

Indigenous Water Rights: A Case Study of the Quechua People from Chinchero, Peru



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1. Chapter One: Problem Statement

1.1. Introduction

How does law regulate water resources for indigenous peoples in Peru? The indigenous knowledge of water resource management and rights system (water control rights) tends to be denied or undermined in Peru (Gil *et al* 2002). From this perspective, it is critically important to analyse the political factors because indigenous communities are excluded from the economic affairs of the country. I would like to focus my thesis on one particular problem related to natural resource rights (water resource rights) and that is the case of the Quechua people of Chinchero.

Although Peru has ratified ILO Convention 169 and recognizes indigenous jurisdiction, the Peruvian law still fails to recognize indigenous rights. The legislation of the country also fails to resolve the problem of indigenous peoples' rights over water resources (Gil *et al* 2002). In reality, other people use the water from Laguna Piuray Lake, which originally stretches on the territories of the indigenous people of Chinchero and which at present is administrated by the company SEDACUSCO S.A.¹. This is the reason for the conflict that was seriously questioned by the authorities of Chinchero in 2005. Conflicts over water in Chinchero are not a new phenomenon. The company takes the water from Lake Piuray and transports it to the city of Cusco and the indigenous people around the lake are victims of this project as it affects their pastoral and agricultural lands.

The present population of Chinchero live on an old pre-Hispanic town and constitute one of the most representative samples of the Andean cultural resistance. They have conserved their heritage – they adorn with multicolour clothing, they have Quechua as their only language, and they maintain their millenarian customs that they refuse to leave. The communities of Chinchero have preserved the system of mutual aid from the times of the Incas. There still exists the practice of "ayni" - a loan from one family to another one, and the "mita" - collective work of public interest (for example the cleaning of irrigation channels). Decision-making is also made in a collective form. According to the native law, the identity of a person

¹ Translated from source: www.mef.gob.pe/propuesta/DNPP/directives/2004/entidades_005. EPS SEDACUSCO S.A. is a municipal (public) company. Like other companies providing sanitation services, its private rights are regulated by Resolution of Supervision no. 26-95-pres/vmi/sss released on March 3, 1995. This Resolution also determines its responsibility to serve the provinces of Cusco, Anta Paucartambo and Urubamba. However, actually at the present the company offers services to the localities of Cusco, Huarcocondo, Paucartambo and Urubamba, with a total population of 307,240.

is determined by the place of birth, the place of living, the practices and traditions accompanying the everyday life activities, the language, etc. One of my aims is to analyse the legislative procedures regarding water resource management.

Peru has adopted Spanish as its official language and in addition has 72 indigenous languages among which are Quechua, Aymara and the Amazonian languages. In my research, I would like to focus on the Quechua people and their actual management of water resources in Chinchero.

Legal practices so far have shown that instrumental water policies (as in Ecuador and Peru, for example) have not only neglected customary and indigenous water management, but have also had concrete, often devastating consequences for these poor people.

1.2. Framework

“Water laws should recognize customary water utilization, including the role of water as part of a stable and lively environment and environmental water services” (Solanes 2002:14).

In this work of investigation, I will examine the predominant laws with respect to water resources. The case of the indigenous people of Chinchero will be used to exemplify the violation of indigenous peoples’ rights in modern Peru. This point will be extended to the understanding of the legal norms found in ILO 169, which postulate that laws should be practiced to defend indigenous rights.

”The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities...” (Art. 14, ILO C169).

Moreover, despite the Indigenous Water Rights of 2003, there still seems to exist a lack of effective legal framework safeguarding the rights of indigenous peoples. Typically, in Andean communities, water rights do not refer to rights of access and withdrawal only, but are considered authorized claims to use water and control decision-making about water management (Getches 2002). Who owns Laguna Piuray? Most of the social and political organizations rethinking the principles of reciprocity and complementarity of the

indigenous culture have decided against the privatization of water and hydro resources, because indigenous management forms should not be romanticised.

The perspectives for water and livelihood development are neglected in the case of the indigenous people of Chinchero. The discriminative and narrow application of modern scientific tools and technologies has contributed to the loss and degradation of water. In this context of water resource management among the Chinchero people, the concept of customary law is of great importance.

Regarding Indigenous Peoples Water Rights, the Kyoto Water Declaration from March 2003 states: “Our relationship with our land, territories and water is the fundamental physical cultural and spiritual basis for our existence...” (paragraph 3). The Declaration also calls for a fundamental implementation of traditional knowledge and traditional laws, as well as of the right of self-determination. It seems that the indigenous people and their unique systems of values, knowledge and practices have been overlooked in the Global Water Vision process. The action framework was started in March 2000 and the final conclusion regarding the necessary legal and political changes was reached in January 2003. The “Water Law and Indigenous Rights” (WALIR) was designed to analyse water rights and customary management modes of indigenous peoples and local communities comparing them to the contents of the current national legislation as most of the Andean countries have experienced problems concerning water resource management.

Water rights have become a pivotal issue in the struggle of the local indigenous people and peasants. The collective nature of “water” almost by definition forces people to build a strong organization (WALIR 2003).

Today Chinchero faces serious water resource problems caused by the company SEDACUSCO S.A. The indigenous people have taken some forced measures to defend their rights. Represented by their indigenous authorities, they have suggested that they should suspend the access of SEDACUSCO S.A. Company to the lake. They have decided to do so because first of all the indigenous people of the area do not have access to their own water resources and are in this way prevented to enjoy some vital elements provided by the lake of Piuray. The indigenous people of Chinchero have asked SEDACUSCO Company not to remain firm in the face of the huge pressure from other corporations that now promote terminator technology for their private gain and monopoly control over water systems.

The water supply for the city of Cusco is provided by five sources of which the Piuray System and the Vilcanota System are of greatest importance, providing about 88, 28% of the total water supply. The remaining 11, 82 % of the total supply is provided by the Korkor System, the Salkantay System and the Jaquira System (translated from Spanish from a Sedacusco booklet).

The indigenous people of the area demand the control of their ancestral resources and collective legal protection. However, the municipal authorities have not come up with any solutions to this water resource problem. The lake belongs to the territories of Chinchero.

Fundamentally, a “water right” is more than just a relationship of access and usage between a “subject” (the user) and an “object” (the water). It is also a social relationship and an expression of power among human beings that could be the cause for the exclusion of the indigenous people when there are other interests involved (Solanes 2002).

According to Boelens (2002), another point of analysis is “internal” inequalities as dilemmas that involve the effectiveness of legal recognition strategies. “How to face the existing gender, class and ethnic injustices that form customary and indigenous socio-legal frameworks and practices?” (Boelens 2002:11)

In this sense, I will research the general aspects of the right system and particularly local and indigenous forms of water resource rights, as well as management in order to respond to the needs of the Chinchero people, and to shed more light on important questions regarding "Indigenous Water Rights".

1.3. Research Questions

In my research, I would like to focus on the following main research question:

- How can indigenous peoples defend their water and ownership rights over their territories?
- How can the ILO Convention No. 169 warrant the rights to water for the indigenous population of Chinchero?

Based on the above main research questions, the following are also used as more specific research questions:

1. Had the indigenous people traditionally occupied the lake?
2. Does the Peruvian legislation regulate the ownership of the Piuray Laguna?
3. Do other Peruvian legal sources regulate the ownership of the Piuray Laguna?
4. What is the significance of the Peruvian ratification of the ILO Convention 169 in this case?

1.4. Hypotheses

- The indigenous peoples were excluded during the colonial time from the water system rights and their laws were replaced by western structural type of laws. This can be seen as a form of exclusion from water resource management of the indigenous people of Chinchero.
- The State still continues to violate the rights of the indigenous population and refuses to recognize their right of water ownership.
- The existing political laws are a form of cooperation between SedaCusco Company and the government and deny the indigenous and traditional rights.

1.5. General objectives

The general objective of my research is to analyse Convention No 169 on Indigenous and Tribal Peoples, Indigenous Water Rights (WALIR) and Peruvian constitutional legislation regarding indigenous people's water rights.

Specific objectives:

- To investigate the claim of the Chinchero people over Laguna Piuray Lake. Do Peruvian indigenous people know about ILO 169?
- To analyse the role of Peruvian legislation in safeguarding the indigenous peoples' right of water resources

- To research the general aspects of the right system and in particular the local and indigenous forms of water management (water control rights)
- To understand the regulation system of Laguna Piuray Lake
- To create a forum for dialogue on Indigenous Rights and Human Rights Instruments.

1.6. Significances of the study

The significances of the study are as follows:

1. It will enable us to understand the level of sustainable utilization of indigenous resources.
2. The research will provide a guideline towards creating harmonious relationship between the indigenous people and the company (SEDACUSCO S.A).
3. It will enable the policy makers to understand the main cause of conflict over water use in Peru, in general, and in the Chinchero areas, in particular.

1.7. Methodology

My primary methodological approach relies heavily on the interdisciplinary method as proposed by Entrikin (1991) and Forbes (1998). I complement this modus operandi with University of Tromsø's school of thought whereby the relationship between law, history, anthropology and literature are interwoven.

My research has been conducted in a modified “participant observer” manner in which I have felt more as an “insider” than as an “observer” and have gained insight and knowledge through *respect, dialogue and cultural perception*. I believe that respect must be the overriding guiding key when approaching all humans, wherever they may be. Dialogue comes next and, with it, one may reach a better understanding of the local problem in which peoples may find themselves. In this way, with respect and dialogue, one attains high levels of detailed perception.

The object of my study is based on a recent contemporary major problem: the unequal distribution of resources, with specific reference to water. As far as the legal aspect is concerned, I have applied Gordillo's (2003) findings for non-legal specialist in the sense that “the law consists of three elements: reality (facts), values, and norms...” (Gordillo, 2003:16). Facts correspond to the water rights dilemma; values are represented by both Western and Indigenous ways of seeing the world; and norms pertain to both, Peruvian and ancestral legislations.

Typology of sources:

Different sources will be used in this case study. Firstly, secondary sources like archives from Cusco University, the National Archive of Lima and Chinchero communal archives; government documents, magazines, ILO Convention 169, the Constitution of Peru, Water Law and Indigenous Rights (WALIR), etc. will be revised. Secondly, information from informants will be collected through formal and informal interviews, group discussion, etc.

1.8. Fieldwork

I was born in Cusco. After I began my studies in Social Sciences at the University of Cusco, I started to develop an interest in doing social activities especially in rural areas. I have travelled to different parts of the region, and more precisely in Quechua and Aymara areas and having the chance to observe their culture and struggle, I grew more interested in this matter. I attended the Human Rights and Indigenous Rights Course held in 2003 and 2004 in Bolivia. While I was studying there, I was a voluntary member and coordinator of the Andean Board, a part of which is Natives Cultures. The association of Natives Cultures Kawsay assisted me in understanding the intercultural meaning of how to respect our culture and other cultures as well. This understanding helped me in my fieldwork. However, to really understand a culture we need more than 20 years (Laurence 2004). Nevertheless, my interest in Chinchero has grown since I was student at the University of Cusco because the Inca civilization had left many mysteries in our culture. In 2005, I was admitted to the University of Tromsø. I was very happy to be a student in Norway due to my interest in doing a Masters in Indigenous Studies and Social Science. It was a good opportunity to continue my research in Chinchero. Since I was in Norway, I had a strong challenge but everything could be achieved. Even the dark period helped me because the natural world has a beautiful interpretation. This combination of dark and natural light (snow) and its combination with the sun during the summer can only be experienced in this part of the world. This was very amazing for me. Subsequently, I wrote two projects on Chinchero, but my priority project was focused on water within indigenous territories and particularly in Chinchero. Water is the relation between culture and rights. During my research, I worked with an indigenous community. In the summer of 2006, I returned home for my fieldwork. I left Norway on the 2nd of June and when I arrived in Brazil, my flight was cancelled and I had to stay for one day in Sao Paulo while the company payed for the hotel, food and transport of all five passengers. In addition, the hotel offered a buffet with typical dishes from Brazil, fruit, and

desserts. I was very pleased in Sao Paulo. The next day we left the hotel and went to the airport where the airline company seated us in the business class. This was our first flight on the business class and we felt happy for having missed the plane the day before.

