee their protection, conservation, and sustainable use.

Law No. 32099 aims to “Establish the regulatory framework to guarantee the protection, conservation and sustainable use of wetlands, in accordance with international treaties and national environmental regulations” (Article 1). Wetlands include “mangroves, lagoons, estuaries, coastal lagoons, deltas, swamps, lakes, marshes, bogs, springs, puquios [ancient systems of subterranean aqueducts which allow water to be transported over long distances in hot dry climates with low water loss to evaporation], peat bogs and moorlands, among other ecosystems identified as such by the National Wetlands Strategy” (Article 1.3). This definition encompasses many cultural and sacred ecosystems for Indigenous Peoples and peasant communities, such as the Andean wetlands, which are vital for high Andean livestock and water regulation.

Article 2 discusses the intercultural approach, stating that “wetland management is developed within the framework of recognising, respecting and valuing different cultural visions, conceptions of well-being and development of the various ethnic-cultural groups, to guarantee the preservation of traditional knowledge in the management and use of wetland components ...”

This article is key to linking the law with collective rights, recognising the biocultural dimension of the territory and enabling defence actions on behalf of the ancestral value of these ecosystems.

The law can be used by indigenous and peasant communities to prevent the expansion of extractive projects (mining, hydrocarbons, monocultures) that intend to operate in Andean, Amazonian or coastal wetlands; demand stricter environmental impact assessments in wetland areas; and initiate processes of legal recognition of wetlands of cultural value as “communal conservation areas” or “agrobiodiversity zones”.

Despite its progress, it still has to overcome several obstacles: lack of resources to implement environmental records, monitoring and surveillance; poor coordination between the State and local communities; and pressure from extractive interests in wetlands located in high Andean or Amazonian areas. However, its recognition of the cultural, spiritual and ecological values of wetlands allows it to be used as a legal basis for community defence actions, and as a complement to prior consultation processes, territorial self-demarcation, and even climate litigation.

To conclude this chapter, it is crucial to note that Peru has a relatively broad legal framework for the protection of community territories, biodiversity, biocultural values and collective rights. However, the effective implementation of these regulations faces significant challenges, including overlapping rights, weak environmental institutions, and socio-environmental conflicts. The full implementation of these laws requires political will, reinforced local capacity-building, and the real recognition of Indigenous Peoples and peasant communities as key actors in biodiversity conservation and the fight against climate change. It is important to keep in mind that initiatives stemming from civil society are essential to take advantage of this vast but scattered and disorganised set of environmental regulations, in favour of human and environmental rights, both collective and individual, and the rights of nature itself.

Relevant case law

La Oroya Case, Inter-American Court of Human Rights

In addition to the analysis that has been carried out on the existing legislation for the regulation of collective, territorial and environmental rights, it is necessary to review the case law.

Case law is the interpretation of the law that emanates from final and repeated judgments of the judicial courts, especially the superior courts, as in the case of the Inter-American Court of Human Rights. This interpretation becomes mandatory in similar cases and forms a guide for the uniform application of the law.

For the topic at hand, we believe it is essential to review the ruling in the case of the inhabitants of La Oroya vs. Peru, in which the Inter-American Court of Human Rights declared the State of Peru's international responsibility for the violation of the rights to a healthy environment, health, personal integrity, dignified life, access to information, political participation, judicial guarantees and judicial protection to the detriment of the 80 victims of the case; for the violation of the rights of children, to the detriment of 57 victims, and for the violation of the right to life, to the detriment of two victims. La Oroya is a city and mining centre in the Junin region of the Andes, located in central Peru about 176 km northeast of Lima.

In a context of expanding extractive activities and deteriorating ecosystems, the Inter-American Court of Human Rights (hereinafter, IACHR) has played a central role in assessing environmental law with a human rights approach. The ruling issued in the La Oroya case reflects the consolidation of this process, by recognising that environmental pollution not only embodies an ecological impact, but also a multiple and systematic violation of fundamental rights of the affected people and communities. This ruling constitutes a normative milestone for the protection of human rights in contexts of serious environmental impact. It consolidates fundamental principles related especially to the right to a healthy environment, and how this determines the fulfilment of other human rights, such as health, personal integrity, a dignified life, and also the collective rights of ancestral peoples, and the preservation of nature itself, vindicating ecocentric visions. All these approaches become fundamental in contexts of climate crisis like the one we are currently experiencing worldwide.

Regarding the right to a healthy environment

The Court establishes that this right is of an autonomous nature and is protected by Article 26 of the American Convention, within the framework of the integral development of peoples (paragraph 115). Furthermore, it highlights that it is a universal and cross-cutting right, recognised by international treaties, national constitutions and United Nations bodies (paragraphs 116-117).

The content of the right includes two components: a substantive one (air, water, food, ecosystems, climate) and a procedural one (access to information, participation and environmental justice) (paragraph 118).

Among the substantive elements, the Court emphasises that natural elements such as forests and rivers must be protected not only for their instrumental value, but for their intrinsic value: "(...) in this way, States are obliged to protect nature not only for its usefulness or effects with respect to human beings, but for its importance for the other living organisms with whom the planet is shared" (paragraph 118).

The Court recognises that the pollution of some of these elements such as air and water directly affects rights such as health, a dignified life and food. "The Court warns that air and water pollution can constitute a cause of adverse effects for the existence of a healthy environment (...) and can have consequences for the health and living conditions of people. In this sense, pollution can affect rights such as a healthy environment, life, health, food, and a dignified life when it produces significant damage to the basic goods protected by these rights" (paragraph 119). Accordingly, it can be deduced that aspects such as food security are closely linked to the integrity of ecosystems, the quality of the soil, water and air.

Likewise, the right to water as an autonomous right, in particular, and as part of the right to a healthy environment, implies that States must guarantee access to quality water resources, which are

fundamental for food production (paragraphs 122-124). "States must take actions to ensure the sustainable management of water resources" and also guarantee that "(...) People have the right to water that is free from levels of contamination that constitute a significant risk to the enjoyment of their human rights" (paragraph 121).

The Court reiterates that access to water, food and health constitute essential conditions for a dignified life (paragraph 221), but at the same time specifies that water determines the fulfilment of other rights: "In this regard, the Court noted that this includes the right to a healthy environment (paragraph 115 above), the right to adequate food, the right to health, and the right to participate in cultural life, which are protected by Article 26 of the Convention" (paragraph 122). It points out, for example, that health requires certain mandatory preconditions for a healthy life, and is therefore directly related to access to food and water.

However, beyond this perspective of water as a substantive right, the Court emphasises that this resource's protection must be guaranteed, ensuring an essential minimum to preserve it; thus, the Court considers that the substantive aspect of the right to a healthy environment protects this component as part of an ecocentric premise: "States must provide protection against acts of individuals, so that third parties do not undermine the enjoyment of the right to water, as well as guarantee an essential minimum of water" (paragraph 123).

Regarding damage or possible impacts on the environment. The Court has indicated in this judgment that States have the duty to prevent environmental damage (paragraphs 125-126): "(...) has emphasised that the principle of prevention of environmental damage is part of customary international law. This principle entails the obligation of States to carry out the necessary measures ex ante, before the production of environmental damage, taking into consideration that, due to its particularities, it will frequently not be possible, after such damage has occurred, to restore the pre-existing situation" (paragraph 125) .

In addition to acting in accordance with the precautionary principle: "this principle refers to the measures that must be taken in cases where there is no scientific certainty about the impact that an activity may have on the environment. The Court has understood that States must act in accordance with the precautionary principle for the purpose of protecting the right to life and personal integrity, in cases where there are plausible indicators that an activity could cause serious and irreversible damage to the environment, even in the absence of scientific certainty" (paragraph 127). These two principles are in line with guaranteeing intergenerational equity (principle 128), that is, ensuring decent living conditions for future generations as well.

Regarding collective rights and the role of communities in environmental protection

One of the main contributions of the Inter-American Court of Human Rights in this ruling is the reaffirmation of the right to ancestral territory of Indigenous Peoples and tribal or peasant communities linked to the protection of the environment. Paragraph 3 states that "(...) the Court has considered that the right to collective ownership of these peoples is linked to the protection and access to the resources found in their territories, since these natural resources are necessary for the very survival, development and continuity of the lifestyle of the peoples, also recognising the close link between the right to a dignified life and the protection of ancestral territory and natural resources". This acknowledges that access, use and control of natural resources is not only a matter of material survival, but also of cultural continuity and identity.

The Court recognises that these peoples have historically faced processes of territorial dispossession and environmental degradation, which violate not only the right to collective property, but also related rights such as the right to a dignified life, to cultural identity, and to political participation (paragraphs 18 and 25). Consequently, it establishes two fundamental guarantees for the protection of their rights: 1) The mandatory performance of environmental and social impact studies before granting any concession in their territories; and 2) The need to reconcile environmental conservation policies with respect for traditional uses and customs (paragraph 18). This approach recognises the interdependence between human rights and the environment, and positions communities not as obstacles to development, but as key actors in its sustainable management.

The right to collective ownership of territory is recognised as a cross-cutting axis of the protection of Indigenous Peoples and tribal communities, especially because it is linked to the natural resources that determine their survival, ways of life and dignity: "(...) in effect, the Court has considered that the right to collective ownership of these peoples is linked to the protection of and access to the resources found in their territories, since these natural resources are necessary for the very survival, development and continuity of the lifestyle of the peoples, also recognising the close link between the right to a dignified life and the protection of ancestral territory and natural resources" (paragraph 3). Consequently, it is recognised that this right implies not only formal ownership, but also effective access to and sustainable use of resources.

In analysing the case of La Oroya, the Inter-American Court of Human Rights reaffirms precedents such as those of the Saramaka and Sarayaku cases, which establish the importance of appropriate environmental and social impact studies, without which concessions cannot be granted in these territories: "(...) in this way, in both the Saramaka and Sarayaku cases, the Inter-American Court consolidated the criterion that carrying out such studies constitutes one of the safeguards to guarantee that the restrictions imposed on indigenous or tribal communities regarding the right to property by the issuance of concessions within their territory do not imply a denial of their subsistence as a people. In that regard, the Inter-American Court of Human Rights established that States must guarantee that no concession will be issued within the territory of an indigenous community until independent and technically capable entities, under the supervision of the State, carry out a prior social and environmental impact study" (paragraph 21).

