

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

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*Source:* Prepared for the World Water Assessment Programme (WWAP) by AFDEC, 2002.

Reference: UNEP, 2011



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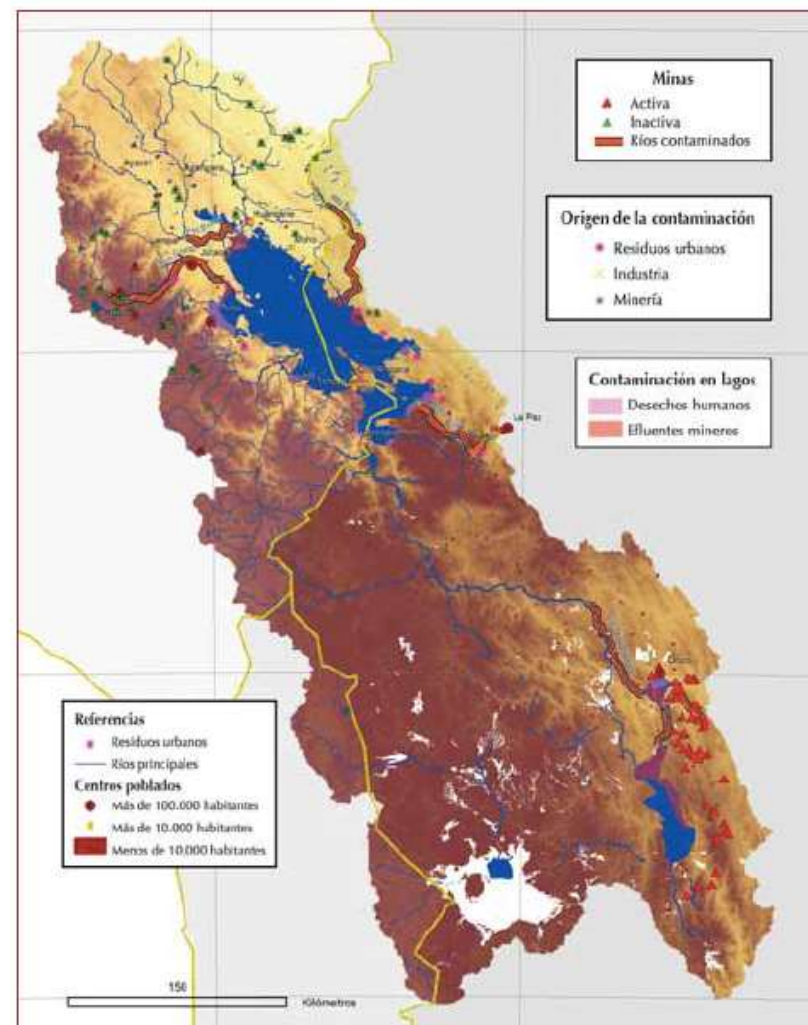
Reference: UNEP, 2011





Impactos de la minería en Perú. Foto: Alejandro Balaguer, Fundación Albatros Media.

Reference: UNEP, 2011



Fuente: Pointec, 2004; UTO et al., 2008; Misión SRTM, 2000, USGS United States Geological Service.

Elaboración: F.A. Kindgard, Facultad de Agronomía, UBA.