I started my fieldwork in Lima where I had many obstacles in different governmental offices. I had to locate my main actors and these were the indigenous communities from Chinchero on one side, and the state political institutions, on the other. My main fieldwork activities were concentrated on conducting private interviews with representatives from the Ministry of Agriculture, Institute of Environment (IMA), SEDACUSCO Company, the Sanitation Office (Sunass), Chinchero Municipal Government, Chinchero Health Center, and representatives from different indigenous organizations and local people from the Chinchero communities. I had problems with SEDACUSCO Company because they never answered my questions, and some other institutions from Chinchero, like some NGOs that did not agree to have interviews with me. When I was interviewing the indigenous people, they were not too confident and did not want to speak about their problems with the company. The indigenous people, however, trusted me because I had been there before and they knew me. They made a collective decision that I would be allowed to talk to them. Because I was there in the time when people were planting field potatoes, most of my interviews took place in the fields while people were working. During these field interviews, I also had the chance to meet the peoples' generosity and was occasionally treated with different dishes, maize and drinks. Another obstacle I faced in the area of Chinchero was caused by the bad condition of the public transport. Therefore, quite often I had to walk for 4 or 5 hours a day and was very tired when the day was over.

I also attended a meeting between PRONASAR (National Water and Sanitation Program for Rural Areas) and the Health Center. The meeting was also attended by many presidents of the indigenous communities. Both PRONASAR and the Health Center did not want me to talk to any indigenous representatives, even though I had permission from the municipal government to talk to them. The assembly voted and I finally got permission to take pictures, to film and to interview whomever I wanted. The indigenous people did not seem to know about ILO 169 and the rights they were granted by it and they were very interested in knowing more about it. They were also very interested whether there was an ILO office in Cusco where they could get more information about their rights.

I also met representatives from JUADIR (the National Irrigation Office) and ARARIWA (an NGO working in Chinchero). I interviewed the national supervisor Weyder Rojas Renjifo in Urubamba, who is an irrigation expert and who shed more light about the new irrigation systems. The indigenous people from Urubamba, however, complained that governmental representatives like Mr. Renjifo do not visit them that often. Asked why the government does not recognize the indigenous people, he replied that the government actually recognizes them and fighting against the government would be like trying to go upstream a river.

1.9. Organization of the thesis

The paper is organized as follows: in Chapter 2 I give an overview of the history and present state of the indigenous people of Chinchero and the Lake of Piuray. I then continue with the Andean cosmic worldview presented in Chapter 3. In Chapter 4, I describe in details the main factors that play role in Latin America and then present the water conflict in Peru with special attention to the different understanding of the problem from indigenous and governmental point of view. In Chapter 5 I try to elaborate on the legal framework concerning indigenous peoples' rights and in Chapter 6 I point out the findings of my research.

2. Chapter Two: Factual and Historical Background

2.1 The Location of the Piuray Lake and Chinchero District in Peru

Peru is a country in western South America. It is bordered on the north by Ecuador and Colombia, on the east by Brazil, on the southeast by Bolivia, on the south by Chile, and on the west by the Pacific Ocean. The Peruvian population is estimated to number 28 million people. Peru is a presidential representative democratic republic divided into 25 regions² (see map 1). The indigenous people of Peru numbers about 72 ethnic groups. These consist of about 7 groups in the highlands and 65 groups in the Amazonian area, whose variety is only rivalled by its biodiversity (see map 2). In fact, the indigenous people constitute the majority of the population of Peru and have a rich and diverse traditional culture. In addition, they are grouped in fourteen (14) different linguistic families. They have conserved their respective cultures and languages at the level of the oral tradition and some of them are increasing while others are decreasing (Ministry of Agriculture, Peru 1996). Cusco, a region located in the South East of Peru, with a territorial surface of 72 364, 00 km², constitutes one of the diverse aspects of the country with geomorphology, climate, soil, vegetation and fauna as rich as its population as far as its ethnic, social and cultural characteristics are concerned. The Cusco region has 22 climatic types. The hydrographical network of the region is made up of three main river basins that comprise the concentration of regional waters. These are the River basins of the Apurimac, Vilcanota Urubamba and Madre de Dios.

Chinchero belongs to the Quechua³ linguistic family with twenty communities altogether and is located at 28 km (17.4 miles) Northwest of Cusco. Furthermore, Chinchero as a district was created under law No 59 of September 9 in 1905 (Tarazona 1968). The Chinchero district is located in the province of Urubamba.

² Available at: [http://es.wikipedia.org/wiki/Cuenca_\(accidente_geogr%C3%A1fico\)](http://es.wikipedia.org/wiki/Cuenca_(accidente_geogr%C3%A1fico))

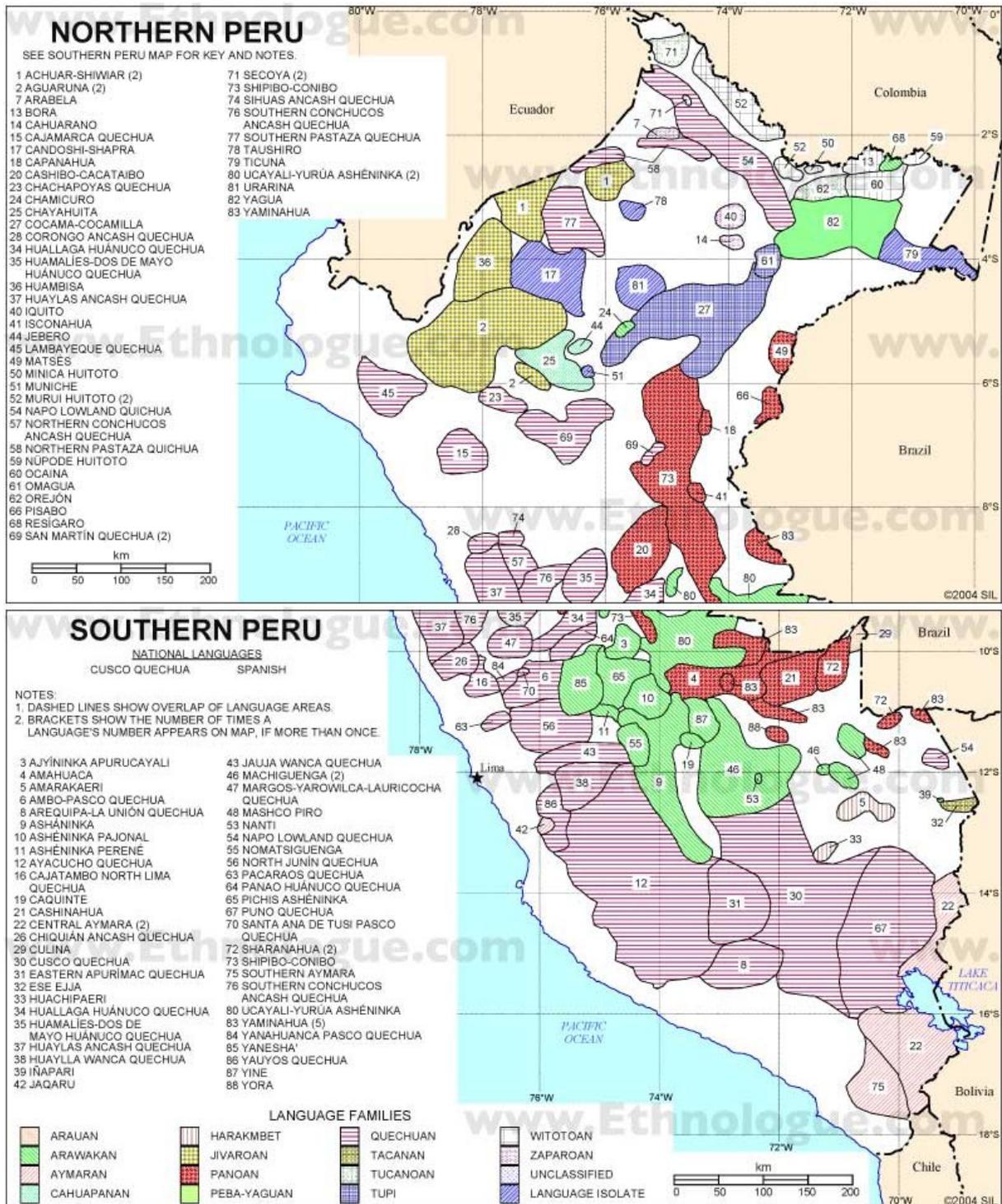
³ **Quechua (Runa Simi; kichwa in Ecuador)** is a Native American language of South America. It was the language of the Inca civilization, and is today spoken in various dialects by some 10 million people (Quehuas) throughout South America Peru, South-western Bolivia, southern Colombia and Ecuador, north-western Argentina and northern Chile (Available at: http://en.wikipedia.org/wiki/Traditional_knowledge)

Map 1



The map shows the 25 regions in Peru.

Map 2



The map shows the distribution of languages on the territory of Peru

2.1.1 The Climate of Chinchero

The climate of Chinchero is semi-cold and semi-dry, with dry winters. This kind of climate extends on a territory surface of 14 247, 19 km², which represents 19, 69% of the total territory surface of Cusco. It receives between 500 and 1000 mm of precipitation each year, and the average annual temperature is about 12-14 degrees. The months of greater intensity of fluvial precipitation are December through March. The dry period occurs between May and July. The climate is significantly affected by the high altitude of the location, between 3 000 to 3 600 meters. This goes for several districts of Cusco, among which is also the district of Chinchero in the Urubamba province (Ministry of Mining, 2005).

2.1.2 Routes of Communication

Access to Chinchero is by land. From the city of Cusco there is a connecting road and the trip is a 30 kilometres drive which takes around 45 minutes of travelling. There is also a rural way From Sacsayhuaman through the Lake of Piuray and then to Chinchero.

2.1.3 The Population of Chinchero district

Chinchero is a district in the northwest of Cusco. It is bordered on the north by Yanacona and Huayllabamba district (Urubamba) and Lamay. In the south it borders the Ayllupongo community, Cachimayo district and Poroy district. Beyond its eastern frontiers lie the Yanacona community, Ayllupongo community, Pisac district and Cusco city. And, finally, in the west we find the Maras (Urubamba) and Chacan (Anta) districts (Caceres and Jurado 2003).

According to estimates published by the INEI (the National Statistics and Information Institute) Census, the Chinchero population was 9 146 people in 1993. It is estimated that by 2005 the total numbers of the inhabitants will be 10,531. The population growth rate is 1.2%. The main spoken language is Quechua.

Table 1: Chinchero Population

Details	Census of 1993			estimates of 2005		
	total	urban area	rural area	total	urban area	rural area
Total population of Chinchero	9,146	1,991	7,155	10,531	3,800	6,731
households	2,286	498	1,788	2,632	760	1,872
No of person per house	4	4	4	4	5	3.6
annual average (%)				1.2%	1.2%	1.2%

Source: Municipal district of Chinchero (2006)

Table 2: The chartered communities of Chinchero

Communities and sectors of Chinchero			
Zone	District	Communities and	sectors
Piuray	Chinchero	Ayllopongo	Ayllumadre
		Chu'so	
		Oqotuan	
		Piuray	
		Huila-Huila	
		Huitapukio	
		Cuper	Cuper Alto
			Cuperbajo
			Cuper pueblo
			Pucamarca
		Pongobamba	
		Tauqa	
		Umasbamba Ichukancha	
			Qorqor
			Umanes
			Huatata
Guaypo		Yanacona	Chakelkocha
			Olonos
			Q'erapata
			Umanes
			Huatata
		Guaypo Andenes	
		Ch'araq	
		San Jose	
		Miraflores	
		Muyuri	
		san Isidro	
		San Juan Bautista	
		Villa Mercedes	
	Maras	Cheqerec	Cruzpata
			Qollana Alta
			Qollana Baja
	Huayllabamba	Raqui Ayllu	
	Cachimayo	Chinchero	Ayarmaca
			Qorikancha
			Tangabamba

Source: Municipal district of Chinchero (2006)

2.1.4 How large is the lake?

The total area of the hydrographical basin is 39.88 km². It is located in the district of Chinchero of southern Peru, province of Urubamba, Cusco region. The lake of Piuray itself is situated between the following geographical coordinates: between 13 degrees 22 ' 33 " and 13 degrees 26 ' 25 " southern latitude; and between 71 degrees 58 ' 012 and 72 degrees 03 ' 25" western longitude. The lake of Piuray has a rectangular shape. Its length is 2,800m and its width is 1,400m according to a 1996 SEGECO report.

Present observations suggest that it possessed a greater area in the past. The diminution in the volume of water is due to extensive defrosting. Rainwater is its only source of replenishment. There are also other smaller reserves of water like the lagoon of Cusicocha and the lagoon of Chinchac, both located 4,000 meters above the sea level in the north-eastern part of the extensive hydrographical basin on which the lake of Piuray is also situated. The water surface of this basin represents approximately 7.3% of the total area. Most tributaries feed the lake of Piuray and there are only two drainage systems which leave the basin. One flows in a northeastern direction towards the village of Urquillos and the other to the south towards the village of Cachimayo (SEGECO S.A., 1996).According to a 1996 Segeco S.A.⁴ report the total hydrographical basin in which the lake of Piuray is located has an area of 39,88km².