The Inter-American Court of Human Rights has held the view that, in principle, there is compatibility between protected natural areas (as a form of environmental conservation promoted by States) and the right of indigenous and tribal peoples to the protection of natural resources on their territories, highlighting that these peoples can contribute significantly to conservation due to their interrelation with nature and ways of life (paragraph 24). It refers to the principle of compatibility between these protected areas and territorial rights, emphasising that communities can and should participate in the conservation of ecosystems and that this vision of protection should be considered a priority by States to avoid incompatibilities when carrying out actions.

The Court recalled this from the case of the Indigenous Peoples Xákmok Kásek vs. Paraguay, where it was argued that the establishment of protected areas by the State caused limitations on the territorial rights of this indigenous community. In this regard, the Court determined that "[...] the State should adopt the necessary measures so that [its internal legislation relating to a protected area] would not be an obstacle to the return of traditional lands to the members of the Community". Complementing the above, in the case of Kaliña and Lokono vs. Suriname, the Inter-American Court of Human Rights stated "The Court considers it relevant to refer to the need to reconcile the protection of protected areas with the proper use and enjoyment of the traditional territories of Indigenous Peoples. In this sense, the Court considers that a protected area consists not only of the biological dimension, but also of the sociocultural dimension and that, therefore, it incorporates an interdisciplinary and participatory approach. Hence, Indigenous Peoples can generally play a relevant role in nature conservation, given that certain traditional uses involve sustainability practices and are considered fundamental to the effectiveness of conservation strategies. Therefore, respecting the rights of Indigenous Peoples can have a positive impact on environmental conservation. Thus, the rights of Indigenous Peoples and international environmental standards should be understood as complementary and not mutually exclusive rights" (paragraph 23).

Finally, this ruling refers to a very important issue, which had not been addressed previously, the issue of Public Utility, a concept mainly associated with extractive projects, which are imposed by reason of this concept. However, the Inter-American Court of Human Rights clearly establishes that "environmental protection can be a cause of public utility, which can justify the motive and purpose of an expropriation, in relation to the deprivation of the right to private property". This seems extremely useful to us, insofar as it allows us to challenge this concept that has been assigned in Peru, normally to extractive activities such as mining, and to demand its application to matters such as environmental protection, because it is of general interest or benefit to society, not only in the present but future, and even more so to humanity in general.

Thus, the judgment of the Inter-American Court of Human Rights in the La Oroya case sets a decisive precedent in inter-American case law, by comprehensively articulating environmental, territorial and social rights. For Indigenous Peoples and peasant communities, this ruling not only represents a legal tool for protection, but also a framework for recognising their role in nature conservation and guaranteeing sustainable development. The holistic approach adopted by the Court, based on the principles of prevention, participation, precaution and intergenerational equity, constitutes a fundamental guide for States in the design of public policies that respect human rights in contexts of climate crisis and environmental degradation.

The Court recalled that, within the framework of the State's general obligations arising from Article 1.1 and 2 of the American Convention, States have the duty to prevent human rights violations produced by public and private companies, and, therefore, must adopt legislative and other measures to prevent them.

Chapter III. Analysis of the applicability of legal frameworks to the protection of communal territories

It is important to conduct a critical analysis of the regulations governing environmental, collective and conservation rights (including case law) regarding their applicability in a context where economic activities such as extractive activities are prioritised as State policies. We analysed the situation mainly in relation to mining, which is the priority activity in the country, especially in the southern Andean territories.

The Constitution establishes the general framework for mining activity, recognising the State's role in the administration of natural resources, but also facilitating their exploitation by private individuals. Article 66 stipulates that "Natural resources, both renewable and non-renewable, are National Heritage. The State is sovereign in their use. The conditions for their use and granting to private individuals are established by organic law." This article is fundamental, since it gives the State the power to decide on the fate of natural resources, for example mining, without considering the consultation of ancestral peoples when the resources are located in their territories. Although the Constitution establishes that they are National Heritage, procedures for citizen or community participation should be allowed when other rights are involved.

Article 62 of the Constitution establishes that "Freedom of contract guarantees that the parties can validly agree according to the rules in force at the time of the contract. The contractual terms cannot be modified by law, without prejudice to public safety measures." This article, while not explicitly referring to mining, has a significant impact, as it provides legal certainty to investors and stability to mining contracts, limiting the State's ability to change the rules of the game.

Article 70 regulates ownership: "The right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good and within the limits of the law. No one may be deprived of their property except for reasons of national security or public necessity, declared by law, and upon prior payment in cash of a fair compensation price that includes the damage."

However, the Consolidated Text of the **General Mining Law** (Supreme Decree No. 014-92) establishes that mining activity is of "public utility and national interest" (Article V).

In practice, the concepts of "Public Utility / Public Necessity / National Interest and Public Necessity" tend to be standardised. This has important implications:

- It prioritises mining activity: it gives mining preferential status over other land uses, which may limit the ability of authorities to set conservation restrictions or priorities.
- It facilitates expropriation or mining easements: it allows the State to expropriate surface lands required for mining activity, or to impose so-called mining easements, even if they are owned by peasant or native communities. Although the Constitution requires fair compensation, the process can generate conflicts and affect the territorial rights of these communities.
- It weakens territorial planning: it hinders long-term territorial planning, since mining activity can take precedence over other land uses defined by communities or local governments.

Similarly, the General Mining Law develops the constitutional principles and establishes the specific rules for mining activity. Article 19 defines a mining concession as a real right, which grants the holder broad power over the concession area and facilitates long-term investment: "A mining concession grants its holder the right to explore and exploit the granted mineral substances, within a solid of indefinite depth, limited by vertical planes corresponding to the sides of a square, rectangle or closed polygon, whose surface is expressed in hectares or fractions of a hectare."

In turn, the **Mining Concessions Law** complements the General Mining Law and establishes:

- Expedited procedures for granting concessions, which facilitates access to mining activity.

- Very specific and limited grounds for the termination of concessions, which provides legal certainty to investors. No grounds for revocation are contemplated.
- That the exploitation and exploration is a joint concession and grants the right of exploitation with the sole requirement of submitting an Environmental Impact Study that is proposed by the companies holding the concession; and gives preferences regarding the use of resources such as surface and groundwater.

The Mining Concessions Law simplifies the procedures for obtaining concessions and protects the rights of concession holders, which encourages investment, but it can limit the State's ability to regulate the activity and protect the rights of communities and the environment.

Peruvian legislation only establishes some restrictions on mining activity in certain places:

- Protected Natural Areas (PNAs): in general, mining is prohibited within Protected Natural Areas, but there are exceptions and overlaps that generate controversy
- Archaeological Zones: mining activity is restricted in archaeological zones, but the lack of precise delimitation of these zones can generate conflicts
- Border Zones
- Tourist Reserve Zones.

Beyond these exclusions, others are not considered, thus ignoring laws related to territorial rights of peasant or native communities, laws that protect fragile ecosystems, water sources and cultural heritage. In this scenario, it is less likely that communal conservation areas can be considered and made to prevail; therefore, the possibility of disputing them jurisdictionally should be considered.

There is strong criticism regarding the environmental requirements for carrying out mining activity, as they are considered to be extremely lax and ineffective in guaranteeing environmental protection. For example:

- Environmental Impact Assessments (EIA): an Environmental Impact Assessment is required to authorise the start of mining operations. However, the main observations made regarding these instruments are that: 1) They are proposed by the same owners of these activities, which does not guarantee objectivity in their results; 2) The quality of citizen participation in them is highly questionable since it is not binding; there is an information asymmetry due to the technical language used and the lack of translation into the communities' own languages; the participation of the population is late, after decisions have already been made; the opinions of vulnerable populations (women, indigenous people, youth) are not taken into account; and there are pressures that limit freedom of participation; among other problems. Furthermore, the regulations concerning this participation have not been aligned with those for Prior Consultation, so on numerous occasions, companies fail to comply with this right and communities must demand it in order for it to be applied.
- Environmental Management Plans: management plans are needed to mitigate the impacts of mining activity, but their compliance and oversight are defective.
- Environmental Quality Standards (EQS): standards exist to protect water and air quality, but their application and enforcement are problematic and not very demanding.

Concerning these environmental demands, laws that protect biodiversity, community territories, and even less so laws that protect collective rights are not taken into account. In addition, there are other laws that strengthen the protection of mining activity such as the **Law for the Promotion of Private Investment (Legislative Decree 708).** This law seeks to attract capital to the mining sector by offering incentives and guarantees to investors:

- Legal stability: legal stability guarantees are offered to protect investors from changes in legislation
- Tax incentives: tax benefits are granted to reduce investment costs
- Administrative facilities: the procedures for obtaining permits and concessions are simplified.

While promoting investment is important, these incentives have created an imbalance, prioritising the interests of companies over protecting the environment and the rights of communities.

This scenario creates tension between promoting investment and protecting other important values. The declaration of public utility, the limitations in exclusion zones, the weaknesses in environmental requirements, and the investment incentives create a context that favours mining activity, but also poses challenges for sustainability and social justice.

Possibility of territorial protection proposals

Peru is a pluricultural and megadiverse country, whose biocultural heritage is closely linked to the communal territories of Indigenous Peoples and peasant communities. These territories not only constitute spaces of life, identity and spirituality, but also reservoirs of biodiversity, traditional knowledge and sustainability practices. Extractive activities, especially mining and hydrocarbon exploitation, have generated serious environmental, social and cultural impacts, violating fundamental rights. Therefore, it is important to coordinate existing regulatory frameworks and insist on territorial and biocultural protection, asserting the self-determination of communities.

The economic model based on resource exploitation, and the policies and regulations that are part of it, constitute a major obstacle to achieving this goal. However, there is still the possibility of contesting territorial, environmental and collective rights protections, not only based on the rights that communities possess, but also on the State's own objectives in relation to sustainability and response to the global environmental crises faced by States.

Therefore, it is essential to take into account the following legal aspects:

1) Normative hierarchy and application.

- Constitution as Supreme Law: the Political Constitution of Peru is the fundamental law. International treaties and agreements ratified by Peru have constitutional status and, accordingly, are above ordinary laws. This means that mining and investment laws must be interpreted and applied in accordance with the Constitution and treaties.
- Ordinary Laws: laws such as the General Environmental Law, the Law of Prior Consultation, the Law of Peasant Communities and the Resources Law, among others, develop the rights and principles established in the Constitution and must be consistent with international treaties. It is necessary to demand their application and, if necessary, their legal weighting against other economic regulations.