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**

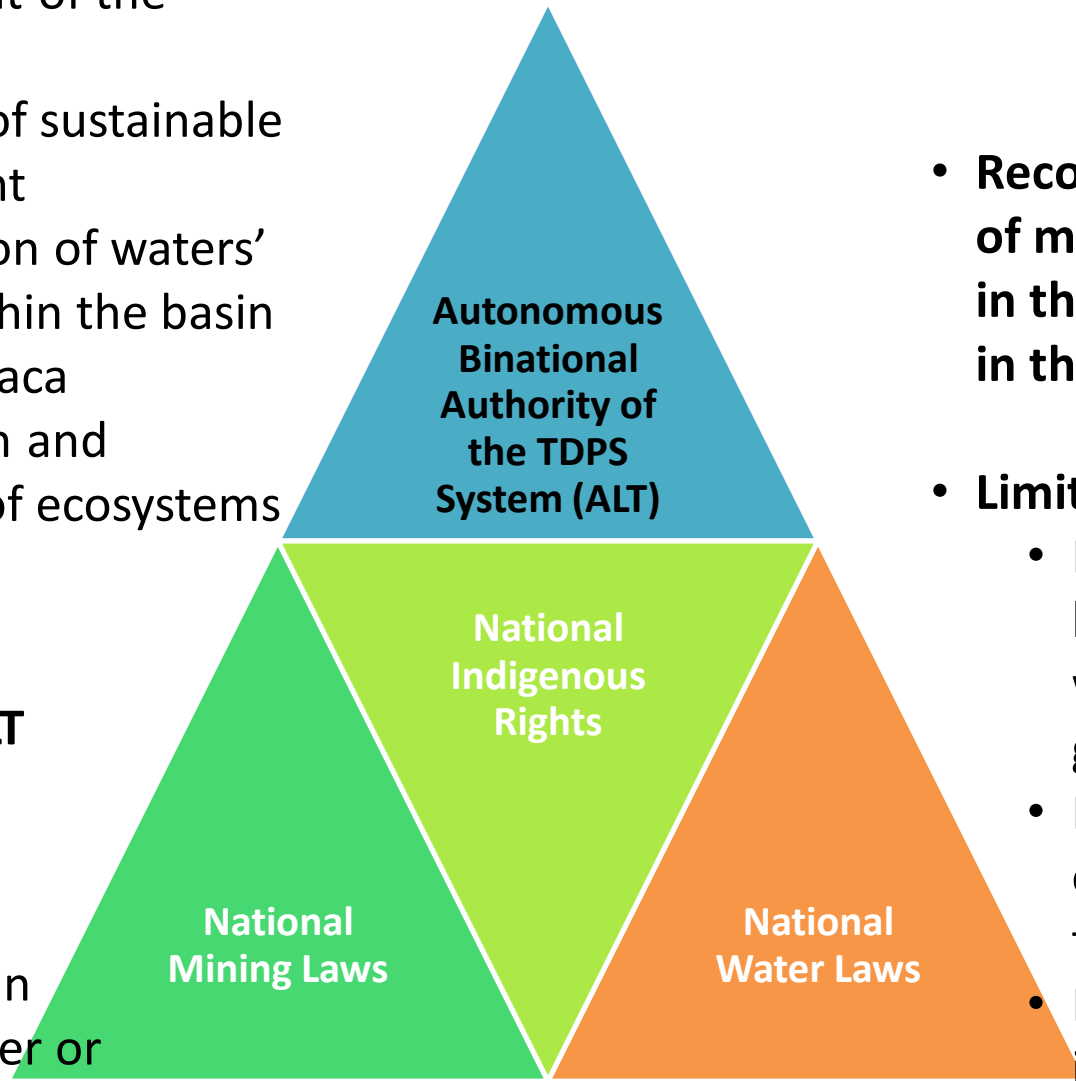
- Rights over lands and natural resources to guarantee indigenous' survival
- Consultation and participation
- Free prior and informed consent

**• 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**

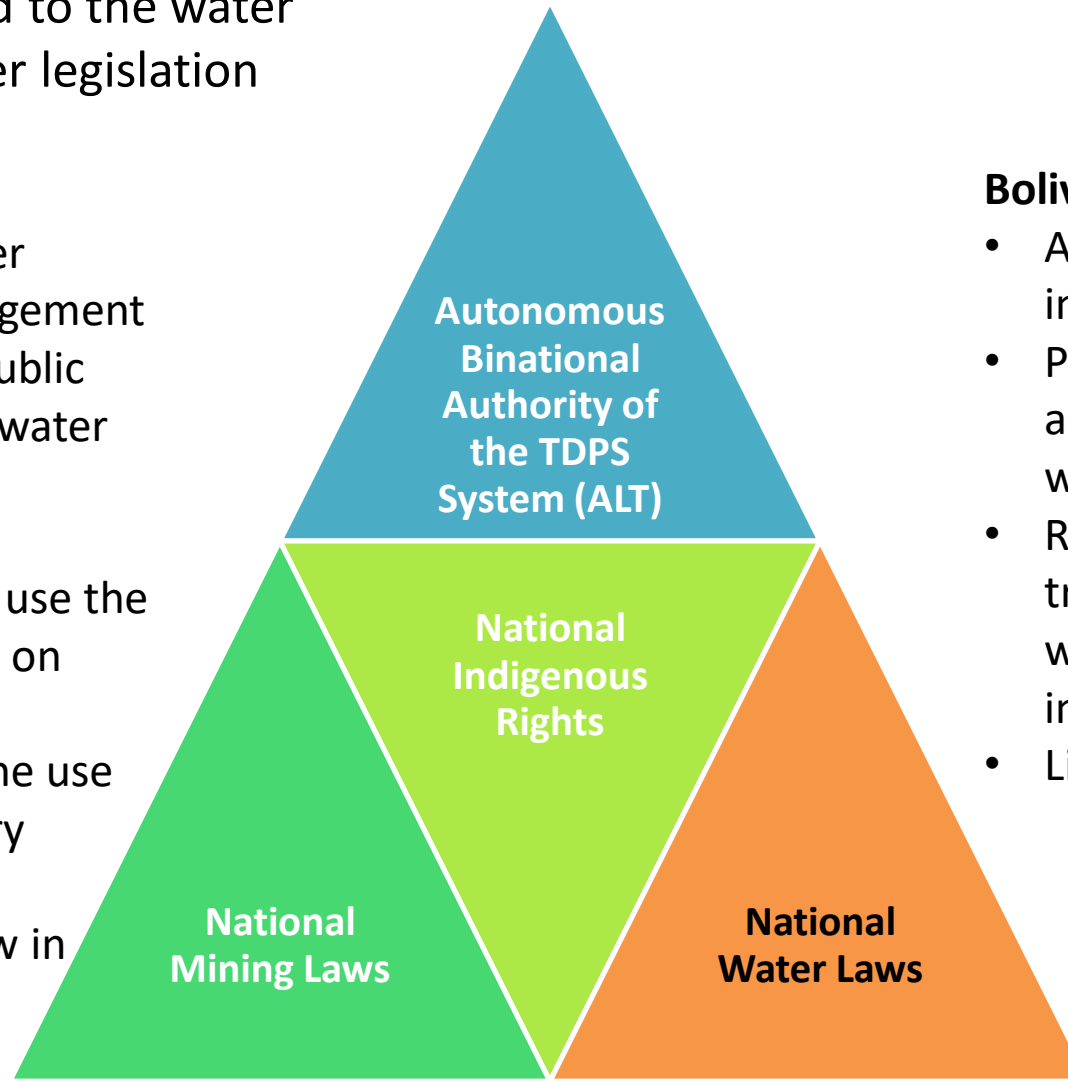
- **Limits of the ALT:**
  - No distinction between surface water and groundwater
  - No implementation of the provisions of the Draft Articles
  - No mention of indigenous peoples in the scope of the ALT