Table 3: The Piuray hydrographic basin

Name of the sub-basins which conform the total of the hydrographic basin (also names of the tributaries of the lake of Piuray)	Area (km2)
Pampachaca	4.66
Pucamarcamayu	1.84
Cuper Yarca	3.83
Ocotuan	2.65
Tauca	5.27
korkor	3.86
Umasbamba	10.73
Raulmayu	0.77
Pongomayo	3.34
Only water surface of the lake of Piuray	2.916
Total area of the hydrographic basin	39.88

⁴ Informe Final Diagnostico de la Laguna de Piuray , octubre 1996. SEGECO S.A.

2.1.5 Which Communities Surround the lake?

Seven villages surround the lake of Piuray: Huila-Huila, Pucamarca, Huitapucju, Cuper Bajo, Ocutuan, Ayllupongo and Pongobamba.

2.2. Historical Background

2.2.1 The town of Chinchero and the lake of Piuray located on indigenous territory

With regard to the concept of indigenous peoples in Section 1 of ILO 169, it is stated that indigenous peoples are those “who retain partially or totally their traditional cultures, values, and institutions and who used to live in a territory prior to conquest or colonization, or the creation of the state” (Tomei and Swepston 1996:5). The town of Chinchero and its surrounding land, on which the lake of Piuray is located, has belonged to indigenous territories since the times of the Inca Civilization. After the Spanish invasion, the Inca land ownership was backed up by data found in written documents in the Cusco Departmental File. Many examples of land title recognition by the Chinchero people dating back to the 16th century are found in these files. Other documents of interest are also found in 1545 files belonging to the Cuper community (located within the Chinchero boundaries), which mention Inka⁵ Tupac Yupanqui’s ownership rights to land. These files also contain information on how land was redistributed among various owners, including Spanish ones. Chronicles written by Juan de Betanzos, Pedro Sarmiento de Gamboa Bernabé Cobo, Garcilaso de la Vega etc. also provide detailed information about the Chinchero area of that time, when it was ruled by Inka Tupac Yupanqui. As an example of these transfers it is worth mentioning the case of the Spanish Alonso de Loayza when he returned the Cuper and Pongo Ayllus (indigenous grouping based on shared landholding, kinship, and ceremonial and public labour obligations explained below under Section 4.2) back to the main leaders of Chinchero. This is described as follows: “In one thousand five hundred and sixty four ... the High Spanish visiting authority granted possession of all land and small farms contained in the above mentioned title to Mr. Juan Llamoc and to Mr. Garcia Cusihuaman, main Indian leaders of Cuper and Pongo, who obtained land tenure from Alonso de Loayza. Of all the land that the Spanish royal delegate had in custody, it awarded royal and physical ownership to the Indians Cuper and Pongo as well as to all others who dwelled there. Borders were established as witnessed by Melchor Masias, Hernando de Jaen and Hernando de Morales. Notary Public of his

⁵ The title of Inka (not be confused with the Inca civilization or people) refers to a position as the head or main leader of a suyu. In turn, during Inca times, there were four suyus (large territories and population within) and, thus, four Inkas.

Majesty: Pedro Dias de Valdeon” (Chincheru archive, note pad 2, Year: 1561, page 111; my translation from Spanish).

In order to understand more about the town of Chincheru and its surrounding area we should point out that, during Inca times, the territories were divided into four major regions: Chinchaysuyu, Contisuyu, Antisuyu and Collasuyu. These four regions were known in the Inca language as “Tawa-Inti-Suyu”, a term which translates as “the four territories of the sun”. Chincheru was located on the Chinchaysuyu territory, and its inhabitants were connected in a circular form with the other Inca populations. Chinchaysuyu, one of the four territories belonging to the Tawa-inti-suyu, was divided up into two smaller units of land and population called Marca and Ayllu (the latter ones being contained within the former ones).

With reference to the town of Chincheru, Juan de Betanzos reports that “Tupac Inka Yupanque established a town two miles away from the city of Cusco, going to the valley of Yucay, which he named Chincheru” (Betanzos 1987:173). Present-day Chincheru and its surrounding land (today named “district”), which is located in the province of Urubamba, rests on the “sacred valley of the Incas” (a privileged place during Inca times). This valley was considered one of the *territories of the sun* and a place of meditation in the presence of ecologically balanced layers. It was also a place where “sacred mountains” (“wacas”) dwelled and where rituals were held. Betanzos (1987) also indicates in reference to the Inka Tupac Yupanqui: “...and then he sent the most important men around his territories who collected about 20 000 men for the construction of the new town, Chincheru” (Betanzos 1987:173). This last quotation reveals that Chincheru enjoyed a privileged status among the wise people of the Tawa-inti-suyu. It also possibly was an astronomical centre where research was conducted in relation to eclipses and equinoxes that appeared during certain months of the year.

Betanzos (1987) also adds that “Inka Tupac Yupanqui visited the lands and held a big meeting” (Betanzos 1987:173). At this meeting, various issues were raised pertaining to the architecture of the town of Chincheru, the sacred mountains surrounding it, as well as the hydraulic works of the Piuray Lake. This lake, of paramount importance, provided water through irrigation channels to several towns including Chincheru, Maras, Urquillos and to Cusco (the capital of the Inca civilization). Hydraulic works, technically advanced during Inca times, had been established in direct relation to the situation of the various “apus” (ritual

spaces located on mountain regions). Irrigation channels carrying water would pass through the “apus” according to sun signals that would, in turn, indicate the appropriate time and place for the cultivation of crops. Some of the main “apus” of this region were Curaca, Cerro Redondo, Qotopuquio (all located over the town of Santa Ana) and Oroqotopuquio.

It is also worth mentioning that “in this same manner in the hydraulic channels of Chinchero two sun signals were located, and during this stage an aqueduct was constructed which up to this day may be observed. It is known by the name of “el Arco” by an ordinance from July 1st, 1557, which granted the supply of water from the Chinchero area, as well as the renovation and building of bridges and roads (De Esquibel 1980, translated from Spanish by me). These quotations, which acknowledge the cardinal importance of the “el Arco” aqueduct situated at the entrance of Cusco during colonial times, further illustrate the foremost economic significance of water supplied by the lake of Piuray. They also highlight the strategic location of the town of Chinchero, through which the aqueduct went by.

2.2.2 History of the Lake of Piuray

The Piuray Lake of the Incas was a key area in the sacred valley because of the great variations in the altitude and topography that advantaged the production of a large variety of products. After the Spanish invasion, the lake of Piuray faced a disruption due to the new administration by Spanish people and the Catholic Church. Water in colonial Peru is a topic of another study. However, I should point out that the data found in written documents in the Cusco Departmental File and Lima national File proves that the utilization of Lake Piuray belonged to the Chinchero District even in the Colonial era. These files describe different kinds of products, as well as a kind of disruption in the stream from the Piuray Lake. They also mention the transfers of some land with irrigation over Ayllu Tiqui located in Chinchero. As an example of this disruption, it is worth mentioning the case of the Spanish Diego de Loayza when he damaged the Ayllus: “In 1670 Alonzo Diaz de Bila , representative of Spain, presented the case concerning the Mills of Tiqui to the Cusco Notary Office. This Mill belonged to the landlord Diego de Loayza and the Jesuits (Catholic Church), who where using water from the river belonging to Pirray Lagoon for the water mills of Tiqui in order to produce flour from wheat. Loayza and his servants cut off a portion of water from the river that belonged to Chinchero and diverted the water flow. This abuse caused a big damage to the city of Cusco and the population that inhabited that area. Alonzo’s petition wanted to expropriate the Jesuits from this area and put out the three mills for sale. This river

(Chucupata) was also used as a border line which divided Chicero and Maras Community. Pedro Fernandez de Castro, Andrade Conde de Lemus viceroy” (F18, cuad 4 a 1602).

During the colonial time, indigenous people were victims of displacement, with increase incidents of abuse in their territories. This holds even with clauses such as: “The merced was only issued with the *proviso* (decree) that some water was to be reserved for the Indians’ fields” (Lipsett 1988:40). As stated above, the acknowledgement of the new legal system was based on a triangle structure that further became a model for social class division of the Suyus, Marcas and Ayllus in Peru.

The lake of Piuray at the colonial time thus incarnates the backbone of the economic interest and water empowerment under Spanish rule. In this same manner, in the Ayllus of Chinchero, some of the hydraulic channels were closed. However, based on the cultural knowledge from the Ayllus, the Quechua people have practiced their main principles related to water since the Inca time. Water is regarded as very sacred, and it is used in a systematic way that harmonizes with the ancestral knowledge that forms a part of the Andean culture. These fundamental principles will be further elaborated in the next section.

Nowadays, indigenous rights are recognised under ILO Convention No 169 with regard to traditional land, language, institutions, and lifestyle. In addition these rights grant collective ownership and possession rights of their land (Tomei and Swepston 1996).

3. Chapter Three: The cosmic Andean vision of Water

This chapter explains the Cosmic Andean Vision and local knowledge of water in the Andean culture. Only by understanding the practices of Ayllu, as well as the culture of the Quechua people, we can understand water management in Chinchero. This section also explains how the Andean particular and generic “world view” is vital to the Quechua culture. When talking about water one also has to talk about culture, territory and language. Furthermore, traditional knowledge provides detailed information about the ancestral wisdom of the Chinchero area. Everything that will be treated later in this chapter concerns traditional knowledge in correspondence with ILO Convention 169 and ICCPR (The International Covenant on Civil and Political Rights).

3.1 The lake of Piuray from an Indigenous standpoint

The name ‘Piuray’ derives from two words from the language used by the Incas, Quechua. “Phiru” means a kind of softness and “wayra” can be translated as ‘wind’. The indigenous position conceives a duality when explaining the significance of the lake of Piuray. It is perceived as the feminine part as opposed to its complementary masculine counterpart: the lake of Guaypo Grande. This is the reason why in everyday conversation indigenous people refer to the lake of Piuray as “mama cocha” (the mother lake) and to the lake of Guaypo Grande as “tayta cocha” (the father lake). In addition, the duality in the indigenous way of thinking envisages a balance of negative and positive energies in relation to both lakes (These findings were observed while carrying out my fieldwork).

3.2 The meaning of water for Indigenous peoples

Indigenous peoples from all over the world have declared that water in indigenous territories must be regarded as sacred. Water is priceless and money is not used as a means of exchange as far as this resource is concerned. There are several rules and regulations that govern the indigenous peoples’ system of organizing water: a) it is considered a living being and is cared for in this way, b) it is regarded as the blood of Mother Earth, and c) it means life. The first country with indigenous population that has included the b) criterion concerning the significance of water is Bolivia. In this country’s constitutional law, it is stated that water is not owned by any person, and that only Mother Earth may claim ownership. In this sense,

only indigenous communities are in charge of taking care of it and protecting it for future generations. This ancestral knowledge forms part of the Andean culture.

The Kyoto Water Declaration of March 2003 concerning indigenous peoples' water rights (paragraph 1) asserts: "We, the indigenous peoples from different parts of the world assembled here ... were placed in a sacred manner on this earth, each in our own sacred and traditional lands and territories to care for all of creation and to care for water" (Kyoto Water Declaration, 2003:Par.1). Indigenous peoples from all over the world share this type of cultural knowledge.

In Peru, the Quechua people have practiced this principle since the Inca times. Likewise, the people of the Andean cultures today consider water as "the blood of Mother Earth". According to these principles, a relationship of mutual aid and trust ("ayni") between people and water has been established for thousands of years. This bond must be based on respect and "dialogue". In Cusco, the Incas had built a Water Temple which was called Tipon. Here water was collected and was united with water from the bowels of the earth. The fruit of this union was to be distributed through four channels representing the four Suyus (Tawa-inti-suyu: four regions belonging to the sun).

"Wiracocha" is the name by which the Incas refer to water, and "Pachamama" is the name by which "Mother Earth" is referred to. They, in turn, fertilize each other and produce life. These concepts have become the main principles of the Andean civilizations today. In this manner, different cultures and social organizations in the communities have been formed. In addition, ancestral wisdom represents the corner stone for future generations.

According to a documentary film from 2003 ⁶ and informants from the Chinchero region I interviewed during my fieldwork, water is perceived as a living being of paramount importance. Without it, neither animals nor other species (including ourselves) would be able to live. In addition, Chinchero dwellers have pointed out that water possesses a kind of "spirit" with which one must constantly engage.

⁶ Documentary film: Fundación Solon directed by Pablo Solon, 2003 .Interviews with Native leaders in Andean South American countries.

The Andean culture, in light of this approach, provides a sustainable way and improved technology in dealing with sustainable water management. In his PhD thesis from 1994, Trawick argued that “an irrigation model based on native management principles would be far superior to the inappropriate methods officially used today. A return to certain practices would greatly increase the amount of water available for use, and correct gross disparities in source access, which have become a major cause of strife” (Trawick 1994:129). In other words, Western ways have produced negative results while hindering Andean cultural wisdom.