2) Counterweight mechanisms against extractive activities.

- Invocation of Fundamental Rights: the Constitution recognises fundamental rights that may limit mining activity. For example:
    - The right to a healthy and balanced environment (Article 2(22) can be used to challenge mining projects that generate pollution or environmental degradation.
    - The collective rights of peasant and native communities (Article 89) can be invoked to protect their territories and ways of life against mining expansion.
    - Constitutional protection actions can be used to assert these rights when they are not being respected.
- Application of ILO Convention 169: convention 169 is a binding treaty that recognises the rights of indigenous and tribal peoples.
    - The right to prior consultation (Article 6) can be exercised before decisions on mining projects that affect communities.
    - Land and territory rights (Article 13(2), 14(1)) can be used to protect the ancestral territories of communities against mining activity.
- Use of the General Environmental Law: this law establishes principles and mechanisms for environmental management that could limit mining activity.
    - The precautionary principle (Article VII) enables questioning mining projects that represent a risk of serious or irreversible environmental damage.

    - Environmental land-use planning (Article 19) can be used to organise the territory in such a way as to protect sensitive areas and limit mining activities in incompatible zones.

- Protection of Biodiversity and Agrobiodiversity:
    - The Law on the Conservation and Sustainable Use of Biological Diversity and the Convention on Biological Diversity1 (CBD) can be used to protect fragile ecosystems, threatened species and traditional knowledge associated with biodiversity.
    - Regulations that recognise agrobiodiversity zones can protect specific territories where native crops and traditional agricultural practices are preserved, limiting the expansion of mining in these areas.
- Defence of Water Resources:
    - The Water Resources Law establishes the priority of water use for basic human needs and the protection of water sources. This can be used to challenge mining projects that put communities' water supply at risk.
- Considerations on Climate Change:
    - The Paris Agreement and national climate change regulations can be used to challenge mining projects that significantly contribute to greenhouse gas emissions or that affect communities' ability to adapt to climate change.

Protection instruments and limitations

Different instruments can be developed to protect biocultural territories:

- Participatory zoning and declaration of protected spaces: initiatives can be developed to declare intangible community and agrobiodiversity zones, based on exemplary model of the “Potato Park”
- Enhanced environmental assessment: invoke in Environmental Impact Studies the inclusion of a biocultural component and the binding approval of the communities based on Convention 169 and the Agrobiodiversity Zones that may be promoted
- Registration of community biocultural heritage: preparation of an inventory of knowledge and community management resources based on existing regulations
- Instruments of community jurisdiction: implementation of Free and Informed Prior Consultation from the communities, and protocols for the use of biocultural heritage, among others.

Despite this, it may be extremely difficult to uphold environmental and collective rights. Nevertheless, it is essential to continue promoting them in a way that places the spotlight on these struggles and resistance against policies to generate objective and concrete impacts, not only for communities but also for the environment in which we live.

These instruments face several limitations and challenges in this context:

- Political will: the effectiveness of these instruments depends largely on the political will of the State to implement and enforce them
- Correlation of forces: the pressure of economic interests and institutional weakness can limit the ability of communities and civil society to assert their rights
- Legal loopholes and contradictions: the Peruvian legal framework may have gaps, contradictions, or overlaps that hinder the effective protection of the rights of communities and the environment
- Power asymmetry: the existing power imbalance between mining companies and local communities makes it difficult to negotiate and defend the rights of the latter.

Chapter IV. Summary of findings

Since the 1970s, Peru has adopted a policy of endorsing international commitments on sustainable development, environmental protection and collective rights, such as ILO Convention 169, Agenda 21, the Convention on Biological Diversity (CBD), among others. However, this international orientation has contrasted sharply with the internal normative and political reality, where the extractive economic model and the lack of a comprehensive approach have weakened efforts to protect territories, biodiversity and the rights of communities. From the study and analysis carried out in this work we can conclude on the following findings:

Regulatory fragmentation and lack of legal coherence

As has been observed, the Peruvian legal system contains many environmental regulations, but their dispersion and lack of coordination limit their effectiveness. According to De Echave (2016), this fragmentation prevents an integral approach to the protection of ecosystems and Indigenous Peoples. For example, although there are laws that recognise the need to incorporate an environmental approach into all public policies (Law No. 28611 – General Environmental Law), their actual application is marginal compared to the State's strategic decisions, such as the prioritisation of mining as a central economic activity.

This regulatory inconsistency has not only weakened environmental institutions, but has also contributed to the lack of protection of collective rights. Lacking a legal system that interweaves human, environmental and cultural rights, communities, especially indigenous and peasant communities, are deprived of effective tools to defend their territories against investment projects.

The extractive model as the prevailing model in the country

Since the enactment of Legislative Decree 708 (Investment Promotion Law) in 1992, extensive tax, foreign exchange and administrative benefits have been granted to mining companies. This law, still in force, has facilitated the advancement of extractive projects without appropriate counterweights in terms of environmental and collective rights (Bebbington & Bury, 2013). Although mining has contributed significantly to Gross Domestic Product (GDP) and tax revenue, social and ecological costs have been ignored in decision-making.

The current constitutional framework establishes that natural resources are National Heritage (Article 66 of the Constitution), with the State being responsible for their harnessing. This centralist approach has marginalised local communities from control over their ancestrally managed resources, eliminating any real possibility of territorial governance from a local level.

The Law on Free and Informed Prior Consultation (Law No. 29785), enacted in 2011, has been a formal step towards the recognition of the rights of Indigenous Peoples. However, its implementation has been flawed; the process has been reduced to a non-binding procedural mechanism; the State has restricted its application to Amazonian communities officially registered in the Ministry of Culture's database and has not developed the procedure for free, prior and informed consent. This contradicts the international standard established by the Inter-American Court of Human Rights (IACHR) which, through rulings such as the case of Saramaka vs. Suriname, requires that the consultation be prior, free, informed, culturally appropriate and with the objective of reaching an agreement or consent (IACHR, 2007). All of this has weakened the right to self-determination and eroded traditional forms of territorial management, undermining deeply rooted cultural, spiritual and ecological values.

Ignored international case law and the denial of consent

In the case of La Oroya vs. Peru, the Court affirmed that a healthy environment is a condition for the exercise of human rights. However, the Peruvian State continues to make decisions that are not compliant with these standards. Mining concessions are granted without real consultation, and communities are only informed upon the approval of the Environmental Impact Study. This violates the right to effective participation and denies the possibility of objecting to projects that threaten their way of life.

Exclusion from local resource management and loss of biocultural values

The current environmental governance model has excluded communities from territorial planning, resource management, and strategic decision-making mechanisms. Local, regional, provincial and district authorities lack real power to stop mining or hydrocarbon concessions in their jurisdictions, consolidating a vertical and extractive model of development. This has had devastating effects on the biocultural values of the people involved. The loss of access to territories and the pollution of rivers, soils and ecosystems are causing an erosion of ancestral knowledge, a loss of agroecological practices and a breakdown of their spiritual relationship with nature (Toledo & Barrera-Bassols, 2008). Far from being considered key players in conservation, Indigenous Peoples are seen as obstacles to economic development.

Sustainability as a principle absent in practice

Although official discourse alludes to sustainability, in practice this principle does not guide public policies. There are no solid environmental institutional frameworks or integrated territorial planning mechanisms that include environmental, cultural and social variables. The absence of a cross-sectoral approach in environmental management limits the effectiveness of protecting ecosystems and biocultural heritage. As the United Nations Development Programme, UNDP (2022), points out, sustainability requires coordination between sectors, suitable resources and political will, elements that are currently scarce in Peru.

Challenges for a transition towards a sustainability approach

Although Peru has ratified environmental treaties and participated in global summits, its domestic policy continues to prioritise the economic over the ecological and cultural. The legal framework lacks a cross-sectoral approach that links sustainability with respect for cultural diversity and territorial rights. Furthermore, the State has not developed financial, technical or institutional mechanisms to empower communities in environmental management.

In this context, promoting a genuine approach to sustainability involves recognising the centrality of communities in biodiversity conservation and land management, implementing a reform of the regulatory and institutional framework, and strengthening mechanisms for participation and binding consent. It is also necessary to incorporate interculturality as a cross-cutting theme in all decisions on development and investment.

Community territorial resilience in Peru

Despite the extractive development model, fragmented environmental legislation and a lack of political will to promote community-led territorial governance, significant experiences of territorial protection and biocultural conservation led by communities have emerged. Through a normative analysis and case study, it is argued that legal instruments such as ILO Convention 169, the Peruvian Constitution and laws on biodiversity enable opening paths to strengthen territorial autonomy and local resource management, with examples such as the Potato Park being key to thinking about new forms of management of biocultural territories and sustainability from a local level.

Determinant global standards

Peru has signed and ratified a series of international commitments aimed at promoting sustainable development, biodiversity conservation and the recognition of the collective rights of Indigenous Peoples. These commitments are mostly binding, so it is appropriate to invoke them, apply them or demand their enforcement.

Currently, there are experiences led by indigenous and peasant communities that have managed, based on these international commitments, to establish innovative mechanisms to protect their territories and preserve their biocultural values, also strategically using various existing regulations.

Useful legal tools

Peru has certain legal instruments that, although they are quite underutilized, can be used by communities to promote the protection of their territories. These include: The Political Constitution of Peru, which in its article 89 recognises the autonomy of peasant and native communities over their lands; Law No. 26839 on the Conservation and Sustainable Use of Biological Diversity, which promotes the in situ conservation of biological resources in territories of Indigenous Peoples; and Supreme Decree No. 002-2021-MINAM, which creates the legal framework for the recognition of Agrobiodiversity Zones, spaces where native varieties, traditional knowledge and cultural practices associated with agricultural biodiversity are conserved.

These regulatory frameworks, although not widely implemented by the State, represent key opportunities for communities to promote self-management and territorial defence processes and strengthen community autonomy, asserting their own rules to regulate the use of land, seeds and knowledge. The case of the Potato Park (Pisaq, Cusco) has been one of these experiences that articulates legal tools with local knowledge, generating a proposal to protect the territory while simultaneously conserving biodiversity and strengthening its cultural identity.