## 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



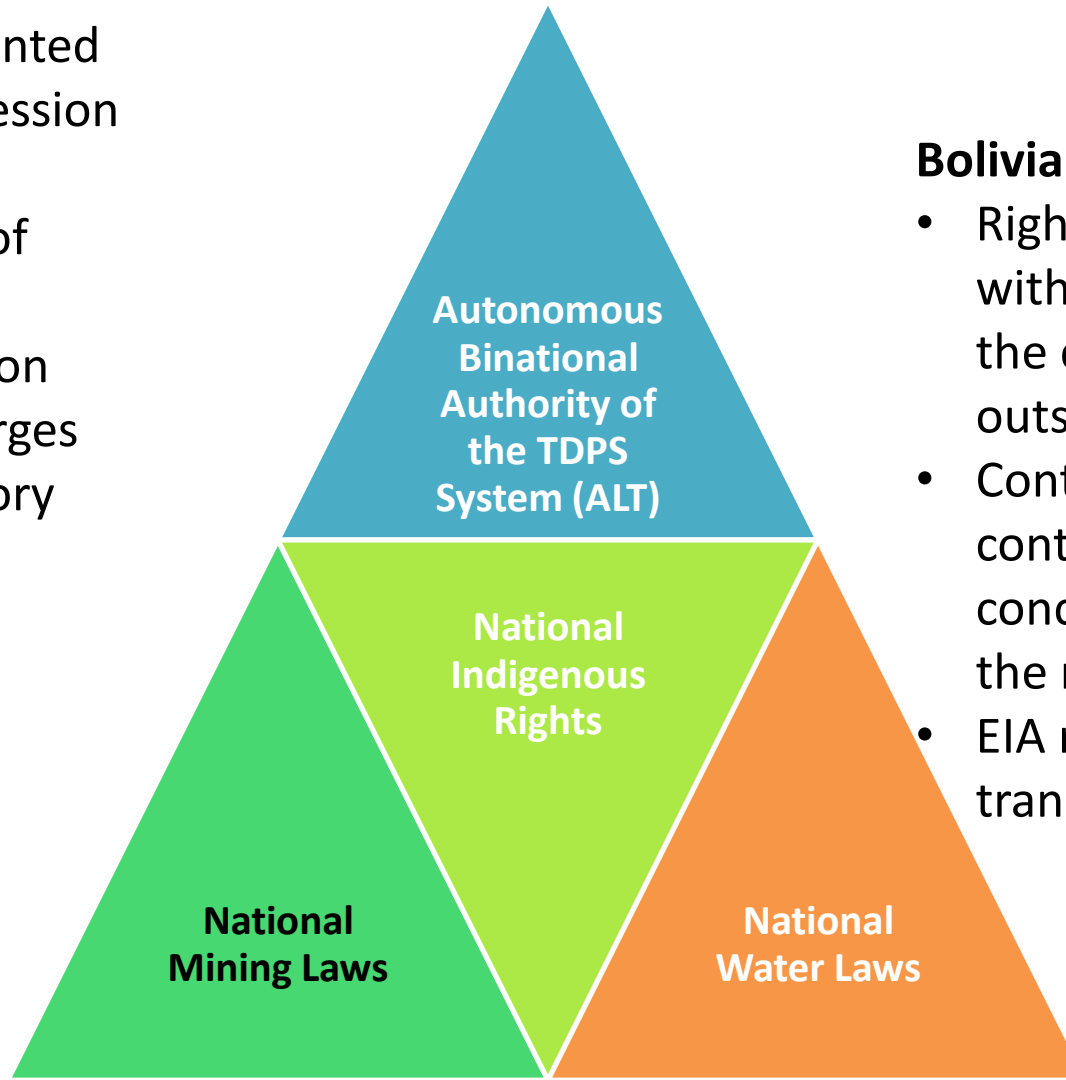
### Bolivia Water Laws:

