Indigenous Peoples’ Rights To Lands And Natural Resources: Mining and Transboundary Aquifers in The Lake Titicaca Region

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Reference: UNEP, 2011
The Legal Framework: Strengths and Weaknesses

**International Water Law** (UN Watercourses Convention, ILC Draft Aquifer Articles)
- Vital human needs
- ‘watercourse’ as ‘a system of surface waters and groundwaters constituting [...] a unitary whole and normally flowing into a common terminus’

**Mining Law**
- Minerals versus Land ownership (public and private)
- Property rights and concessions
- Environmental Impact Assessments

**Rights of Indigenous Peoples**
- Rights over lands and natural resources to guarantee indigenous’ survival
- Consultation and participation
- Free prior and informed consent
• Functions of the ALT [ALT Statute, Art 5]:
  • Achievement of the Master Plan
  • Promotion of sustainable development
  • Consideration of waters’ projects within the basin of Lake Titicaca
  • Preservation and protection of ecosystems

• Projects in the Master Plan [ALT Statute, Art 6]:
  • Water resources’ availability in surface water or groundwater sources

• Recognition of controls of mining contamination in the Master Plan and in the ALT Statute

• Limits of the ALT:
  • No distinction between surface water and groundwater
  • No implementation of the provisions of the Draft Articles
  • No mention of indigenous peoples in the scope of the ALT
ALT Statute, Art 12(b)(2): Consideration of Peruvian and Bolivian legislation related to the water resources in water legislation

Peru Water Laws:
- River basin water resources management approach and public participation in water management
- Right for native communities to use the water resources on their lands
- Conformity of the use of transboundary basins with international law in force
- Limit:
  - No mention of the Draft Articles

Bolivia Water Laws:
- Access to water for all inhabitants
- Protection of border and transboundary waters for populations
- Recognition of traditional rights and water management by indigenous peoples
- Limits:
  - No rights to groundwater for indigenous peoples
  - No mention of the Draft Articles
Peru Mining Laws:
• Right to exploit minerals granted by the concession owner
• Prevention of water contamination from discharges
• EIA mandatory

Bolivia Mining Laws:
• Right to exploit minerals within the perimeter of the concession or outside
• Control of contamination by the concession holder or the mining company
• EIA required in case of transboundary impacts
Peru and Indigenous Rights:
- Free access for indigenous peoples over natural resources to satisfy their subsistence needs
- Right to land ownership for native communities
- Limits:
  - Priority access for native communities to natural resources on the contiguous environment of their lands, unless third parties have exclusive rights or it is a State reserve
  - Indigenous lands can be bought and sold

Bolivia and Indigenous Rights:
- Indigenous peoples’ right to receive titling of their lands
- Indigenous peoples’ right to benefit from exclusive use of their natural resources
- Indigenous peoples’ consultation in case of natural resources’ exploitation
- Limit:
  - No recognition of groundwater in indigenous peoples’ rights to lands and natural resources
Recommendations to Secure the Rights of Indigenous Peoples

- Conjunctive management with recognition of the interconnection between groundwater and surface water
- Reduction of waters contamination and transboundary contamination
- Guarantee of human vital needs
Public participation (EIA)

The right of free, prior and informed consent [UNDRIP]

Authorisation to indigenous communities to claim their rights to lands and natural resources