Opportunities to replicate experiences from a community-based territorial approach

The experience of the Potato Park is not an isolated case. In regions such as Cajamarca, Ayacucho, Puno and Amazonas, processes of recognition of other Agrobiodiversity Zones and Communal Conservation Areas (ACC) are being fostered. These processes show that there is a real interest and ability of the communities to manage their territories in a comprehensive way. However, its expansion faces structural obstacles such as:

- The prioritisation of mining and hydrocarbons as the country's main economic activities, which limits secure access to lands and territories.
- The lack of coherent public policies that integrate conservation, food security, intercultural education and the recognition of territorial rights.
- The limited State investment in strengthening community capacities and local institutions for environmental governance.

In response to this, a community strengthening strategy based on the legal recognition of biocultural territories can be key to ensuring genuine sustainability. Creating more areas like the Potato Park, based on collective rights and biological diversity, could lay the foundation for a new model of territorial development in the country. The following are some suggested strategic actions.

Chapter V. Strategies for the development of biocultural protocols, defence of rights and regulatory reform

1. Strengthening community governance

1.1 Strengthening of communal statutes

Communal statutes embody the right to self-government and are fundamental instruments for regulating internal affairs, land management, resource protection and use, and collective decision-making within the community. In a context where the territories and culture of communities are seriously threatened by factors that confront their existence - such as the increasingly forceful “development” models that disregard the people's worldview, harmony with nature and community life, or climate change that jeopardizes food sovereignty, access to basic resources like water, and sustainable ways of life - communal statutes, as a management tool, must be adjusted and adapted to address these problems. In this regard, it is essential to incorporate specific provisions, particularly regarding the following aspects:

On the protection of community heritage

It is necessary for these statutes to establish concrete “principles” that define the community’s central purpose: the protection of community heritage**,** understood as the inseparable set of knowledge, cultural practices, traditions, forms of spirituality, languages, ways of life and relationships with nature that peoples have developed over time in a specific territory.

The principle of protecting biocultural heritage is based on the provisions of ILO Convention 169, the Political Constitution of Peru, and other related regulations that recognise the right of ancestral peoples and communities to conserve and control their territories, natural resources, traditional knowledge and ways of life, and which today, in these contexts, is essential and vital to defend. This report includes a proposed clause for the recognition of Biocultural Heritage, see ANNEX 1.

Regarding the prohibition of activities that threaten biocultural heritage

It is important to discuss the incorporation within these statutes of clauses that establish the prohibition of activities that are contrary to community principles, particularly that of “protection of biocultural heritage”, considering that they are incompatible with the integral protection of ways of life, culture, spirituality or the preservation of nature. A clause that incorporates the prohibition of activities must be based not only on the collective rights of communities, but also on the need to preserve biocultural heritage as a fundamental element to ensure life. A proposal for a ban on extractive activities is attached in ANNEX 2.

Regarding the exercise of the right to consent

Free, prior and informed consent (FPIC) is a collective human right which is especially relevant for indigenous and peasant communities. This principle ensures that communities have the autonomy and power to make informed decisions about any project, initiative or legislation that may directly affect their rights, territory or resources. Free, prior and informed consent is held by the community or collective, therefore this right implies the power to exercise it directly. Free, prior and informed consent is not a state procedure but a collective right recognised internationally and constitutionally. Accordingly, communities have full legal capacity and legitimacy to initiate processes of consent and internal consultation, communicate their decision and demand their respect, even without an official call from the State.

Therefore, one of the initiatives that communities should include is that of regulating this self-governing procedure for making decisions, especially regarding the disposal of biocultural heritage and the prohibition of extractive activities.

Annex 2 includes the proposal to invoke this right to exercise free, prior and informed consent at the initiative of the community itself. However, it is essential to develop a special protocol that regulates the exercise of this right directly by the community.

1.2 Development of community decision-making tools

Protocol for Free, Prior and Informed Consent

This is perfectly supported by the provisions of ILO Convention 169, Article 6(1)(a) and (b): Obliges governments to consult "through appropriate procedures and in particular through their representative institutions", although the text does not limit the initiative to States. Recognises that representative institutions are actors with their own capacity. Similarly, Article 7.1: Recognises the right of peoples to "decide their own priorities" and control their development processes, implying that they can initiate and organise their consultations without waiting for state impetus.

This is reinforced by the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): Article 19, which establishes that States must obtain free, prior and informed consent *before* approving measures that affect Indigenous Peoples. The emphasis on obtaining implies that free, prior and informed consent is a requirement that can be claimed directly by communities. Article 32.2: Recognises that Indigenous Peoples have the right to participate in decision-making, and that their free, prior and informed consent must be respected regarding projects that affect their lands, territories and resources. The law belongs to the people, not to the States.

There is some Inter-American case law that can also be invoked. The case of Saramaka vs. Suriname (Inter-American Court of Human Rights, 2007) and the case of the Kichwa People of Sarayaku vs. Ecuador (IACHR, 2012): In these cases, the Inter-American Court of Human Rights establishes that free, prior and informed consent is a substantive right of Indigenous Peoples, not a mere State formality. The IACHR 2009 Report on the "Rights of Indigenous and Tribal Peoples over their Ancestral Lands" also emphasises the right of communities to exercise authority, governance and justice over their territory, and notes that "self-government is indispensable for the enforcement of other collective rights."

There are some Latin American precedents that can also be cited as references, such as the rulings of the Constitutional Court of Colombia that have established:

- T-129/11 and SU-123/18: Prior consultation and consent are fundamental rights exercised by peoples, and the State cannot prevent communities from acting proactively to ensure their respect.
- T-376/12: The initiative can come from the communities; it is not exclusive to State authorities.

Finally, the Political Constitution of Peru in its Article 89 recognises the autonomy of indigenous communities to govern their internal affairs, which includes the exercise of rights such as consultation and consent.

In this sense, it is necessary to develop a basic Protocol of Consultation and Free, Prior and Informed Consent for the purpose of making decisions on the disposal and management of biocultural heritage, as well as the start of economic activities, especially those that may put the territory and its biocultural values at risk. The proposal is incorporated in ANNEX 3.

2. Territorial protection instruments

2.1 Participatory zoning and declaration of protected areas

Participatory zoning and the declaration of protected spaces due to biocultural or spiritual value, such as the Potato Park model, is a powerful tool for peasant or indigenous communities to ensure control over their territories when facing extractive threats. For such a process to be legal, legitimate and effective, at least four dimensions would need to be developed: legal, technical, political and organisational.

a) Legal requirements.

Recognition of the community's legal status: the peasant or indigenous community must endeavour to collect documents enabling them to prove their existence and, if possible, their legal status. Public

Registries would be important for the purposes of government recognition; it is also possible to seek to validate ancestral rights with community uses and customs. Regulatory basis:

- Constitution (Article 89, recognition of communities).
- Law of Peasant Communities (Law 24656): protection of communal lands.
- General Environmental Law (Law 28611): allows for participatory environmental management instruments.
- DS 020-2016-MINAGRI (Agrobiodiversity Zones): direct precedent.
- Law 29785 (Prior Consultation): requires consultation if the State intervenes in their territories.

Compliance with government regulations: As has been sought with the Potato Park model, it is strategically important for community zoning to standardise its community processes to existing government formulas, adapting the initiatives to basic requirements required by state agencies (through the Ministry of Agriculture and Irrigation (MINAGRI), Ministry of Environment (MINAM) or regional governments).

b) Technical requirements – consider:

- Participatory data collection:
    - Territorial maps (community cartography, ancestral land use, spiritual areas).
    - Inventory of biodiversity and biocultural resources (seeds, medicinal plants, fauna, traditional practices).
    - Identification of sacred sites and spaces of spiritual value.
- Use of technical tools: georeferencing; use of geographic information systems (GIS), audiovisual records, etc.
- Studies: technical documents that justify the biocultural, spiritual and environmental values of the territory.

c) Organisational requirements:

- Community assembly agreement: collective decision formalised in minutes of the community's general assembly.
- Territorial management committee: made up of community authorities, local wise men, young people and women, to monitor the process.
- Intercultural coordination: involving peasant and indigenous organisations (peasant patrols, federations), allied Non-Governmental Organisations (NGOs), academia; etc.

d) Political and institutional requirements:

- Dialogue with regional and local governments to include zoning in territorial management instruments (territorial planning plans, concerted development plans).
- National impact: demand official recognition from the Ministry of Environment (MINAM) and Ministry of Agriculture and Irrigation (MINAGRI) of “community biocultural protection spaces” (similar to Private Conservation Areas, but communal).
- Linkage with international standards: based on ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), reinforced by national regulatory frameworks.

2.2. Territorial monitoring committees and similar organisations

Territorial monitoring committees and similar organisations made up of local leaders, youth and traditional authorities. Their work being to strengthen community-level organisation, the vision of collective rights, customary and ordinary laws, to generate capacity not only to lead proposals for protection and conservation, but also for defence. These committees or similar organisations lead much more permanent processes that enable the community to be strengthened as a collective.

3. Instrument for organisational strengthening

3.1. Intercultural education and youth leadership

- Implement leadership training schools with an intercultural, gender and youth focus.
- Incorporate ancestral knowledge into rural education and promote the use of native languages.
- Support youth projects that promote knowledge and upgrading of the territory.

3.2 Community partnerships with other actors

- Linking communities with NGOs, universities and international networks that support biocultural protection. Once again, the Potato Park model provides an experience of collaboration with institutions, NGOs and other local actors that has been successful in strengthening the initiative and its dynamics.
- Develop fair marketing mechanisms for agroecological products and local handicrafts.
- Promote legal entities such as Communal Conservation Zones of Biocultural Heritage, and other types of ecosystem conservation and recovery zones, or linking to models such as those of territories of life (TICCA).

4. Mechanisms for the defence of rights and the exercise of justice

4.1 Internal strategic litigation

Strategic litigation is a mechanism to seek justice using the State's jurisdictional system and, consequently, legal processes as a means, aiming not only to resolve a specific case, but also to legally, politically and socially raise and contest a specific problem concerning rights. This differs from ordinary litigation because it does not only seek to resolve a particular conflict, but to transform power structures, legal structures or public policies. One of its main objectives is to act in contexts of strong power asymmetry, where communities, vulnerable people or disadvantaged groups face actors with economic, political or institutional power (extractive companies, the State itself, transnational corporations, etc.).