- 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

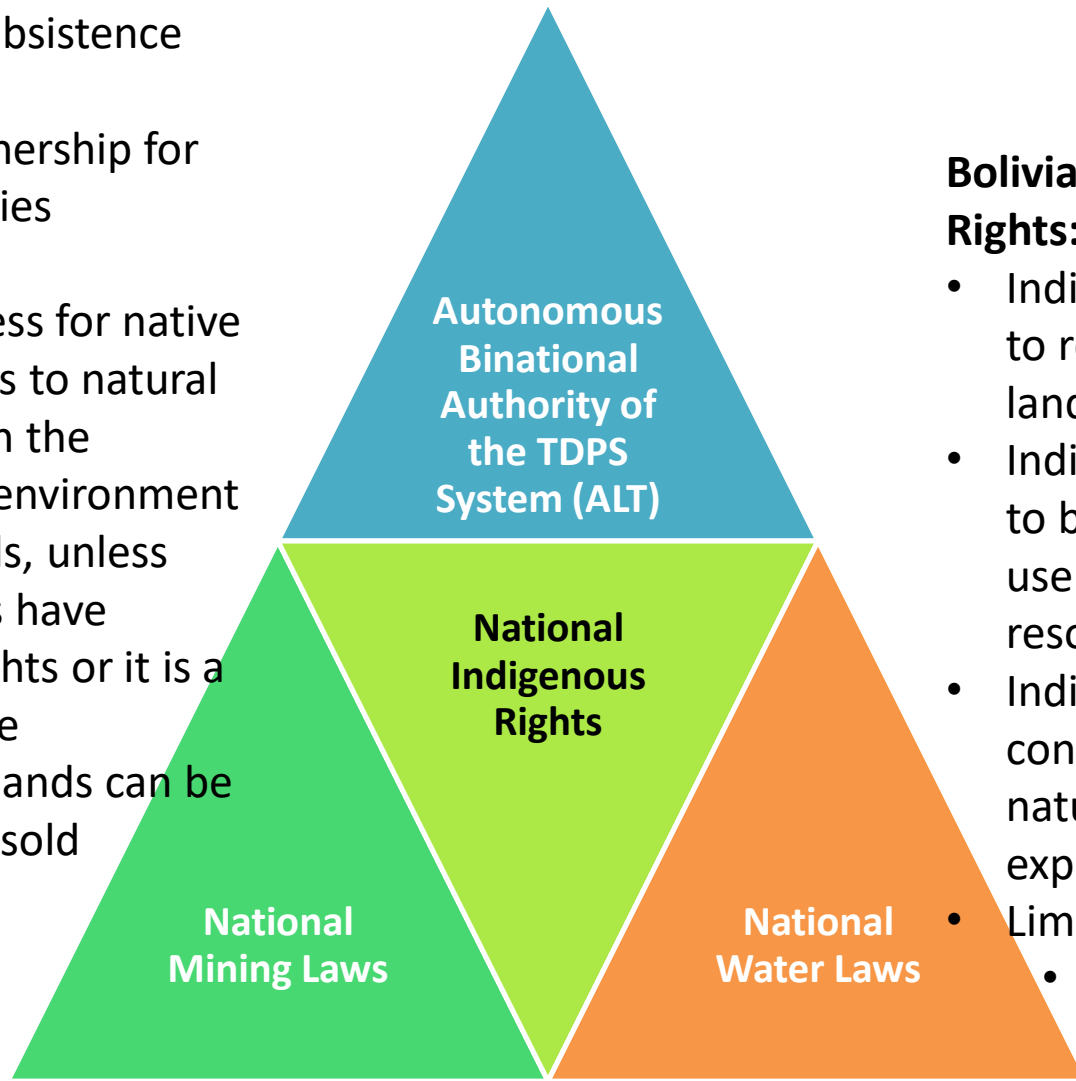


## Bolivia Mining Laws:

- 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