3.3 Andean Water Cosmogony

The Cosmic Andean Vision may be understood as a “world view”; the cornerstone of the Andean vision is an equal balance of keeping resources and preserving an “*alive world*” (PRATEC 1993). The equal balance, thus, incarnates the backbone of nature and is vital for the “*alive world*”. In light of this approach, the Andean culture provides alternative ways and theories in dealing with nature and sustainable water management. The equal distribution of the living world means that there is no superiority and everything gets equal respect as it is. This distribution of the world view is primarily widespread in four worlds (see fig. 1). Furthermore, these four worlds that represent the worldviews of the contemporary Quechua people and their Andean cultural wisdom are still playing an important role in understanding nature.

Another realm of literature addresses the issue of a world view. In 1971, Yi – Fu Tuan investigated the organization of world views and found that non-western thinkers conceptualized space around a sacred centre. Likewise, in 1977, he writes about two types of world views: (1) human beings are located at the centre of a world defined by cardinal directions and (2) the world is modelled on the human body. He uses the BaMuti Pygmies of the Congo Rain Forest and the Pueblo Indians of the arid American southwest as case study examples (cited in Forbes 1997:26).

In the Andean Culture there are four types of world views: (1) Ukupacha (world of the subsoil), (2) Kaypacha (the world in which we live), (3) Hanan pacha (the world of the constellations) and (4) Supaypacha (the unknown world). Keeping a balance between these four worlds was believed to be extremely important for the well-being of the existential world. In addition, these four types of world views have different levels of meaning for the

culture of the Quechua people. Because in the Quechua language *kay pacha* is translated as “the world in which we live”, land and water are comprehended as a whole entity.

Andean Cosmogony

The illustration underneath shows the 4 world views of Andean cosmogony.

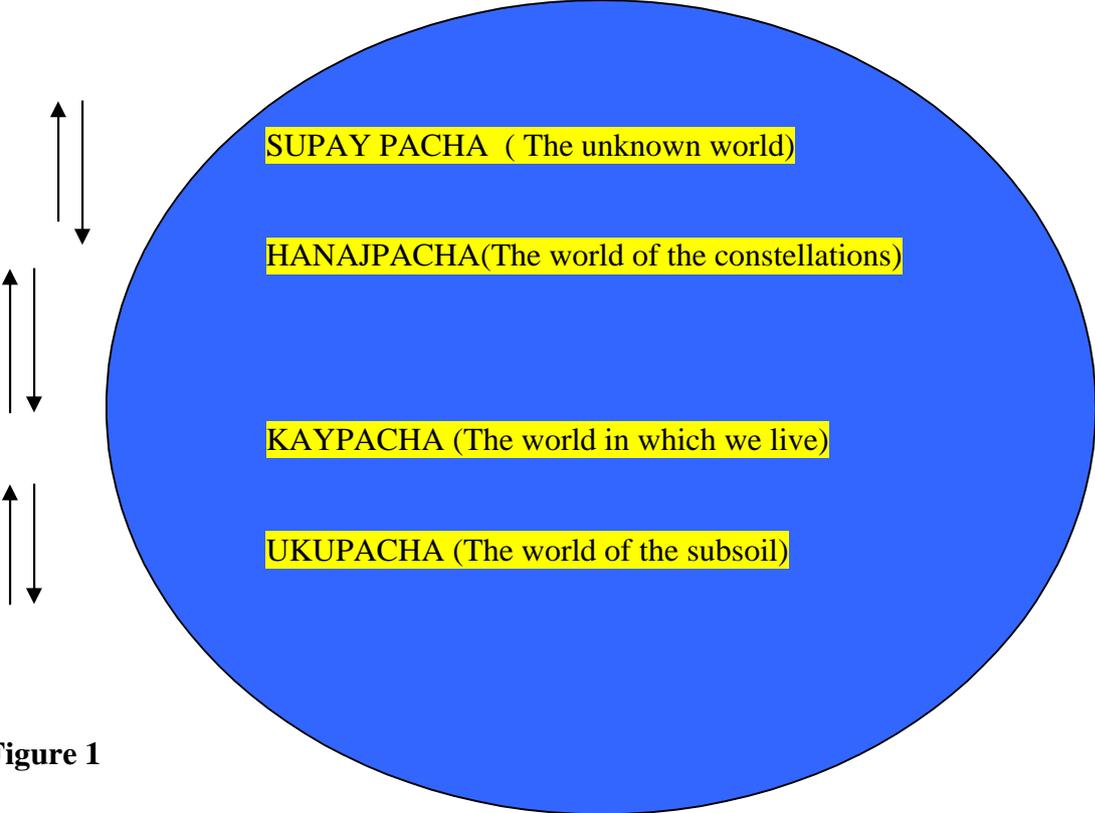


Figure 1



Native art by Sairy Lligado. The upper part of the picture depicts the unity between land and water. In the middle part, we can see the communities and their relationship with water based on a mutual aid and trust ("ayni"). People consider water to be a living thing which can be both alive and dead. If it is running, it is alive. The polluted water, however, is considered dead. That is why indigenous peoples care so much about water.

There are several rules and regulations, which govern the indigenous people's system of water organization: a) *lakes*, which are considered to be living beings and are characterized as having free interchanges with the Hananpacha; b) *black lakes*, which are believed to have some kinds of energies; c) *sweet water*, which is considered to envisage different cycles of life, d) *salty water*, which is used for every day needs; e) warm water, which is related to medical practices.

In the Andean culture, water is considered as “the blood of Mother Earth”. In this regard, this Quechua cosmogony endorses the idea that everything should be respected, including water. This line of argument is based on the principle of “Ayni” (a practice, a relationship of mutual aid and trust between people and water). This bond must be based on respect and dialog. If we turn our gaze towards the ancestral wisdom of the cosmic Andean vision of equal balance with respect to the existential world, we could comprehend the miracle of life.

According to Kincaid “the concept of dualism or parallelism was essential to the Andean worldview. It is based on the premise that all entities have a complement (sun/moon, earth/sky, land/water, volcano/lake, man/woman) and that actions of one stimulate reciprocal action in the other” (Kincaid 2005:175).

In what follows, I will focus on examples from another part of the world, which relate to these same assumptions. Starting with Nebraska, it is relevant to point out that “the Pawnee Indians, whose homeland is east central Nebraska, also incorporated bodies of water in their world view. For instance, Kicawi: caku, or spring Mound, was a spring on the south bank of the Platte River where offerings were left to appease the world maker, and children were taken to sprinkle with holy water as a way of blessing them” (cited in Forbes 1997:36). This study approves the idea that bodies of water are considered sacred.

The Konkow Maidu of the north are portals between the lower (below the earth’s surface) and the middle (the earth’s surface) worlds. Thus, at some mountain lakes inhabitants of the lower world can come into contact with human beings. Since the lower world is the home of malevolent beings, these mountain lakes are avoided (Cited in Forbes 1997:37).

Mircea Eliade (1957) writes of the symbolic nature of sacred places. As a religious scholar, he applies the concept of cosmic mountain and axis mundi to a variety of cultures, including Native Americans, Australian aborigines, adherents of Buddhism, Taoism and Christianity, and the ancient Greeks and Romans. According to Eliade (1957), the cosmic mountain symbolizes the connection between heaven and earth. He also notes through his cross-cultural perspective that these mountains may become grounds (Forbes 1997).

3.4 Water ritual ceremonies at the Lake of Piuray



Chincheru dwellers are carrying out a water ceremony around Piuray Lake



In this picture, we see people making offerings of fruit, coca leaves and maize drink to the water.



After the ceremony is over, the man offers maize drink to the land

According to Andean Cosmogony, water ceremonies have been incorporated in Andean tradition for thousands of years. During my fieldwork I have met a group of elders from some Ayllus in Chinchero, who explained to me that water ceremonies had played a great role in their culture since Inca times. Kincaid argues “Andean water cults” that reverence for water became a unifying theme throughout the colonial Andes (2005:160). The indigenous people of Chinchero have always engaged in water ceremonies

Intercultural norms are conveyed through water. A key aspect of this is the spiritual significance that indigenous belief systems attach to place, land and resource use (Jarding 2001). According to Forbes (1997), humans are engaged through emotional attachments to particular places. One attachment is religious in nature and includes the recognition of sacred places. In addition he points out “geography of religions” as a concept that contributes a great deal to the understanding of people’s connections to land via spiritual beliefs.

David Sopher (1967) proclaims that there are four broad areas of research in the geography of a religion. They are (1) the significance of the environmental setting for the evolution of religious systems and institutions, (2) the way religions modify their environments, (3) the different ways that religious systems occupy and organize space, and (4) the geographic distribution and diffusions of religious systems (cited in Forbes 1997:29). The categories mentioned above can explain the concept of a sacred place and geography religions.

These assumptions are contrary to the indigenous way of seeing the world in Chinchero. In the indigenous system religion does not exist, due to an equal distribution of an 'alive world' where everything is respected as a self, and thus nothing is considered superior to anything else. This represents a different perception of the world, which can be seen in the Ayullu community. The spaces are organized using an ancestral knowledge as reference. It is diverged that indigenous people have another way of life that coexists with other living beings such as water, which are located in the nature. The Chinchero dwellers think along the line of the lake of Piuray, which is conceived geographically and spiritually as a cosmic fundamental unit.

The cosmic Andean vision rests on ancestral knowledge on how to deal with land and water. Chinchero dwellers have pointed out that water ceremonies at the lake of Piuray should be based on "respect and dialogue" with which one performs the traditional Ayllus. This concept must be based on the indigenous Cosmic Vision, which in the Quechua language is *Kay Pacha* and is translated as "the world in which we live", meaning land and water comprehensively seen as a whole entity. Nowadays, the traditional Andean worldview is replaced by the viewpoint of the modern state and the western legal perceptions are dominant when it comes to natural resources and land distribution.

Referring to the modern state, Mario Vargas Llosa states that "the indigenous peoples who live in Peru today (and constitute close to half the population) must be swept aside in the name of progress, because modernization, which he equates with "complete assimilation," is "possible only with the sacrifice of the Indian cultures" (cited in Wright 1992:7). This line of argument is based on the perception that our culture must be transformed and the role of our culture – diminished.

On the other hand, the indigenous approach is deeply concerned with cultural bonds linked to internal resistance. The Chinchero culture performs different water ceremonial activities.

They point out that their practices are based on *respect and dialog*. In fact, the Ayllus of Chinchero are widespread practices of water ritual ceremonies that are performed twice a year.

For example, the Ayllu Pongobamba (head Ayllu) practice deals with these spiritual relations. How do they respect water and why is the dialog so important? According to my informants, Ayllu water is attracted by making *despacho*, which can be translated as a reciprocal relation (this category is based on dialogue). In addition, they said “we have to go to the “ñawi-uno” (the term by which elders refer to sacred water places) which is Piuray lake where they offer coca leaves (they have spiritual qualities), flowers, and fruit beneath mother earth (the land is seen as a mother). In addition, some of them (especially elder males) know the most important water places which they called “the eyes of water” and which must be protected. From this point of view, the water of Piuray Lake is conceived as the main mother lake which is referred to as “mamacocha” and is believed to be of enormous significance. Furthermore, water ritual ceremonies at the lake of Piuray are perceived as a communication with another living being. Water is perceived as a subject and it can be alive or dead. Indigenous people cannot perceive water as an object. When digging a channel and letting the water for the first time through it, people use to accompany it when it first enters the channel and offer it flowers.

According to Forbes (1997), the recognition of the spiritual landscape is very important for indigenous people who strongly identify themselves with their homeland.

Several cases from over the world as well as from the Americas can shed light on this. In the Native American cosmology “bodies of waters prominent landforms, especially mountains, are areas most often considered sacred. For instance springs, lakes, rivers, and the ocean” (Forbes-Boyte, 1997:40). In addition, he argues that bodies of water play an important role in religious pilgrimage. Blue Lake, considered sacred by the Taos Pueblo, is an excellent example of a holy water body utilized for specific rituals to which pilgrimages are undertaken.

Forbes (1997) characterises different types of sacred places. His study is concerned primarily with “natural phenomena and physical characteristics of a place and bodies of water can contribute to the perception of it being sacred. Thus spring, lakes, rivers, and the ocean all figure in Native American cosmology and are believed to be sacred places” (Forbes 1997:36).

According to Kincaid (2005) water is also laden with ideological and cosmological meaning. In Ecuador, “the waters of San Pablo Lake, imbued with ideological, political and

cosmological meaning, became the medium through which indigenous people asserted their ethnic identity” (2005:5).