This instrument does not ignore or disregard community justice systems; on the contrary, it seeks to defend them strategically before the ordinary justice system, using the courts and laws of the State itself, to reaffirm and claim the recognition of the rights of ancestral populations, many of which are prescribed in the Constitution itself and in international treaties (such as ILO Convention 169 on prior consultation and the UN Declaration on Indigenous Peoples).

The main objectives of this tool are focused on:

- Making inequality visible: showing to the public and the courts how communities or victims face conditions of structural disadvantage, in order to have their rights respected.
- Rebalancing the legal and political scales: using the law as a tool to protect those who would not normally have equal access to ordinary justice.
- Generating precedents and structural changes: achieving judgments or decisions that not only benefit the specific case, but also establish case law or regulatory changes that strengthen collective and environmental rights.
- Incorporating the educational dimension through communication: each case becomes an opportunity to raise awareness in society about the injustices arising from the asymmetry of power.
- Empowering communities: strategic litigation is accompanied by organisational processes, training on rights and political advocacy, so that the social actors themselves gain voice and legitimacy.

As this tool is a process that involves a certain degree of organisation and minimum conditions to be able to enforce it, certain guidelines must be taken into account in order to implement it. Annex 4 contains a basic guide for implementing Strategic Litigation.

4.2 Use of the supranational Human Rights System

When a country's internal mechanisms are exhausted or ineffective despite the efforts that can be deployed, communities can turn to the supranational human rights system. In the case of Peru, the Inter-American System is available, composed of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). The first body to which one should turn to present a case of this nature is the Inter-American Commission on Human Rights, which can be used to file the following actions:

a) Petition to the IACHR:

- Utility: Communities can file a petition when the Peruvian State has violated rights enshrined in the American Convention on Human Rights or in ILO Convention 169 (by connection).
- Requirements:
    - Having exhausted internal resources or mechanisms (or demonstrating that they are not effective).
    - Submit within six months of the last internal decision.
    - No lawyers are required
- Example: A community that has had an extractive project imposed on it without consultation or consent can sue the State.

b) Precautionary measures before the IACHR:

- Urgent protection measures can be requested when there is imminent danger to the rights to life, personal integrity or collective property (e.g. in cases of threats, severe pollution, forced evictions). It is not necessary to have previously submitted a petition.

c) Themed hearings:

- A themed hearing before the Inter-American Commission on Human Rights (IACHR) is a non-contentious mechanism that allows civil society organisations, communities, collectives or even States to present information, complaints or general situations of human rights violations, without there necessarily being a petition or individual case in the pipeline.
- They are carried out within the framework of the IACHR Sessions (three a year, usually in Washington DC or in a host country). A specific case with specific victims is not analysed (as in a petition or precautionary measure). It focuses on a topic of public interest, for example: impacts of mining on Indigenous Peoples, violence against women, prison crises, climate change, etc. The result may be that the IACHR open special monitoring on the topic; issue public recommendations or statements; include the information in annual or themed reports; demand commitments from the State or promote dialogue roundtables, among other measures.

Finally, it is important to point out that the Inter-American Court of Human Rights is a jurisdictional body to which cases are referred only at the request of the Inter-American Commission on Human Rights (IACHR) itself, when the State has not complied with any of its recommendations issued in a petition. The rulings issued by the Court are then binding on the State.

5. Proposals for regulatory reforms

Territorial defence can also be contested directly from the legislative sphere. The proposed laws and regulatory reforms enable closing legal gaps and harmonising the law not only with international standards but also with customary law, which would guarantee adequate and optimal protection for ancestral peoples. Strengthening collective rights through legislation helps to balance the power relationship between communities, the State and extractive companies. Promoting laws from within communities not only ensures territorial protection, but also politically empowers peasant and Indigenous Peoples, making them active agents in the construction of the national legal framework.

Given that this requires allied political actors, especially in spaces such as legislative power, it is crucial to be prepared to take advantage of any alliance opportunity that arises with these actors. Hence, the

following are some proposed regulations or legal modifications that are needed, which should be re-evaluated with the communities and an advocacy strategy established with those communities to find ways to make them viable.

5.1. Proposed Amendment to Supreme Decree No. 020-2016-MINAGRI

This proposal (Box 1) seeks to ensure that the Regulation on the formalisation of the recognition of agrobiodiversity zones incorporates the prohibition of concessions and extractive activities in Agrobiodiversity Zones, because at the moment it is not considered in this regulation, leaving open the possibility that they may overlap in Agrobiodiversity Zones.

Box 1. Supreme Decree amending Supreme Decree No. 020-2016-MINAGRI, which approves the regulations on the formalisation of the recognition of agrobiodiversity zones, in order to prohibit mining and hydrocarbon activities in these zones

Article 1 - Incorporation of Article 16-A into the Regulations approved by Supreme Decree No. 020-2016-MINAGRI

Article 16-A is incorporated into the Regulation on Formalisation of the Recognition of Agrobiodiversity Zones, as follows:

Article 16-A - Prohibition of concessions and extractive activities in Agrobiodiversity Zones

In recognised Agrobiodiversity Zones, as well as in those that are in the process of being recognised, the following are expressly prohibited:

a) The granting of mining concessions, hydrocarbon concessions or for any other extractive activity.

b) The carrying out of prospecting, exploration, exploitation, construction of extractive infrastructure and auxiliary or related activities that may affect the conservation of agrobiodiversity, biocultural assets and the collective rights of Indigenous Peoples and peasant communities.

Any concession, authorisation, permit, contract or other enabling title granted in contravention of the provisions of this article is null and void."

Article 2 - Incorporation of a Final Supplementary Provision

The following provision is added to Supreme Decree No. 020-2016-MINAGRI:

Fourth - Reinforced protection of Agrobiodiversity Zones against extractive activities

The State guarantees the inviolability of recognised Agrobiodiversity Zones or those pending recognition against any type of mining, hydrocarbon or extractive activity.

The competent entities must adapt their procedures for granting concessions and authorisations to the provisions of this Supreme Decree, under administrative, civil and criminal liability."

Legal framework

Political Constitution of Peru: Article 68 of the Constitution of Peru obliges the State to conserve biological diversity and protected natural areas.

The Convention on Biological Diversity

ILO Convention 169 requires the protection of indigenous territories and cultures against activities that put them at risk.

5.2. Proposal to Reform the Law on Prior Consultation to incorporate the "binding nature" of the Consultation and Free, Prior and Informed Consent

The Prior Consultation Law (Law No. 29785) is noted for having several shortcomings and gaps. Therefore, this proposal includes a legal amendment to recognise some necessary aspects to strengthen collective rights (Box 2). The proposal states that:

- Consultation becomes binding in all cases.
- Consent is required in critical cases: direct impact on territories, displacements and irreversible damage.
- The absolute nullity of acts without valid free prior and informed consent is incorporated.
- It strengthens legal certainty for both communities and the State itself.

Box 2. Law incorporating the binding nature of prior consultation and the requirement of free, prior and informed consent in cases of direct impact on indigenous territories

Article 1. Purpose of the Law

This law amends Law No. 29785 in order to:

a) Establish the binding nature of the results of the Free, Prior and Informed Consultation (FPIC).

b) Incorporate the requirement of Free, Prior and Informed Consent (FPIC) in cases of direct impact on territories, natural resources or biocultural assets of indigenous or native peoples.

c) Ensure that consultation or consent is obtained before any State decision (legislative, administrative or development projects) likely to affect these peoples.

Article 2. Amendment to Article 3 of Law No. 29785

Article 3 - Nature of the consultation and consent

The purpose of the consultation is to ensure respect for the collective rights of Indigenous Peoples, and their participation in decision-making that may affect their lives and territories. In that regard, it is established that:

3.1 Free, Prior and Informed Consultation is binding for the promoting and deciding State entity.

3.2 In the event that the measure, project or decision implies a direct impact on ancestral territories, essential natural resources or biocultural assets of Indigenous Peoples, the State must obtain the free, prior and informed consent of the peoples involved.

3.3 No state decision, concession, authorisation, contract or project may be endorsed or implemented without consent where appropriate.

Article 3. Incorporation of Article 6-A. The following article is added:

Article 6-A.- Cases in which free, prior and informed consent is required.

Free, prior and informed consent will be required in the following cases:

a) When a measure, project or concession implies a direct impact on ancestral territories that are titled or in the process of being titled.

b) When involving projects that may generate displacement of communities.

c) When the proposed activities may cause irreversible damage to biocultural assets, sacred sites, water sources or critical ecosystems.

d) When Indigenous Peoples so determine in the exercise of their right to self-determination recognised in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples."

Article 4. Certification of compliance.

The Certificate of Compliance with Prior Consultation or Consent, issued by the competent authority, is created as an indispensable requirement prior to the approval of any measure or concession.

Article 5. Nullity of contrary acts.

Any concession, permit, authorisation or project approved without valid consultation or, where applicable, without free, prior and informed consent, shall be declared null and void, without prejudice to the administrative, civil and criminal liability of the responsible officials.

Final Supplementary Provision.

The Executive Power must adapt the Regulations of the Law on Free, Prior and Informed Consultation and the sectoral regulations within a period of 120 days, establishing clear procedures to identify the cases of direct impact and guarantee free, prior and informed consent in the cases provided for by this Law.

5.3. Proposed amendment to the National Environmental Impact Assessment System (SEIA) Regulation

The current Regulation includes technical, social and environmental aspects for drawing up Environmental Impact Studies (EIA). However, the reality of Peruvian territory demands explicit recognition of the biocultural values that sustain the life of its communities and the conservation of nature. This would imply recognising:

- Traditional soil use and management.
- The integration of ecological and cultural variables.
- The identification of priority conservation areas.
- The valuation of significant biodiversity and ecosystems that support critical environmental services (e.g. water regulation, pollination, erosion control).
- The worldview and ancestral knowledge of indigenous, peasant and local peoples as part of sustainability.

Below is a proposal that could cover these fundamental aspects (Box 3).

Box 3. Proposed amendment to the regulation of the SEIA law.

Annex III: Minimum Content of the Detailed Environmental Impact Study (EIA-d).

A new component is added named:

"Biocultural and Ecosystem Services Component", with the following minimum content:

1. Biocultural Values and Local Worldviews.

• Identification and description of traditional land uses, cultural and spiritual practices linked to the territory.

