

**IMPLEMENTATION OF THE FTA VIOLATES THE RIGHTS OF  
INDIGENOUS PEOPLES: L.D. N° 994, 1015, 1064, 1073 and 1089**



## **Implementation of the US - Peru FTA affects the rights of indigenous peoples<sup>1</sup>**

- The Legislative Decrees N° 994, 1064 and 1089 violate the fundamental rights of indigenous peoples, as well as the right to prior consultation and the collective right to ancestral territory.
- This weakens the guidelines of internal legislation and affects the protection of the Territorial Reserves of Indigenous People in Isolation or Initial Contact.

### **It violates the right of Indigenous Peoples to consultation**

The principal problem regarding the mentioned legislative decrees is that the affected parties, the indigenous peoples, were not consulted, infringing what is established in ILO Convention 169, adopted under Legislative Resolution N° 26253 on December 5, 1993 and ratified January 17, 1994. As a result, a human rights treaty is not being fulfilled, which in Peru, even when it is not listed in the Constitution, is protected by Constitutional rank.

### **The collective right to ancestral territory is violated**

The already repealed L.D. N° 1015 y 1073, put at risk the collective property of Indigenous Peoples, granting those in possession of the land for more than one year the disposition over Community lands-territories. This failed to recognize the autonomy of Indigenous Peoples and what is established in the statutes (article 89 of the Peruvian Constitution).

However, the still current L.D. N° 994, 1064 and 1089, also affect the indigenous peoples' right to territory as they promote, as a group, the adjudication of land to third parties. While said legal degrees establish that community lands do not participate in the land market, they do not make any pronouncement regarding community lands that have not been titled or those that have requested an expansion of their land-territory. As a result, these decrees promote both the division of these lands as well as the disappearance of community property.

The Peruvian government's priority and interest to promote individual property, both in urban and in rural areas, is evident. For example, one of the state bodies responsible for titling native community lands, the Formalization of Informal Property Body – COFOPRI – despite having been given new responsibilities to centralize the titling of communities, does not have the human resources or the budget to achieve this. In the 2008 - 2011 Strategic Institutional Plan it expects

**Despite the repeal  
of L.D. N° 1015 y  
1073, the right to  
land and territory  
of Indigenous  
Peoples is at risk  
because of L.D. N°  
994, 1064 y 1089**

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to title 55 communities (located in the Valley of the Apurimac and Ene Rivers – VRAE and the districts of Moyobamba, Rio Tambo Mazamari and Pangoa) leaving another 127 native communities that do not yet have property titles<sup>2</sup>.

## The Territorial Reserves of Indigenous People in Isolation or Initial Contact are also Harmful

The Indigenous Territorial Reserves are geographical areas reserved for those peoples who have not decided to be in contact with formal society, allowing them to respect their right to remain isolated. To date there are five established territorial reserves<sup>3</sup>, with another 5 pending approval: Reserve Kapanawa, Reserve Cashibo Cacataibo, Reserve Yaraví Tapiche, Reserve Yaraví Mirim and Reserve Napo Tigre. The delay in the approval or study of these cases could lead to a violation of the right to property that said peoples could exercise when they decide to be in contact as said areas could, thanks to the legislative decrees, be assigned to investors or to individuals. Once those right are granted, these third parties would face no impediment to take advantage of the resources existing in these areas, cutting back the area that the isolated Indigenous People can choose to establish themselves.

## The guidelines to protect indigenous people established in domestic legislation are weakened

These legislative decrees not only violate the rights of Indigenous Peoples but also fail to recognize the basic environmental guidelines of public policies, as established in article 11, clause d) of the General Law on the Environment, Law N° 28611: “The sustainable development of urban and rural zones, including the conservation of peri-urban agricultural areas and the environmentally sustainable provision of public services, as well as the conservation of cultural habits, knowledge and life style of traditional communities and Indigenous Peoples.”

It is important to recall that sustainable development encompasses three dimensions: the social, the environmental and the economic, and if we forget or leave aside one of them the resulting system will be weakened. The Peruvian State had demonstrated this by leaving aside the Indigenous Peoples, a population directly involved in the management and use of natural resources.

The weakening of the standards of protection of the rights of indigenous people could be considered a way to lower costs to facilitate investment and trade. The spirit of the renegotiation of the environmental chapter of the FTA with the United States sought to avoid this type of behavior (social and environment dumping). Therefore, if confirmed that this weakening of rights affects investment or trade, it could be considered that it violates what is established in article 18.3.2<sup>4</sup> of the Environmental Chapter of the FTA.

<sup>2</sup> According to the 2008 – 2011 COFOPRI Strategic Institutional Plan there are still 182 native communities without titles (page 15) prioritizing the land titling of native communities in the central jungle.

<sup>3</sup> State Territorial Reserve In Favor of the Kugapakori y Nahua Ethnical Groups, State Territorial Reserve In Favor of the Murunahua Ethnic Group State Territorial Reserve In Favor of the Mashco – Piro Ethnic Group, State Territorial Reserve In Favor of the Isconahua, and the State Reserve in the Area Occupied by Indigenous People in Voluntary Isolation, located in the department of Madre de Dios.

<sup>4</sup> Art. 18.3.2: “Las partes reconocen que es inapropiado promover el comercio o la inversión mediante el debilitamiento o reducción de las protecciones contempladas en sus respectivas legislaciones ambientales. En consecuencia, una Parte no dejará sin efecto o derogará, ni ofrecerá dejar sin efecto o derogar, dicha legislación de manera que debilite o reduzca la protección otorgada por aquella legislación de manera que afecte el comercio o la inversión entre las Partes”.

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