3.5 The wisdom of water management: emphasis on the secret way of producing rain



This picture is taken during the dry season and shows people on their way to the mountain to perform a rain ceremony

“The Andean culture is the culture of an alive and vivifying world, that vibrates to the rhythm of the cosmic cycles and the telluric cycles that is the rhythm of life. Therefore, the time is cyclical. Nevertheless, the ceremonies of the Andean calendar are moments of intimate conversation with such cycles in which “an archetype” does not repeat but the peculiar situation is tuned” (translated from Spanish from PRATEC, 1993).

The Indigenous people from Chinchero have pointed out that water in their territories is regarded as very sacred. The Ayllus of the district of Chinchero have been the main institutions for protection of the secret ways of producing rain. During the year there are different obligations in terms of water prediction. The communities form different ayllus and

social organizations for this purpose. The lake of Piuray is the female part and is of paramount importance. Without it the indigenous people believe that they can not produce the rain season. In addition, Chinchero dwellers have pointed out that “mama qocha” is the name by which indigenous peoples refer to the Lake of Piuray, and “tayta cocha” is the name by which Lake of Guaypo Grande is referred to. They, in turn, fertilize each other and produce rain. This is the reason why water duality has become an important perception of foremost significance. The traditional Ayllus perceive a duality in the water basins in relation to the ecosystems of the lakes. They must be masculine and feminine and the two of them are united during periods of water scarcity. This perception is one of the agricultural strategies that makes it possible for dry zones to benefit from the rain season. The secret way of producing rain in the ayllus is characterized by a close association to water management, and by norms of cultural understanding. It also shows ways to distinguish signs throughout the seasons, winds and the colour of clouds that can make theories of prediction for each year. In addition, a Chinchero dweller pointed out that, “the winds move towards the South or the North according to the stations. Its study provides a key for the understanding of the distribution of rains in association with the Lake of Piuray “.

The Ayllus organization following a systematic transition incorporates nucleus of more traditional patterns of water and land. From the very beginning, a *varayoc* has been the leader of an Ayllu. By putting them in the centre, it is still possible to build local organizations (Michetchell and Guillet, 1994).

Marcelino said that the indigenous youth in Chinchero is less familiar with the cultural patterns but with the older indigenous people still alive, these cultural patterns are still known and they have managed to preserve their ancestral wisdom. Furthermore, the young people have different lifestyle because of the globalization, and it seems that most of them will lose their identity and their own cultural patterns. To combat this cultural loss, self-identification and knowledge of ancestral traditions is essential.

On the other hand, Jones and Schanche (2004) emphasize that a modern society is based on the idea of dividing rights among several and different owner interests. However, the legal techniques can never be transferred from one culture to another without being adapted to the local values and conceptions of property.

4. Chapter Four: Interest involved

4.1 Why water rights are an issue?

Latin America, with the exception of Cuba, has been influenced by capitalism since the independence from colonial rule in the beginning of the 19th Century. The cornerstone of capitalism is an unequal distribution of goods, wealth and resources. Inequality, thus, incarnates the backbone of the economic and social capitalist system.

The unequal distribution of resources is better represented by the denial of water rights to the indigenous peoples in Latin America. This economic marginalization is primarily widespread in territories with traditional cultures. Water, especially during the last ten years, has become a matter of great concern all over the world. Nowadays, the scarcity of this vital resource has led to the creation of a world water day (UN, March 22nd). This is the reason why water rights in Latin America have become an issue of foremost significance.

The violations of indigenous water rights in Latin America have escalated during the present century due to the neo-liberal reforms. “Neoliberalism can be defined as a political-economic philosophy and set of policies that established development priorities along austere capitalist paths of free trade, market expansion, privatization, and free of governmental intervention and regulation and the public good” (Kermath 2004:1). In this regard, this ideology endorses the idea that everything should have an owner, including water. This line of argument is based on the principles of productivity, creativity and individualism. It also contends to diminish the power of governments but, ironically, it also maintains that cooperation with governments is essential (as long as the latter remain compliant to its needs).

If we now return to our initial concern regarding the upsurge in the violation of indigenous water rights in Latin America due to neoliberal policies, it is relevant to point out Andreasson (2006), who states that “given the disappointing gap between expectation and the results in reforming countries, doubts have been raised about the feasibility of the various development strategies, which can be labeled 'neoliberal development policies'” (Andreasson, 2006:16). Thorsen and Lie (2006) also question these types of policies: “Neoliberalism is perhaps best perceived of as a radical descendant of liberalism ‘proper’, in which traditional liberal demands for ‘equality of liberty’ have been bent out of shape into a demand for total liberty

for the talented and their enterprise...” (Thorsen and Lie, 2006:16). This touches upon the above-mentioned foremost aspect of equality. However, it is a form of equality only for the talented. By contrast, the concept of inequality for those at the bottom of the society is introduced. In this case, it pertains to the poor indigenous people of Latin America. Bebbington (2007) also argues that “In much of Latin America, such approaches increasingly argue that large parts of the peasantry (or campesinado) are not longer ‘viable’ in the face of a globalizing market economy”(Bebbington, 2007:495). In a more general manner, inequality is also stressed by Weyland who, interestingly, brings up democracy in Latin America in a not so glamorous light. “Other theories stress the tensions between democracy, which guarantees equal political rights for all citizens, and market capitalism, which allows for – and perhaps even requires –considerable socioeconomic inequality (1998:3)

Inequality, then, is further expressed by the fact that indigenous cultures in Latin America suffer a severe lack of respect when subjected to neoliberal reforms. In fact, free trade agreements have little or no regard for indigenous well-being due to an ample array of economic interests, especially with regard to natural resources such as water. Furthermore, privatizations are not well adapted to traditional cultures because the latter do not possess the financial capability to negotiate on an equal level. In this case some even speak of an imposition: “Free trade agreements ‘are not right for developing countries... it is not a negotiation, it is rather an imposition’ (Joseph Stiglitz, Co-Recipient, Nobel Prize in Economics” (Oxfam briefing paper, March 2007)).

It is now worth drawing attention to the consequences of inequality in the capitalism system further exacerbated by neoliberal reforms. In this respect, Oxfam is eloquent when bringing up the issue of the dire by-products of free trade agreements in terms of: “Signing Away the Future’. How trade and investments between rich and poor countries undermine development? The quiet advance of trade and investment agreements between rich and poor countries threatens to deny developing countries a favorable foothold in the global economy. Driven by the USA and the European Union, these agreements impose far-reaching rules that place severe restrictions on the very policies developing need in order to fight poverty” (Oxfam briefing paper, March 2007).

If we now turn our gaze on the indigenous people in Latin America along the general issue of capitalist inequality with respect to water, we should mention a major documentary film

called “The Blood of Mother Earth” produced in 2003. In this film, native leaders of Andean countries conclude that “Humanity has been divided into two worlds: one consisting of people in touch with their roots, culture, language, history and land, and the other with individuals who have great love for money and profit”. They further assert that water has become like “blue gold” in the present century. In addition, it may be contended that those who hold positions of power in the established order attach a great deal of importance and value to money. It follows that water and air become commodities with a price tag.

An example of this was published in the Third Latin American Congress on Watershed Management (Arequipa, Peru 9-12 June 2003). It mentions the results of the Regional Forum on (PES) Payment Schemes for Environmental services in Watersheds. These schemes generally involve the implementations of market mechanism concerning different payments of upstream and downstream landowners for services rendered. However, projects such as these hinder the interests of indigenous peoples to the extent that landowners charge them money for the use of water. In fact, according to ILO 169 Art, 14, the former should be the rightful owners of the land where watersheds exist.

“This obvious inequity thereby introduced into the system then reverberated throughout the district in a self-reinforcing manner, setting off a struggle over water that further exacerbated the scarcity. The result, as I found when I arrived in late 1985, was a profoundly divided society, rife with iniquity, corruption, and conflict whose people were incapable of working together to solve problems that needlessly affected the lives of everyone. The situation was tragic indeed, and soon became even more so” (Trawick 2003:129).

In this sense, it follows that it is the landowners who should pay money to indigenous peoples who have been guardians of the environment during the centuries. This illustrates that the struggle to build egalitarian institutions under a neo-liberal regime imposes hardship on the rightful owners of the land.

The indigenous peoples from the Andean cultures seem to lack the tools to defend their rights as can be illuminated by several considerations: they have no access to lawyers, are not too knowledgeable about laws, lack financial resources and trials about disputes sometimes take place in countries other than those where conflicts have arisen. An example is the so called “water war” in Bolivia where the transnational corporation Bechtel-Aguas del Tunari S.A., which enjoyed a water and sewer services concession, brought a lawsuit against the Bolivian state. This court case, which started in February 2002, was held not in the country of conflict, but in the U.S.A. Leaders of the indigenous movement of Bolivia have claimed that the

government in power “...wishes to take away our wells, our lakes” (Translated from the documentary film mentioned above).

How can indigenous people defend their water rights against neo-liberal reforms, which grant the government ownership over their territories?

Can we imagine indigenous people returning to colonial times even though we live in a century where human rights are supposedly respected?

Several cases from all over the world as well as from the Americas can shed light into these important questions. Globally, it is worth drawing attention to eleven case studies of water conflicts involving international law procedures until the year 2005: “Liquid Relations: Contested water Rights and legal complexity”. Proposals to address water shortages are usually based on two key assumptions: (1) Water is a commodity that can be bought and sold and (2) “states,” or other centralized entities, should control access to water (D. Roth, R. Boelens, M. Zwarteveen: 2005).

These assumptions are contrary to the indigenous way of seeing the world. The first one (1) is opposed to traditional wisdom to the extent that water is never considered a commodity. It is looked upon as a living being as well as the blood of Mother Earth. The second one (2) also diverges from ancestral knowledge because, in terms of the indigenous *Cosmos vision*, natural resources are perceived as a one body and cannot be divided up into water, forest, land, etc as modern state legal perceptions would like us to believe. In fact, in the Quechua language *kay pacha*, translated as “the world in which we live”, loosely regarded as land and water is comprehended as a whole entity.

Everything stated above concerns global considerations in reply to Roth, Boelens and Zwarteveen’s assumptions. Now we will focus on examples from North America, which are related to these same assumptions. According to Danver (2004) federal Indian land policy was the main point of contention and conflict during the nineteenth century, the even more confusing and ambiguous area of Indians water rights was the battleground of the twentieth century. The case studies why Indian tribes and groups of tribes have used different strategies in their water rights struggles. In addition, they assess how these strategies have been determined by number of factors: the cultural norms determined by the tribes’ histories, the

history of the tribes' interactions with the federal and state governments, and responses to the actions of the federal government.

By implication, this example regards the opposition of several Indian tribes in the U.S.A. to federal state ownership of water (assumption 2). In addition, the same dispute between state and Indian traditional control over water is furnished by an example from Canada: "...native peoples increasingly relied on the agriculture economy in the early twentieth century, and the competition with neighbouring settlers for water intensified, the question of the extent to which the native peoples were entitled to water became a subject of serious political and legal wrangling" (Kenichi 2003). Furthermore, water controversies have also led to the marginalization of tribes in the United States.

The fact that water is a key factor for the development of permanent communities in the west is not lost on Indian tribes either. The continuing debates, litigation, and negotiation between tribal groups such as the Pueblo tribes, The Navajo Nation and the Jicarilla Apache tribe, and the non – Indian population along with state and the federal governments over the rights to the water that is so important in shaping the character of the American West is indeed a relationship of power (Danver 2004).

4.2 The indigenous and the Peruvian governmental conflicting interests in the use of water from the lake of Piuray

There are two approaches when considering the concept of the lake of Piuray. On the one hand, the indigenous cosmic-vision conceives three "Ayllus" (one Ayllu may be formed by several villages and its conceptual framework explained in the next paragraph) located in the proximity of the lake and which have been traditionally supplied with water from it. On the other hand, the Peruvian government thinks along the lines of hydro-graphic basins which disrupt traditional indigenous land and cut-through ancestral "Ayllu"-based divisions.

In the first indigenous approach, the Ayllu, being the most transcendent concept in Andean sociology, is of enormous importance. There are three Ayllus surrounding the lake of Piuray and are conceived geographically and spiritually as a cosmic fundamental unit. "The Ayllu

defines the essentials in terms of social relations, family bounds, love attachments...”⁷ In more expanded terms it is also perceived as “certain forms of social organizations, especially Ayllus, (grouping based on shared landholding, kinship, and ceremonial and public labour obligations) are found quite commonly as the basic units of social organization in Andean communities both today and during colonial times throughout much of Peru (Urton 1988: 8).