• Identification of the local worldview regarding nature and its elements (water, mountains, forests, fauna).

• Recognition of areas of cultural, spiritual or community continuity value.

2. Ecological and Socio-environmental Integration.

• Identification of strategic ecosystems that support essential environmental services, such as:

- water regulation,
- ecological connectivity,
- provision of food and medicinal plants.

• Analysis of potential impacts on these ecosystems and services.

3. Priority Areas and Significant Biodiversity.

• Determination of critical areas for biodiversity (endemic species, endangered species, fragile habitats).

• Identification of priority conservation areas in accordance with national, regional and local plans.

4. Critical Ecosystem Services for the Continuity of Communities and Nature.

• Determination of the ecosystem services that are essential for the physical, cultural, and economic survival of communities.

• Assessment of how the disturbances may affect long-term sustainability.

Annex IV: Methodological Guide for the Identification and Assessment of Environmental Impacts.

Specific guidelines are incorporated:

1. Biocultural Evaluation Criteria.

• The impacts will be assessed not only in biophysical and economic terms, but also considering the cultural and spiritual dimension of the territory.

• Incorporating the consultation and active participation of local communities and Indigenous Peoples in the identification of impacts on their biocultural values.

2. Integration Methodologies.

• Use of participatory approaches (community maps, worldview workshops, social cartography).

• Methods for valuing ecosystem services adapted to the local context.

3. Determination of Critical Impacts.

• An impact will be considered critical if it compromises:

- The continuity of essential ecosystem services,
- The integrity of areas of cultural value,
- The cultural and social reproduction of communities.

Supplementary Provision.

The Ministry of Environment (MINAM) will develop specific methodological guides for the identification, registration and evaluation of biocultural values and essential ecosystem services, ensuring their cross-cutting application in all sectors and types of projects subject to the National Environmental Impact Assessment System (SEIA).

5.4. Proposed amendment to the Climate Change Law

This amendment incorporates the Precautionary Principle to prevent extractive activities in certain strategic territories in the context of climate change and priority protection of territories of biocultural, environmental and food value (Box 4). The amendment is based on the:

- Convention on Biological Diversity (CBD, 1992): which recognises the need to conserve biological diversity, the sustainable use of its components and the fair sharing of benefits arising from genetic resources, establishing precaution as a guiding principle in cases of scientific uncertainty.
- Agenda 2030 and the Sustainable Development Goals (SDGs, 2015): in particular, SDG 13 (Climate Action), SDG 15 (Life on Land) and SDG 2 (Zero Hunger), which call for ensuring sustainable and resilient food systems, protecting biodiversity and combating the effects of climate change.
- Kunming-Montreal Global Biodiversity Framework (COP15, 2022): which establishes the global commitment to protect at least 30% of terrestrial and marine areas by 2030 (30x30 initiative), in order to halt biodiversity loss, conserve key ecosystems and ensure essential ecosystem services such as water, clean air, food security and climate resilience.
- Political Constitution of Peru: in which Articles 66, 67 and 68 recognise the State's obligation to promote the conservation of biological diversity, natural resources and protected natural areas.
- Law No. 30754, Framework Law on Climate Change (2018): which establishes principles, approaches and provisions for national climate action, to which the precautionary principle is incorporated as a management pillar.

Box 4. Proposal for regulatory amendment of Law No. 30754, framework law on climate change

1. Incorporation of the Precautionary Principle.

The following is incorporated into Article 3 "Principles" of Law No. 30754, Framework Law on Climate Change: g) Precautionary Principle. In the design and application of policies, plans, programmes, projects and activities related to climate change, the State endorses precautionary measures when there is a risk of serious or irreversible damage to the environment, biological diversity, ecosystems and the livelihoods of communities.

2. Incorporation of Article X into Chapter III: Prevention, Mitigation and Adaptation to Climate Change.

Article X. Priority protection of territories of biocultural, environmental and food value.

In accordance with the precautionary principle and the Convention on Biological Diversity, the 2030 Agenda, the SDGs and the Kunming-Montreal Global Biodiversity Framework, the State recognises and prioritises the protection, conservation and restoration of territories that contain biocultural, environmental and food value fundamental to resilience to climate change, particularly those associated with peasant, native and indigenous communities.

These territories are considered strategic for resilience, mitigation and adaptation to climate change, and their conservation takes precedence over extractive or economic exploitation activities that may jeopardise their ecological, cultural and social integrity, even in situations of scientific uncertainty about the extent of the impacts.

The State, in coordination with communities, regional and local governments, will endorse territorial management measures that guarantee the preservation of these spaces, including ecological and economic zoning, land management, recognition of communal conservation areas, and the implementation of participatory monitoring mechanisms and socio-environmental safeguards.

Investment projects intended to be developed in these territories will be subject to rigorous evaluation under prevention and precautionary criteria, prioritising the sustainability of local ecosystems and cultures, in compliance with Peru's international commitments.

5.5. Proposed amendment to the Law on Protected Natural Areas

The Law on Protected Natural Areas should be amended to incorporate the categories of Territories of Life (TICCA), Territories of Biocultural Heritage and Protection Areas for Food Production (Box 5).

Box 5. Amendment to the Law on Protected Natural Areas

The amendment to Article 22 of Law No. 26834, Law of Protected Natural Areas, is proposed as follows:

Article 22.- Categories of Protected Natural Areas.

The National System of Natural Areas Protected by the State (SINANPE) comprises the following categories:

National Parks; National Sanctuaries; Historic Sanctuaries; National Reserves; Landscape Reserves; Wildlife Refuges; Communal Reserves; Protective Forests; Hunting Reserves; Territories of Life – ICCAs; Territories of Biocultural Heritage – TBCH; Food Production Protection Areas; Supplementary definitions (Incorporated Supplementary Provision)

• **Territories of Life – ICCAs**: These are territories of Indigenous Peoples, peasant and native communities or other local collectives that have three key features: a strong connection between a territory or area and its custodian communities; an effective governance institution that develops and applies decisions and rules; and this contributes to the conservation of nature and to the livelihoods and well-being of the community (UNDP, 2022). The State recognises and respects their self-determination, in accordance with the right to self-determination and to free, prior and informed consent, established in the Political Constitution, ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

• **Territories of Biocultural Heritage (TBCH)**: These are ancestral territories of Indigenous Peoples who have comprehensively preserved and continue to comprehensively preserve the biodiversity, native crops and ecosystems and their associated cultural values, through their own forms of governance and community management, indigenous worldview and customary laws (Argumedo and Swiderska, 2014). They are similar to Territories of Life (ICCAs) but also different because they have emerged from a process of indigenous self-determination in the Potato Park, Cusco, Peru (Swiderska et al, 2020).

• **Food Production Protection Areas:** These are strategic natural and productive spaces to ensure the country's food security and sovereignty, including traditional agroecosystems, ancestral farming areas, wetlands, mangroves, peat bogs and marine-coastal areas. Their purpose is to protect the capacity for sustainable food provision and its resilience to climate change, in accordance with the constitutional right to adequate food and with the State's commitments within the framework of the Sustainable Development Goals (SDGs 2 and 15).

National legal basis:

• Political Constitution of Peru (1993):

• Article 2(22): The right to enjoy a balanced and appropriate environment.

• Article 66: natural resources as National Heritage.

• Article 89: legal recognition of peasant and native communities, autonomy in the management of their lands.

• Law 29763, Forestry and Wildlife Law: recognises the role of communities in conservation.

• Law 27867, Organic Law of Regional Governments: establishes powers and duties concerning food security.

International frameworks:

• ILO Convention 169: Recognition of Indigenous Peoples, their right to retain lands and territories, and their participation in resource management.

• United Nations Declaration on the Rights of Indigenous Peoples (2007): Articles 25-29, on conservation and protection of the environment and territories.

• Convention on Biological Diversity (CBD, 1992): Article 8(j) on traditional knowledge and conservation practices.

• Sustainable Development Goals (2030 Agenda): SDG 2 (Zero Hunger) and SDG 15 (Life on Land).

• International recognition of ICCAs: an initiative of the Convention on Biological Diversity (CBD) and the International Union for Conservation of Nature (IUCN) as “territories and areas conserved by Indigenous Peoples and local communities”.

Comparative experiences:

• Mexico: The General Law of Ecological Balance and Environmental Protection includes “Areas Voluntarily Designated for Conservation”, in which Territories of Life (ICCAs) are recognised.

• Colombia: Decree 2372/2010 includes the “Reserve Areas for Food Production” as part of its National System of Protected Areas.

5.6. Incorporation of "Public Utility" for the defence of the environment

Although the General Mining Law has given this activity the preferential legal status that considers it to be of "Public Utility", it would be necessary to propose the repeal of the article that considers it as such in said law. An alternative way could be proposed to place the environment in this same status and promote its prioritisation. Including the environment as an activity of "Public Utility and Necessity" in the General Environmental Law as a principle would generate that effect. This principle would enable the public administration to have greater legitimacy and legal certainty to prioritise environmental law in decisions regarding land use planning, concessions, extractive or industrial projects, declarations of environmental emergency, among others. The proposed amendment is shown in Box 6.

Box 6. Incorporation of a new principle into Article 6 of the General Environmental Law (Law No. 28611):

Article 6 - Principles of the National Environmental Policy

Add the following principle:

Principle of Public Utility of the Environment.

A healthy and balanced environment is an essential condition for the enjoyment of fundamental human rights and, consequently, is expressly recognised as being of public utility or public necessity. This recognition would allow the protection, preservation, recovery and sustainable management of the environment to be prioritised and considered legitimate causes for applying the legal effects of this category.

Under this principle, public policies, administrative decisions, economic activities and regulatory acts must be subject to the prevalence of the general interest of protecting the environment over private interests, in consideration of its nature as a collective, inalienable and indivisible legal good.

Justification for the Amendment

International case law: The Inter-American Court of Human Rights, in the case of La Oroya vs. Peru it was determined that a healthy environment is not only an autonomous right but can also be considered a cause of public utility, which enables the State to adopt protective measures even against private activities or economic concessions.

Constitutional basis: The Political Constitution of Peru, Article 2(22), recognises the right of every person to enjoy a balanced and appropriate environment for the development of their life, and Article 70 establishes that the right of ownership may be limited for reasons of public utility or social interest. Expressly recognising the environment as being of public utility reinforces the coherence between both mandates.