On the other hand, the second Peruvian government approach is greatly concerned primarily with “development” and “progress” and brings about a division of indigenous land by raising other types of discourse based on western perceptions: “ In terms of modern conception of territorial political treatment, the hydro-graphic basin is considered to an ever greater extent as a natural unity with regard to the rational use of natural resources in general and water resources in particular”. Along the same lines a state NGO by the name of PRONAMACH (National Program for the Management of Hydro-graphic Basins and Conservation of Renewable Soil) upholds a policy of “integration” and “hydro-graphic security” explained as “... interests of the nation based on development efforts and considering the value of water in social, economic, environmental, landscape and cultural terms. No one owns water individually...” (PRONAMACH).

Reflecting on these two approaches regarding the concept of the lake of Piuray, either from (1) an indigenous perspective, which draws attention on the fact that three Ayllus form the traditional cosmic unity ; and (2) the Peruvian government one, which lays stress on the hydro-graphic basin of the lake, there are observations to be brought out. In case (1) the idea of the lake is a local self-conception based on traditional culture whereas in case (2) it represents an abstract political concept based on categories and stereotypes which cause a grave misunderstanding of the indigenous way of life

At this point, it would be relevant to include comments on the legal framework that touches upon both approaches (1) and (2). From this juridical viewpoint the ILO Convention No 169 sides with indigenous culture in the sense that it “deepens: the concept of land and territory, and introduces new provisions on the right of ITPs (Indigenous and Tribal Peoples) to natural resources pertaining to their lands, and on the right to return to ancestral lands they have lost” (ILO 169). If we consider this statement to be relevant as far as land rights from an indigenous standpoint are concerned, then state hydro-graphic division (approach 2) violate

⁷ http://www.infoarica.cl/1ta/arica_territorio_00000c.htm

these rights. Furthermore, the same ILO Convention 169 expands its remarks to include the “environment” or traditional culture that is infringed upon. This Convention formulates that: ““Lands” comprise the concept of territories, which covers the total *environment* of the areas which Indigenous and Tribal Peoples occupy or otherwise use”.

4.3. “Community” divisions surrounding the lake of Piuray hinder indigenous based ecological claims.



Non-affected crop growing land utilized by a traditional rotational system of farming.

The concept of community is a Peruvian government based one. It, purportedly, derives from a political division of land along a hydraulic basin approach as mentioned above under 4.2. However, from an indigenous standpoint, the so called present-day communities form part of a traditional “Ayllu” system. The “Ayllus are residential and kinship unit, although each Ayllu has its own territory, members of other Ayllus can and do possess land within each one” (Trawick 2003:113).

It is important to underline, from a geological perception, that much wisdom for the preservation of agriculture land is contributed by the traditional “Ayllu” system. “The collective ownership of land (as defined by the Ayllu system) may exist in a small society.

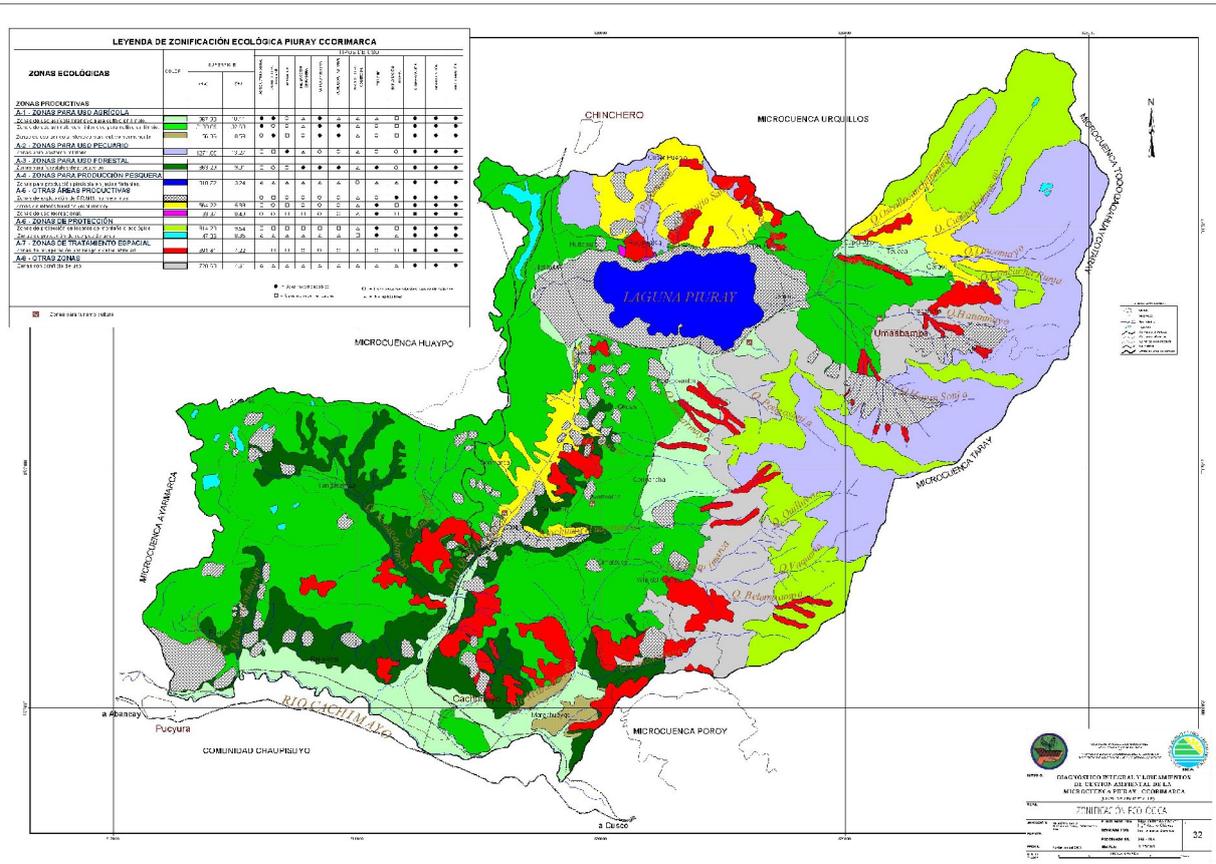
Ideally, a group of families had rights over several parcels of land. The ownership of these parcels could change from time to time and from year to year” (Ramirez 1998:104). This quotation unravels an essential point as far as the geological safeguarding of land is concerned. It is known that an Ayllu is composed of several groups of families or sub-Ayllus which are traditionally in charge of a numbers of parcels. In the ancestral Inca rotational system of agricultural production, some parcels of land should be left uncultivated during one or three years for the conservation of the soil. In this regard, some sub-Ayllus may need to rotate in the crop growing of parcels of land (These findings have also been observed while carrying out my fieldwork). The three Ayllus have parcels of land near the lake surroundings and they rotate in order to get more products at the same time. That is why, they complained to SEDACUSCO collectively but the company did not understand them.

In the final analysis the issue of water is less a tribal or local issue than a regional ecosystem issue. “Only examining the issue of Indian water in the wider social, political, and ecological contexts that are emphasized in the implementation of ecosystem management can the contentious History of water in the west be successfully put in the past and the future of the region’s resources improved” (Danver 2004:8).

4.4 The exclusion of the district of Chinchero from Piuray water rights

As mentioned above under section of 2.1.3 the district of Chinchero (with a population of 10,531 people according to a 2005 census), which contains the town of Chinchero as well as many small villages and population groupings, is composed of 3 ayllus: Cuper, Pongo and Yanacona. An Ayllu has been defined above as a grouping based on shared landholding, kinship, and ceremonial/ public labour obligations. These three Ayllus (located within the district of Chinchero) may be viewed on the map below (the town of Chinchero is situated in the Cuper Ayllu).

Map 3



The Piuray Lake surrounded by the lands of Chinchero (source: PRONOMACH)

It should be underlined now, as seen on the map, that the lake of Piuray is completely surrounded by land belonging to the district of Chinchero. Nevertheless this district of 135 km² is excluded from drinking water rights from the above mentioned lake. This situation reflects the fact that indigenous people are being ruled out from economic participation by not being provided with basic resources such as drinking water. Even government sources cite that 27.7 % of the rural population in Peru have “minor access to drinking water” (SUNAS 2004:14). In the case of the district of Chinchero the indigenous population are forced to use water springs and self-made water wells in order to obtain this precious resource, even though the lake of Piuray is located on their ancestral territory. During Inca times hydraulic channels originating from this lake were constructed. In present-day Peru the important city of Cusco is supplied with drinking water from the lake of Piuray whereas the indigenous people of the district of Chinchero are completely deprived of this vital resource. Since 1970, Government authorities have granted total rights to the public company SEDACUSCO S.A (Municipal entity with private rights which provides sanitation services) in order for them to utilize water

from the lake of Piuray as they may seem fit. This clearly amounts to a violation of ancestral rights.

Even considering this event in a purely Peruvian government approach, this case amounts to a disruption of the rights of the people in the district of Chinchero as illustrated by a Western style official university publication called “Environmental Legislation and Legal Framework within Basic Health Settings” (Carreño and Moscoso 2006). In it, it is stated that “...being important to observe the economic, social, cultural human rights. According to the state, these rights transcend the individual scope and should reach society as a whole” (Carreño and Moscoso 2006:97, translated from Spanish by me).

This last assertion, according to modern Western sociology, implies that “individuals” may be indigenous as well as non-indigenous and that both types of individuals form part of “society as a whole”. In these terms, all inhabitants of the district of Chinchero should enjoy the same “rights”, including the extremely essential drinking water right from the lake of Piuray. Nevertheless, this is clearly not the case since, as mentioned above, they are completely excluded from this official government expressed right.

Furthermore, the 1970 state project of supplying drinking water to the city of Cusco by bypassing completely the district of Chinchero has eroded valuable crop growing land surrounding the lake of Piuray. In other words, the damage had been twofold. A first important earth erosion took place in 1993 and an even major one took place in 2000, which severely spoiled more than 40 hectares of potato and beans growing land. During my fieldwork in 2006, I had the opportunity to interview the Communal President of Pongobamba, Valentin Auccacusi. The government, since the latter part of the 20th century, has established communities in order to replace the older Ayllu land division system. This person affirmed that “...the loss of 40 hectares left us in situation of extreme poverty. More than 100 families were affected and nowadays the community of Pongobamba lacks crop-growing land. A handicrafts center is being constructed so as to compensate for this lack of revenue” (personal interview). In addition, this community leader expressed bitter remarks concerning the public company SEDACUSCO mentioned above: “In spite of having participated in a march together with the mayor of the district of Chinchero as well as the people of the whole town, the water company never granted us with compensation for our loss of land” (personal interview). It is worth mentioning at this point that the present price of one

hectare of ready to harvest land is worth over \$ 2000 dollars. And one square meter of land sells for \$ 20 dollars approximately.

4.5 The struggle against the public water company SEDACUSCO concerning rights over the Lake of Chinchero



Crop damage caused by land erosion due to excessive water extraction. Indigenous houses have also been affected.

Since the beginning of the state project for drinking water that today comprises the exclusion of the district of Chinchero from Piuray water rights there have arisen disputes between the Indigenous communities and the public water company SEDACUSCO because the project included spring water resources within the indigenous territories. The first problem took place in 1950 as reported by indigenous individuals during my interviews. "In 1950 a state engineer began to evaluate our water resources on indigenous areas and included Piuray Lake and the springs for urban use. The indigenous people from the area already then protested against this." After the rising of the indigenous community, the state officials left some of the springs for communal usage. The problems with the company did not stop then. In 2000 Pongobamba community lost 55 hectars of crops, which was productive twice a year because of the good

irrigation system. The main reason for the soil erosion was the excessive exploitation of the lake by the company. When they went to the company, the company took the names of the affected people but did not compensate them afterwards. This resulted in an extremely poor year for the affected families. The economic situation even prevented the children from going to school which also turned into a moral problem for the community. From 2000 to 2005 there were continuous dialogues with the company. The company, however, changes its official representatives almost each year and this prevented the indigenous people from getting a positive outcome from the negotiations. In 2006 there was a new meeting with the company's representatives but they said that they had nothing to do with them because what had happened was before them and it was not their problem. The district mayor took the names of all affected people and sent it to the company but again, nothing was achieved. The company did not want to recognize the communal complaint, however, and said that each affected person should complain on an individual basis. The company's other excuse was that it was paying taxes to the Ministry of Agriculture. Unfortunately, neither SEDACUSCO nor the Ministry of Agriculture cared for the maintenance of the lake and it is all up to the indigenous peoples of the area who take care of that. And even though the indigenous people no longer use the lake for irrigation or drinking water, they maintain it because it is important for their spiritual believes. "Now is the time to fight for our rights! We need drinking water!"

In 2005 and 2006 Teofilo Gomes Gutierrez, the mayor of Chinchero declared that they would start a new negotiation with SEDACUSCO because people of the area need drinking water. The company, however, denies the peoples' water rights. The mayor has threatened the company that they will close the pipes coming out of Lake Piuray if the indigenous people do not receive drinking water. "Even if this may affect the health of the 300 000 people of Cusco, I am ready to do it and even go to prison. I am ready to die in the prison. If I go to prison, it will not be because I am a thief but because I fight for the rights of my people. We need water for drinking and bathing. This is our necessity and we need it even though we are Indians! We need our water resources back!" (T. Gomez, 2006, personal interview).

In 2006 there were new negotiations with the company and the mayor asked for a political decision and sharing of the water resources. The company's representatives initially neglected his request, but the mayor demanded that the company should pay for another drinking project of the community. At the end, the company agreed to share the amount of 8 l/s of water from the Qorqor spring with the community. The community, again, was denied water from Lake Piuray. Before my fieldwork in the summer of 2006, the Qorqor drinking project had already

started. This project will affect about 20 communities in the area. At the beginning, only three communities were involved and they had to dig the channels for the pipes themselves. According to the district mayor, the Housing Ministry supported the project and the World Bank would also support it. Because of the project, the mayor initiated a new census which involves all 20 communities in the district and which would give a clearer picture of the total number of people who need drinking water. Still, the quantity of 8 litres was not considered enough for the needs of all people and the water issue remain.

5. Chapter Five: The legal context

Indigenous peoples have been the victims of land invasion and displacement since the colonial time, when they were divided as the Spanish people brought their laws and new management system of water. The laws affecting the allocation of water came from a common Spanish base (Lipsett 1988).

When talking about water one has to talk about the culture, territory and language. As in the before-mentioned example of Chinchero, even present-day communities can form traditional Ayllus. “The indigenous peoples are at the mercy of the legal systems of the nation-state, which took over their homelands” (Forbes 1997:59). The cornerstone of the legal system has been the model in a triangular system during the colonial time and republic, which has displaced the Inca structure and legal system. The legal system, thus, incarnates the backbone of the constitution and power of state. Likewise, the indigenous people have been forced to adhere to governmental dictates of this nation-state even when they constitute the majority (i.e. the Mayan Indians in Guatemala) of a country’s population (cited in Forbes 1997). The issue of water is a matter of great concern all over the world. “In many places, the institutional and legal tools needed to adapt and manage water scarcity are not available, leaving the way open to abuse and unequal access to the resources” (UN Water Report, 2007:6). In the case of Chinchero district, there have been violations of land and natural resources by disruption to indigenous water supply from the lake of Piuray.

This economic marginalization is primarily widespread in territories with traditional culture. Nowadays, the present reality of indigenous people raise unequal distribution of resources is no better represented than by the exclusion of water right. Nowadays, “water development is linked closely to poverty reduction” (UN Water Report 2007:13). The violation of indigenous water rights has escalated with social impact issues on traditional territory in the Chinchero district. Where water decisions are made by the government concerning the hydro-graphic basins, there are negative social consequences in the Chinchero district because the indigenous people do not comprehend this (hydro-graphic basin) system and are therefore deprived of their rights. In particular, I am going to focus on the exclusion of the Quechua people from their traditional water resource in Lake Piuray Chinchero Urubamba (Cusco). From a judicial perspective, this point will be extended to the understanding of the legal norms found in ILO 169, “Water Law and Indigenous Rights” (WALIR) and the International

Covenant on Civil and Political Rights (ICCPR). It sets out to analyse water rights and customary management of indigenous people and local communities, comparing them with contents of current national legislation. That will be the focus in the next chapter.

5.1 Water legislation and analysis regarding water ownership in Peru

There are two approaches when considering water rights in Peru. On the one hand, the indigenous cosmic-vision provides a “*local indigenous water law and legal water management principles*” (Gentes 2002:36) explained as a common law system based on customary norms. On the other hand, the Peruvian government thinks along the lines of official laws which comprise property rights.

In the first indigenous approach, the Ayllu is the transcendent concept in Chinchero sociology, and politically it is of enormous importance. The Ayllu is comprehended as an indigenous institution for water management, and thus the cornerstone of a legal system that has been the model in an ancient Inca structure in terms of “collective community ownership”. As mentioned above under section 4.2 Chinchero is organised by Ayllus that surround the lake of Piuray. Furthermore, local traditional authorities have been isolated inside “local customary unit” (Gentes 2002:38). It can also demonstrate how different traditions work. The indigenous claimed their right to water by the fact that they are “first in time and first in right”, and there is evidence in theory that they secured land title prior to state. In many ways indigenous people suffer from the lack of rights denied by the Peruvian government and are confronted by a state system that works superficially.

During my fieldwork I had contact with some state institutions, but the problem was that the civil employees of the state did not have knowledge of the problems about rural areas and communities. In many ways, Peru continues to be a centralist country. The State has the central power because there is a demand for greater justice and equality regarding the unequal distributions of water and natural resources. Concerning indigenous water rights in Chinchero there are numbers of conflicts between Chinchero and the public company SEDACUSCO.

Historically, the Andean indigenous people have been oppressed by colonization and more recently by the government. The expropriation of communal land and natural resources had a profound affect on traditional cultural practices. Likewise, water rights are important subjects in their own right, but it is a rather complex and contradictory problem. The idea of limited water rights for the indigenous people was established very early in Peru, first trough the

Spanish bureaucratic administration, and nowadays it is maintained through the Peruvian state and their idea of concessions of the water. Concessions, in more expanded terms, are also perceived in international law as “a territory within a country that is administered by another entity than the state, which holds sovereignty over it. This is usually a colonizing power, or at least mandated by one, as in the case of colonial chartered companies”⁸. In this regard, this dogma endorses the idea that unequal treaties have forced the indigenous people to cede their territorial right to the state colonial power through concessions.

Thus, the indigenous people of Chinchero lost the control of the Piuray Lake by the concession idea brought up by the government administration. Since the government authorities have granted total rights to the public company SEDACUSCO S.A, they control Lake Piuray and the adjacent springs through various administrative resolutions. Many examples of water right recognition by the SEDACUSCO S.A dating back to the 70 s, 80s and 1996 are found at the Ministry of Agriculture. Other documents are also found in 1996 about springs belonging to the communities located within Chinchero boundaries, which mention the SEDACUSCO S.A ownership rights to water. These files (Administrative Resolutions 1996) contain information how water was distributed to the Municipal public company of Drinking water by an employee of the Ministry of Agriculture, the so-called Technical Administrator. They also provide detailed information about the licence of water users with located population and domestic aims of the time when Chinchero lost more than 8 springs as an example of these transfers (Urmana Chico, Kor-Kor I-II-III-IV,V Maychu, Tintinpujio and Wayna Kor-kor) (Information available from the Ministry of Agriculture) .

The company uses the law “Administrative Resolution” to gain more water rights. Officially, they lean on written laws in Peru, for example the decree General Water Law of 1969 (DL 17752) and its articles 8, 27, 28, 42 and 133. They also base themselves on the “Supreme Decree” approved by the government.

In order to learn more about SEDACUSCO S.A we should point out that during the last fifty years, water rights were divided among various municipal ownerships (for example Cusco 33%, Santiago 26%, Wánchaq 19%, San Sebastian 11%, San Jeronimo 5%, Urubamba 4%, Paucartambo 1% and Huarrocondo 1%), in total belonging to 8 municipal governments. With this ownership, these municipalities have control of total profit of the drinking water from the

⁸ http://en.wikipedia.org/wiki/Concession_territory

lake of Piuray and the adjacent springs, whereas Chinchero district consequently is being excluded from such water rights.

Nowadays, the important city of Cusco consumes about 88, 28% of the total production of drinking water from the lake Piuray. According to a 2004 report, SEDACUSCO Company supplies drinking water to the city of Cusco in the amount of 21' 483,498 m³, or 681,24 litres/second, per year (available at SEDACUSCO S:A memory date 2004). Their most important water resource is the lake of Piuray.

By the year 2000, an illustration by ARARIWA reported water supply for the following users in the area: Communities 4%, SEDACUSCO 75%, Irrigation System 20%, cattle breeding 1%. (ARARIWA report 2000). However, according to my interviews made in 2006 the water supply for indigenous communities was 0 %. Moreover, since the project of producing drinking water started, the district of Chinchero has become completely deprived of drinking water. This clearly amounts to a violation of indigenous and human rights.

The Peruvian government's approach is greatly concerned with the current draft water law, which empowers the public administration to grant water concession as real property rights. It also reads that state sovereignty "entails the jurisdiction to legislate and perform executive and judicial functions in regard thereto" and the power to grant private parties "the right to sustainably utilise" them (Gil *et al*, 2002:47).

5.1.1. How are water rights organised according to Peruvian law?

Water rights are administered through the Ministry of Agriculture, by the Main Supervision of Waters and Land (DGAS) and the National Institute of Natural Resources (INRENA). The latter is a decentralized organ of the Ministry of Agriculture, ordered to promote and to support the sustainable use of renewable natural resources (Peralta and Moscoso, 2006). The decisions are made locally by the Technical Administrator of the Ministry of Agriculture.

So, who owns the water resources in Peru? Concerning water use, the state regulated the use of water in 1969, in which all populations, indigenous and non-indigenous, had the right to use the water resource. Peruvian water policy is based on The General Water Law of 1969 (DL17752), written in more than XII chapters.

Article 1 of the Preamble of the declaration of water rights articulates:

The solid, gaseous, and liquid (Waters), are without any exception state property and its dominion is inalienable and a prescriptive law. There is no private property to water. The use is rational, justified, and granted in harmony with the social interests and the development of the country (Lozano, 2002, translated from Spanish to me).

In practical terms, the rights should be compatible with continued existence. It also contends to diminish powers of new government over water law, because the water rights are made to be permanent and static. In this manner, water state property means water rights for all inhabitants. In addition, according to the state, these rights transcend the individual scope and should reach the society as a whole, and include indigenous as well as non-indigenous people. The central part of this General Water Law of 1969 was to abolish private water ownership (Trawick 2003). The indigenous people have used this General water law to gain water rights within their jurisdiction, in order to be recognised by the state. An example of water rights recognition was made by the Cuper Pueblo dating back to the year 2004. This case shows the recognition of the spring *Faychayhuaycco*, that belongs to the Cuper Pueblo community located in Chinchero. The document also describes how drinking water was distributed among the people in this community. It also presents detailed information about the autonomy administration of water in Cuper Pueblo area (document discovered during my fieldwork in 2006). Other areas in Chinchero which gained water rights were located within Mateo Pumacchahua, Olones, Inka Garcilaso and Villamercedes as pointed out by the Ministry of Agriculture. In theory, the easiest and most straightforward means to secure entitlement is through the Ministry of Agriculture. Nevertheless, as Peruvian water policy usually is centralistic, and there is economic interest in retaining control over indigenous land, most communities are not recognised due to lack of information about this policy (DL17752). During my fieldwork, the Ministry of Agriculture of Cusco did not have more than one employee to be present at the communities and rural areas in order to inform and organize them. Thus, the indigenous people felt abandoned by state.

Countless drafted laws have been discussed between 1993 and 2005 but they all were geared to fit water law into the current constitutional framework. There is a new draft law which aims to privatise water resources and which was issued in 2001. It also contains information how to

create the National Water Council's new strategies and policies of water management (UNSAAC and SANBASUR 2006).

Nowadays, Peruvian water policies are characterised by these preambles:

- With reference to the conservation and preservation of water
- With reference to the Priority user, (*how people use water in an amount sufficient to satisfy their primary necessities*)
- In reference to the obligations and rights to the water users
- The economic dimension of water use
- Article 51, 52: by Supreme Decree No 26 -95-AG, which was modified by President Fujimori on matters concerning water fees and water taxes
- In reference to the elections of the boards and members
- In reference to the sanctions and removals
- With reference to the control system of the members of users (concerning the members of users in terms of local representation)

As a result, very few communities have gained water rights showing up inequities that often exclude the indigenous peoples.

- With reference to the Priority user:

Article 39: *The water authority jointly with the sanitary organizes how people use water in amount sufficient to satisfy their primary necessities. With such purpose, it will fix, as necessary, places and opened zones of free access to the natural sources or artificial courses without altering them and avoiding its contamination* (Lozano 2002, translated from Spanish by me).

Article 40: *The state prefers the grant use of water for domestic aims and supplying of water the satisfaction of the primary and sanitary necessities for the whole society* (Lozano 2002, translated from Spanish by me).

However, this establishment has worked well only in urban areas, where the utilization of water by users has a public administration. Nevertheless, indigenous areas are deprived of drinking water. In the high land, the indigenous people are forced to use water springs and non-purified water, and are being ruled out from economic participation. According to WALIR (2003) "some indigenous organizations feel that these public policies are designed to institutionalise them and treat them as static societal bodies, which does not go along with Andean communities' day-to-day realities or customs" (Gentes 2002:36).