Conclusion

Finally, as we close this study, it is important to reaffirm the need to strengthen proposals and instruments to protect the territories and biocultural heritage of peasant and indigenous communities, as a strategic and urgent task in the face of the advance of extractive activities that seriously jeopardise not only biodiversity, but also the cultural and spiritual practices that sustain community life. The analysis of national and international regulations, as well as case law, demonstrates that there are legal bases that, even with their weaknesses and shortcomings, enable us to expand and contest collective rights; although reforms and new instruments are required to ensure their full effectiveness. In this regard, emblematic experiences such as the Potato Park in Pisaq, Cusco, show that it is possible to consolidate community protection zones, based on the existing values in these spaces and on the ancestral practices and knowledge that not only protect agrobiodiversity and the territory and generate sustainable systems, but also recognise the value of intangible heritage such as culture, identity and autonomy. This example sets the course towards a model that integrates legal pluralism, effective participation and conservation guarantees, thus ensuring that indigenous and peasant peoples can

decide on their territories and bequeath the biocultural wealth that characterises them to future generations.

References

ACtHR, cases of Saramaka vs. Surinam, Sarayaku vs. Ecuador, Kaliña and Lokono vs. Surinam, Xákmok Kásek vs. Paraguay.

Actualidad Ambiental. (2022). ¿En qué consiste la meta “30x30”, el nuevo compromiso de biodiversidad a nivel mundial? Retrieved from https://www.actualidadambiental.pe/en-que-consiste-la-meta-30x30-el-nuevo-compromiso-de-biodiversidad-a-nivel-mundial/Actualidad Ambiental

Advisory Opinion OC-23/17

American Convention on Human Rights (Pact of San José).

Argumedo, A. (2008). El Parque de la Papa: Conservación de la agrobiodiversidad y derechos colectivos. Asociación ANDES.

Argumedo, A (2012). Decolonising action-research: the Potato Park biocultural protocol for benefit-sharing (PLA 65). IIED www.iied.org/G03475

Bebbington, A., & Bury, J. (2013). Subterranean Struggles: New Dynamics of Mining, Oil, and Gas in Latin America. University of Texas Press.

CBD (1992). Convention on Biological Diversity. United Nations. https://www.cbd.int/doc/legal/cbd-en.pdf

CEPLAN. (2020). Informe Nacional Voluntario del Perú sobre la implementación de la Agenda 2030 para el Desarrollo Sostenible. https://www.ceplan.gob.pe/agenda-2030

CMM (2020). Mining Principles. International Council on Mining and Metals. https://www.icmm.com/en-gb/our-principles

Congress of the Republic of Peru. (1993). Law No. 26253: Ratification of ILO Convention 169.

Congress of the Republic of Peru. (1997). Law No. 26839 - Law on the Conservation and Sustainable Use of Biological Diversity. Retrieved from: https://www.leyes.congreso.gob.pe

Congress of the Republic of Peru. (2011). Law No. 29785: Law on the right to prior consultation of indigenous or native peoples.

Congress of the Republic of Peru. (2015). Law No. 30355 – Law for the Promotion and Protection of Agrobiodiversity.

Congress of the Republic of Peru. (2016). Legislative Resolution No. 30310. Diario Oficial El Peruano (Official Gazette).

Constitutional Court of Peru. Case No. 1417-2005-PA/TC.

CooperAcción (2004). How are mining concessions progressing in Peru? Retrieved from https://cooperaccion.org.pe/como-van-las-concesiones-mineras-en-el-peru/

De Echave, J. (2016). Minería y conflicto social. CooperAcción.

De Echave, J. (2020). La minería en el Perú: El conflicto irresuelto. Lima: CooperAcción.

Defensoría del Pueblo (2020). Balance de la implementación del derecho a la consulta previa.

FAO. (2021). Panorama de la seguridad alimentaria y nutricional en América Latina y el Caribe 2021. Food and Agriculture Organisation of the United Nations.

FAO. (2022). Kunming-Montreal Global Biodiversity Framework. Retrieved from https://www.fao.org/biodiversity/kunming-montreal-global-biodiversity-framework/esFAOHome

Glowka, L., Burhenne-Guilmin, F., & Synge, H. (1994). A Guide to the Convention on Biological Diversity. International Union for Conservation of Nature (IUCN) Centre For Environmental Law.

Hoetmer (2013). Cited by De Echave, José. Mining in the Southern Andes: the cases of Cusco and Apurimac. CooperAcción

IACtHR (2007). Case of the Saramaka People vs. Surinam. Judgment of 28 November 2007. Inter-American Court of Human Rights.

IACtHR (2021). Case of the Community of La Oroya vs. Peru. Judgment of 27 November 2021. Inter-American Court of Human Rights.

INEI. (2021). Indicadores de seguimiento de los ODS en el Perú. https://www.inei.gob.pe

Inter-American Court of Human Rights. Judgment in the case of La Oroya vs. Peru (revised extracts).

International Labour Organization (ILO) (1989). Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.

La Vía Campesina. (2018). Historic UN vote for Peasants' Rights. UN Human Rights Council passes a resolution adopting the peasant rights declaration in Geneva | Via Campesina

Law No. 26839. Law on the Conservation and Sustainable Use of Biological Diversity.

Law No. 28611 – General Environmental Law, Peru.

Law No. 29785 – Law on the Right to Prior Consultation, Peru.

Legislative Decree 708 – Law for the Promotion of Investments in Peru.

MINAM (2020). Actualización de las Contribuciones Nacionalmente Determinadas del Perú. Ministry of the Environment. https://www.minam.gob.pe/cambioclimatico/ndc

MINAM (2021). Supreme Decree No. 002-2021-MINAM. Recognition of Agrobiodiversity Zones.

Ministry of Agrarian Development and Irrigation. (2021). Supreme Decree No. 003-2021-MIDAGRI, which approves the Regulations of Law No. 30355.

Ministry of Energy and Mines (MINEM). (2023). Anuario Minero.

Ministry of Justice and Human Rights of Peru. (2021) https://www.gob.pe/institucion/minjus/informes-publicaciones/1959312-plan-nacional-de-accion-sobre-empresas-y-derechos-humanos-2021-2025

Ministry of the Environment of Peru (MINAM) (2020). Política Nacional del Ambiente al 2030. Lima: MINAM.

Ministry of the Environment of Peru (2021). Estrategia Nacional de Diversidad Biológica al 2021 y su Plan de Acción 2014–2018. https://www.minam.gob.pe/diversidadbiologica

Ministry of the Environment of Peru (2023). COP 16: Perú busca consolidar sus avances en conservación de la biodiversidad con apoyo internacional. https://www.gob.pe/institucion/minam/noticias/1008116-cop-16-peru-busca-consolidar-sus-avances-en-conservacion-de-la-biodiversidad-con-apoyo-internacional

MINJUSDH (2021). Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021–2025.

Oxfam (2021). Minería y derechos humanos en América Latina: Entre el discurso y la práctica.

PNUD (2022). Report on Human Development and Sustainability in Latin America.

Political Constitution of Peru (1993)

Salas Murrugarra, Marita. Legal recognition of the collective biocultural heritage of Indigenous Peoples. Culture, biodiversity and regulatory framework. UNMSM. Andean Anthropology Muhunchik – Jathasa. V. 2, No. 1, January - July 2015.

Salazar, M. (2022). Derechos territoriales y pueblos indígenas en el Perú: Avances y desafíos. Revista IWGIA.

Swiderska, K, (2006). Banishing the biopirates: a new approach to protecting traditional knowledge. IIED Gatekeepers 129

Toledo, V. M., & Barrera-Bassols, N. (2008). La memoria biocultural: La importancia ecológica de las sabidurías tradicionales. Icaria Editorial.

UNFCCC (1992). United Nations Framework Convention on Climate Change. https://unfccc.int/resource/docs/convkp/conveng.pdf

United Nations (1972). Stockholm Declaration. https://docs.un.org/en/A/CONF.48/14/Rev.1

United Nations (1992). Rio Declaration on Environment and Development. https://digitallibrary.un.org/record/141565?v=pdf

United Nations (2007). United Nations Declaration on the Rights of Indigenous Peoples. https://docs.un.org/en/A/RES/61/295

United Nations (2011). Guiding Principles on Business and Human Rights. https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

United Nations (2015). Transforming our world: the 2030 Agenda for Sustainable Development. https://sdgs.un.org/2030agenda

United Nations (2015). Paris Agreement to the United Nations Framework Convention on Climate Change. https://unfccc.int/sites/default/files/english_paris_agreement.pdf

United Nations (2015). Sustainable Development Goals. https://sdgs.un.org/goals

United Nations (2018). United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. https://docs.un.org/en/A/RES/73/165

United Nations (2022). Resolution on the right to a clean, healthy and sustainable environment.

United Nations (2022). Kunming-Montreal Global Biodiversity Framework. https://www.cbd.int/gbf/

United Nations Development Programme (2022). The Global Support Initiative to territories and areas conserved by Indigenous Peoples and local communities.

Annex 1. Community statutes: clause for including the principle of protection of biocultural heritage

Article [X]: Principle of Protection of Biocultural Heritage

The Community declares the **protection of the biocultural heritage** of its territory as a fundamental principle, understood as the integral and inseparable defence of collective life, ancestral knowledge, traditional practices, biodiversity, genetic resources, sacred sites, cultural landscapes and their specific systems of relationship with nature.

Article [X]: Biocultural Protection Protocol

In accordance with the principle of biocultural protection, the following is established:

The entry, use, appropriation or unauthorised alteration of elements of the Community's biocultural heritage by third parties, whether natural or legal persons, is prohibited.

The Community establishes and organises its territory, establishes areas of special biocultural or spiritual protection, and establishes internal rules for their protection and intergenerational transmission. These places constitute **legal and cultural proof of collective use and possession,** as well as inalienable heritage of the Community.

Any natural or legal person, national or foreign, who intends to **access the communal territory, natural resources, or the knowledge, practices, wisdom or cultural expressions of the Community, must comply with the Community Protocols of Free, Prior and Informed Consent (FPIC)** approved by the General Assembly, in accordance with national and international law.
No access or use may be considered valid without the Community's express and collective approval and when failing to respect its own uses and customs.

All forms of **research, bioprospecting and germplasm collection for academic, commercial, or institutional use** are prohibited without the Community's express consent, in accordance with its internal protocols and under conditions of reciprocity, shared benefit and cultural respect.

Failure to comply with this clause will be considered a **violation of the collective rights of the Community** and will give rise to legal, administrative and community actions for the defence of the territory, in accordance with current regulations.

Community members who fail to comply with or respect this protocol will be sanctioned according to the rules established in the community statutes.

Legal basis

- **ILO Convention 169**, in particular Articles 2, 7, 13 and 15, recognise the right of Indigenous Peoples to conserve and control their territories, natural resources, traditional knowledge and ways of life.
- **Article 89 of the Constitution of Peru**, which guarantees communal property, organisational autonomy and cultural identity of peasant and native communities.
- The **Prior Consultation Law (Law No. 29785) and its regulations**, which state that the State must guarantee free, prior and informed consultation in legal, administrative measures or projects that affect Indigenous Peoples.
- **The General Environmental Law**, which in its articles 70 and 71 establishes that the rights of Indigenous Peoples must be safeguarded and their participation and integration in the management of the environment must be promoted, and also, respect, register, protect the collective knowledge, innovations and practices of Indigenous Peoples, peasant communities and native communities.
- **Framework Law on Climate Change (Law No. 30754)**, in which Article 7.9. promotes the participation of citizens and indigenous or native peoples, in the comprehensive management of climate change aimed at strengthening climate governance and sustainable development in harmony with nature. And Article 22 declares that the State safeguards the right of participation of

indigenous or native peoples, respecting their social, collective and cultural identity, their customs, traditions and institutions, in the design, implementation, monitoring, and evaluation of public policies related to climate change.

- The **principles of sovereignty and self-determination** enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (2007).

Annex 2. Community statutes: clause for territorial protection and prohibition of activities contrary to biocultural heritage

Article [x]: Protection of Communal Territory and Prohibition of Mining Activities

The Community [X], in exercising its right to self-determination, self-government and collective ownership of its ancestral territory, recognised in ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, the Political Constitution of Peru, as well as in the binding case law of the Inter-American Court of Human Rights (case of Saramaka vs. Suriname, case of Sarayaku vs. Ecuador), **expressly prohibits the entry, exploration, prospecting, exploitation or development of extractive activities of mining nature** throughout its entire communal territory.

This prohibition is in response to the defence of our life, health, culture, spirituality, environment, local economy, and our particular communal ways of relating to nature, which constitute fundamental pillars for our existence as an indigenous/peasant/native people.

Any natural or legal person, national or foreign, public or private, who intends to carry out extraction activities in the communal territory must have the **free, prior and informed consent** of the General Assembly, in accordance with ILO Convention 169.

Any agreement, contract, authorisation or concession granted by third parties without this consent is null and void.

The Community will exercise its right to defend the territory through legal, administrative and community means, and may declare communal conservation zones, areas of spiritual or ecological protection, or any other form of collective protection against extractive threats.

Legal basis

- **ILO Convention No. 169**, a standard of supralegal rank pursuant to Article 55 of the Constitution, in which:
    - **Article 7.1** recognises the right of peoples to “decide their own priorities” for development and organisation;
    - **Articles 8 and 9** obliges States to recognise and respect the customary legal systems of indigenous and tribal peoples.
- **United Nations Declaration on the Rights of Indigenous Peoples** (2007), in which:
    - Article **4** enshrines the right to self-government in internal and local affairs;
    - Article **33** affirms the right of peoples to determine their own structures of authority and rules of operation.
- **General Law of Peasant Communities – Law No. 24656**, in which:
    - Article **7** establishes that the lands of the communities are unseizable, imprescriptible and inalienable, and based on this, recognises economic, administrative and organisational autonomy.

Annex 3. Community protocol on free, prior and informed consent (FPIC)

The community (XXX), recognised by (XXX), pursuant to Article 89 of the Political Constitution of Peru, which establishes the autonomy of indigenous and peasant communities, particularly regarding the free disposal of lands; pursuant to ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which establishes the right of Indigenous Peoples to be consulted and to give their free, prior and informed consent in relation to any measure that may affect them; taking into consideration Law No. 29785 on Prior Consultation, whose Article 2 enshrines the right of communities to be consulted not only regarding legal or administrative measures that affect them but also regarding any plan or project; and in accordance with the Law for the Promotion of the Rights of Peasant and Native Communities over their Lands, which recognises that they have control over their territories; the following **protocol of free, prior, and informed consent** is established for the purpose of guaranteeing respect for self-determination and communal sovereignty:

a) All access to the communal territory for the purpose of exploiting natural resources, ancestral knowledge or cultural expressions must be formally requested **in writing to the Communal Board of Directors**, clearly explaining the objectives, responsible parties, beneficiaries, duration, methods and possible impacts of the activity or research.

b) The Board of Directors will submit the request for **consultation at a General Assembly**, convened in a timely manner and with complete, accessible and culturally appropriate information.

c) Consent must be given or denied by two-thirds of the **General Assembly as the highest decision-making body**, without external pressure or economic conditions, in accordance with internal rules and through democratic processes defined by the Community under its cultural uses and customs. The decision must be recorded in the minutes, with the signature and/or fingerprint and clear and precise identification of the participants.

d) If approved, a **written consent agreement** will be signed that includes clauses on use of information, ownership of results, shared benefits, protection of sensitive knowledge and the right to revoke consent if the commitments undertaken are violated.

e) If the community becomes aware of any project for the exploitation of natural resources in its territory, promoted by the State or third parties, and there is **no request for entry** into it, the community may, on its own initiative, start the process of free, prior and informed Consultation and Consent, in accordance with the rules established in subparagraphs b), c) and d) of this article.

f) The Community may appoint **observers or monitors** to track the authorised activities, as well as require periodic reports on progress and results.

Annex 4. Basic guide to strategic litigation for peasant and indigenous communities in defence of their territory and biocultural assets[4]

1. **Conditions of the case to be litigated**

Strategic litigation should be based on a "landmark" case, which involves choosing a case with important characteristics that can serve as an example and set precedents in similar cases.

To determine whether a case has the potential to be pursued through strategic litigation, the following conditions must be considered:

- It should provide a specific example of a clear violation of rights, in this case collective rights.
- The existing power asymmetry: a specific case that enables demonstrating how laws or state practices favour powerful actors and harm the most vulnerable.
- That has the potential to set precedents: a favourable ruling or its visibility can serve as case law for similar future proceedings and/or force regulatory changes or changes in public policy.
- That will strengthen unity and social organisation.

2. **Basic principles for Strategic Litigation**

a. Community mandate

- Community assembly that agrees to initiate litigation.
- Authorisation document signed by the community authorities.
- Appointment of lawyers and legal spokespersons.

b. Evidence and documentation: Depending on the case, the following may be needed, among others:

- Communal property titles or ancestral possession certificates
- Territorial maps (social and official cartography); evidence of environmental, social and cultural impacts
- Documentation of concessions, licenses or permits granted by the State.

c. Technical and legal support

- Lawyers specialising in human, environmental or constitutional rights and with knowledge and/or experience in the strategic litigation instrument.
- Environmental experts, agronomists, anthropologists and cultural specialists to support evidence.

d. Communication and advocacy strategy

- Specialists in communication and media advocacy, and in engagement with various forums, both domestic and international.

e. Community protection and security

- Security protocols for human rights defenders.
- Support networks with social organisations and NGOs.
- Rapid reporting channels in case of harassment or criminalisation.

[4] This tool merely provides guidance; it does not replace legal advice, but it seeks to provide communities with a clear path on how to activate legal mechanisms in parallel with their organisational struggle.

3. **Relevant legal avenues**

To carry out strategic litigation, a legal action must be chosen from those prescribed in the jurisdictional system. The type of action to use and its relevance depends on thorough analysis of the case in terms of the content of the problem and the objectives to be achieved. The following legal actions are available within our system:

a. Protective Action

- Aim: Protect fundamental rights that have been violated or threatened (life, health, healthy environment, prior consultation, communal property).
- Requirements:
    - Identify act or omission that violates rights.
    - Present evidence (documents, minutes, testimonies, expert reports).
    - Demonstrate active legitimacy (community or its representatives).
- Advantages:
    - Fast processing.
    - It can halt extractive projects preventively.
- Example of use: mining concession granted without prior consultation.

b. Action of Unconstitutionality

- Aim: Challenge regulations (laws, decrees) that violate collective rights or constitutional principles.
- Who can submit it:
    - Organisations with active legitimacy (Ombudsman's Office, Regional Governments, Professional Associations, etc.).
    - Communities can coordinate with these institutions to file the action.
- Example of use: A law that relaxes environmental controls without respecting collective rights.

c. Popular Action

- Aim: Question sub-legal norms (regulations, supreme decrees, ministerial resolutions) that affect constitutional rights.
- Who can submit it:
    - Any citizen.
    - In practice, the community can file the action with the support of lawyers.
- Example of use: Regulation that grants mining concessions without consultation or adequate studies.

d. Ordinary Lawsuits

- Aim: Defend property rights, compensation for damages, enforcement of contracts, or recognition of ancestral rights.
- Characteristics:
    - Processed through civil or administrative litigation channels.
    - They may be slower, but allow for the recognition of rights and the obtaining of reparations and compensation.
- Example of use: Claims for lands invaded by extractive companies or the annulment of irregular contracts.

4. **Dimensions of the comprehensive strategy**

Strategic litigation will necessarily develop the following components:

i. Legal litigation: actions in national and international courts.

ii. Political impact: complaints to state agencies and ombudsmen.

iii. Social mobilisation: demonstrations, assemblies, peaceful protests.

iv. Community communication: spokespeople, media campaigns, press relations.

v. Protection of human rights defenders: security protocols and support networks.

Therefore, it is necessary to keep in mind that the organisation and resources must consider coverage of all these dimensions.

5. **Expected results**

- Effective protection of the territory and biocultural assets.
- Creation of case law favourable to Indigenous Peoples and peasant communities.
- Greater organisation and community cohesion.
- National and international visibility of the struggles.
- Precedents that strengthen the defence of other peoples.

IMPORTANT: The strategic litigation plan for a specific case should be built from within the community itself, with the help and assistance of people who know and have experience in these procedures, who should be summoned by the community based on trust and competence. The development of strategic litigation and the actions taken will depend on the type of case to be defended, as there is no one template that applies to every case.