The state public administration attempted to deprive the indigenous people from their water rights, as seen in the Chinchero case. “Another dilemma involves the effectiveness of legal recognition strategies, considering peasant and indigenous communities’ lack of access to State, law and administration” (Boelens 2002:11). In these terms, particularly local and indigenous forms of water management have been isolated. Likewise, this isolation due to the lack of access to State law has left grave consequences in the case of the indigenous peoples in Peru and in the Andean cultures. This is to say that they lack tools to defend their rights, they have no access to lawyers, and they are not too knowledgeable about state law and the legal system.

Water policy for the society of indigenous and non-indigenous people has in modern days been determined by the implementation of a neoliberal government of water allocation. One of the first legal instruments under this orientation was the 1993 Constitution. “It defined natural resources, both renewable and non-renewable as the Nation’s heritage, asserting that the State wields the sovereign power to utilise them” (Gil *et al* 2002:46). In addition, “the concept of Nation’s heritage does not imply governmental sovereignty of natural resources over indigenous peoples. In Peru, the priorities set in the Water Law to grant water right concessions ignore ethnic criteria for allocations” (Gil *et al* 2002:50). Finally, as far as the rural scope, this must be served through communal action by means of the organization of administrative members of services for drinking water (Drinking water for Latin America and natural resources No 27 (LC/L.1564 –P)).

According to the present water policy in Peru with reference to the drinking water in rural areas, the government is stimulating the private investments from 2003 to 2008. The present policy of rural maintenance in Peru has opened a great opportunity for the presence and collaboration of international corporations in its diverse expressions. After many years, the Peruvian government has still not answered the demands of its people in relation to water (Report from Calderon Drinking Water Project). The present policy is directed by the Ministry of Housing, Construction and Sanitation (MVCS), created in August of 2002, the Vice ministry of Construction and Sanitation (VMCS), the National Direction for Sanitation (DNS). The most important effort is the National Water and Sanitation Program (PRONASAR) which, with an investment of 68 million dollars for infrastructure and qualification between 2003-2008, will invest in rehabilitation, expansion and improvement of the water systems.

5.2. Is Peruvian Law aligned with international Law with respect to the Water Rights for indigenous peoples?

We don't have clean water at all and we don't have toilets. To obtain self-made water in my community there were long negotiation with government institutions - at least 3 years. The authorities do not hear our needs for basic necessities. From the time of my experience the peasant (indigenous) are permanently marginalized outside of our communities and abandoned by state (Geronimo, personal interview).

There are signs that controversies in relation to access to water have led to the marginalization of indigenous peoples in Peru. This economic marginalization is primarily widespread in indigenous territories with traditional culture, as mentioned in the case of Chinchero. The Inter-American commission on Human Rights and the U.N. Human Rights Committee mentioned the importance of lands and resources for the survival of indigenous cultures (Anaya 2004). “In this regard, this policy endorses the idea of communal stewardship over land and a deeply felt spiritual and emotional nexus with the earth and its fruits” (Anaya 2004:141). In an international context, the Universal Declaration of Human Rights is eloquent when bringing up the international bill of human rights with both legal and moral force. This Declaration is divided into three parts: (1) The International Covenant on Economic, Social, and Cultural Rights, (2) International Covenant on Civil and Political Rights and (3) the optional protocol. “The International Covenant on Civil and Political Rights” was adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) on 16 December 1966, and was ratified on 23rd March, 1976. The International Covenant on Civil and Political Rights is already obliged (by virtue of articles 2 (paragraphs 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy" (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3), which would seem to be capable of immediate application by judicial and other organs in many national legal systems⁹.

Of special interest is **Article 26** of the Preamble of the declaration, which states:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee

⁹ www.unhchr.ch/html/menu3/b/a_ccpr.htm

to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

This line of argument is based on the principles of equal rights, protection and guarantee. Furthermore, this ideology endorses the idea that “all persons” (indigenous as well as non-indigenous) should enjoy the same “rights”, including the equal distribution of resources and the extremely essential drinking water. The cornerstone of social impact on the indigenous territories is an unequal distribution of goods, wealth and resources. In this sense, equal rights for indigenous peoples at the international or national level have not been protected.

Also relevant is **Article 27**, which states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

In order for this statement to be relevant as far as article 27 is concerned (from an international point of view) the state should respect the Andean cosmogony about water. Furthermore, the same article expands its remark to include the “multicultural and multilingual” or traditional culture which is infringed upon. In the case of Peru, it is important to keep in mind that cultural practices are expressed in the coexistence of seventy two (72) ethnic groups, which lays stress on the multiculturalism and multilingualism of the country. Indigenous people who strongly identify with home land, culture and language have great importance on the international legal framework. In this sense, the international community has maintained indigenous peoples as a special subject of concern, and sought cooperatively to secure their rights and well-being. The Inter-American Commission on Human Rights recognized some time ago that “special protection for indigenous populations constitutes a sacred commitment of the state” (cited in Anaya 2004:186). On the other hand, the International Covenant on Civil and Political Rights under article 27 sides with indigenous culture in the sense that it “deepens the concept of minorities”. If we consider this statement to be relevant, as far as minorities rights from an indigenous standpoint are concerned, then the States have to learn to live with the indigenous people in majority (which is the case of Guatemala, Peru, Bolivia and Ecuador).

Reflecting on this approach regarding the concept of the minorities, the Peruvian government has to take attention on the fact that indigenous peoples are majorities in rural areas and the cities. Even in the case of the capital Lima 5 out of 7 million dwellers are indigenous by mother tongue language, as illustrates by a San Marco university linguistic study. Indigenous leaders question how the minorities can govern the majorities, which is the case in the Andean countries.

The appropriate arena for understanding indigenous peoples is at the local or regional level. The Chinchero Quechua people have maintained their culture of an alive and vivifying world. This Andean world has a different vision about water, language, culture, custom, music, textile, art, etc. These schemes of traditional culture today generally involve the implementation of international law. “It includes a body of conventional land customary norms concerning indigenous peoples, grounded in the principle of self-determination” (Anaya 2004:289). In order for this principle to be applicable, the indigenous peoples from Chinchero should be the rightful owners of the land where watersheds exist.

On the other hand, it is a paradox when the ICCPR brings up the issue of the right to the principle of *self-determination*. “The ICCPR does not include a clause on the right to property and as the cases to the related to the right of all peoples to self-determination” (Scheinin 2000:163). Due to implications derived from the ICESCR, this would also not be a legal right under the ICCPR. Art.1of the optional protocol to the ICCPR recognizes the right of *individuals*. These agreements impose far-reaching rules that self-determinations place severe restrictions under the ICCPR. In this perspective, we need to interpret Article 27. “That includes the right of persons, in community with other, to engage in economic and social activities, which are part of the culture of the community” (Scheinin 2000:163). It also protects traditional livelihood of the culture in community.

As to the Chinchero people’s concerns about water right, it would be relevant to include comments in order to comply with article 27. On the one hand, the indigenous cosmic vision conceives ancestral “Ayllus” as recognition of their own institution of social organization, which involve traditional culture and collective rights. In addition, Chinchero dwellers have pointed out that the lake of Piuray is considered a sacred place. Water possesses a kind of “spirit”, which the traditional Ayllus must engage with constantly in terms of water management. Socially, Andean water is a community asset, and the communities have

elaborated systems of rights and duties conditioning their use and enjoyment (Solanes 2003:14).

On the other hand, Peruvian government brings up a division of indigenous land by raising other types of discourses based on natural resources. A modern conception such as the hydro-graphic basin focus in public enterprises violates the indigenous water rights in the case of Chinchero, as they are excluded from drinking water rights and the population is forced to use water springs and self made water wells in order to obtain this precious resource even though the lake of Piuray is located on their ancestral territory. If we consider the ICCPR to be relevant, then the Peruvian state through the public company SEDACUSCO, violates the rights in Article 27 as the indigenous peoples are still excluded from the society and deprived of their rights as equal citizens of the Peruvian state. The Piuray Lake exploitation violates the livelihood with interference to the traditional typical usage by indigenous peoples.

At this point, it would be appropriate to point out what kinds of measures constitute a violation of Article 27.

“According to one academic expert on indigenous rights, Professor Benedict Kingsbury, the Lubicon Lake Band case implies that the right of members of a group to enjoy their culture may be violated ‘where they are not allocated the land and control of resource development necessary to pursue economic activities of central importance to their culture, and that the right to enjoy culture may extend to the maintenance of the group’s cohesiveness through the possession of a land base and pursuit of important cultural activities of an economic nature’ (cited in Scheinin 2000:167).

The Lubicon Lake Band (or Ominayak) case still stands as a demonstration of the fact that allowing the exploitation of the natural resources in a territory traditionally used by an indigenous community may constitute a violation of States Party’s obligations under Article 27.(Scheinin 2000:166)

The international legal standard is further expressed by the fact The United Nations’ international dictates do not override national policies, primarily because the United Nations provisions do not command members to enact or enforce supportive domestic legislation. In fact, no sanctions or enforcement regulations were included within the documentation. Moreover, article 2 of the United Nations charter denied authority to the United Nations “to intervene in matters which are essentially within the domestic jurisdiction of any state” (Forbes 1997:62). Thus, the United Nations is limited to hearing and discussing human rights

violations with regards to such violations (Forbes 1997). In fact, the international dictates have little or no regard for indigenous well-being due to the ineffectiveness of these covenants. In more general manner, international legal standard is also stressed by Forbes, who interestingly brings up ICCPR in a not glamorous light: “It did not ratify the covenant on Civil and political Rights until June 8, 1992 and to date has failed to ratify the Covenant on economic, social and cultural rights” (Forbes 1997:62).

In 1982, the sub-commission has lead to the creation of a Working Group on Indigenous populations (WGIP), a group that meets annually in Geneva to provide insight into indigenous issues.

The Chairperson for WGIP, Erica-Irene Daes, in 1992 stressed three main goals. “First, the creation of this forum has to contribute to an understanding of indigenous cultures. Second, the committee has allowed the development of a constructive dialogue between governmental representatives and indigenous peoples. Third, the forum has become the focal point for indigenous peoples” (cited in Forbes 1997:63).

In late December 2004, the United Nations General Assemble proclaimed 2005-2014 to be the second International Decade of the World’s Indigenous People. The main goal of the new decade will be to strengthen international cooperation around resolving the problems faced by indigenous people in areas such as culture, education, health, human rights, the environment, and social and economic development. Those exercises had consisted of internal and external reviews of UNDP's (United Nations Development Programme) activities that involved indigenous communities and their respective organizations. An external review had also been undertaken of existing policies and/or current policy-formulation processes in intergovernmental organizations, including various United Nations agencies and bilateral development cooperation agencies. (Report of the WGIP 12 August 1999)

Danver (2004) argues that speaking in purely economic terms, by not promoting and protecting the right of tribes to develop their resources, the government could be found guilty of perpetuating dependency and poverty.

5.3 What is the meaning of ILO 169 (Articles 14 and 15)

There are two approaches in terms of indigenous people’s right to water. At the one hand, we have the Peruvian legal context based on the national constitution. On the other hand, there is

the international legal context based on collective human rights of indigenous and local communities that have been recognized in the International Labour Organization (ILO) Convention 169 (1989) and the draft Declaration on the Indigenous Peoples (1982-2006). Reflecting on these two contentions regarding the representation of law, either from an international level which draw attention on the fact collective human rights of indigenous and Peruvian government one, which lays stress on the first legal instrument under the 1993 Constitution. These legal contexts are two different levels of legislation.

These assumptions imply to the indigenous water right of comprehending the legal context in both. Chinchero dwellers can introduce local common law and indigenous norms by the Ayllu system at the same time they are under of Peruvian policy. The concept of collective human rights of indigenous people involves the rights to water and land. However, even today this remains one marginal and controversial assumption.

According to the WGIP in 1999, an indigenous representative expressed concern about the loss of control by indigenous people of the Andean region over their traditional rivers, lakes and waters. There had been a loss of underground water, which was then affecting indigenous farmers and herders (Report of the WGIP, 12 August 1999).

It should be underlined, as seen the case of the district of Chinchero, that the indigenous population now have lost the control over their traditional Piuray Lake and the main springs, which is located in their communities. Even this valley was considered to be one of the important places of the “sacred mountains” and “sacred water” of Ayllus. It was also a place where “sacred water” dwelled and where rituals were held. Nevertheless, this district with 10,531 inhabitants is excluded from drinking water rights. The facts in this case suggest that the issue of water rights in Peru is not protected at the traditional territories. The indigenous’ people continue to be deprived from their obvious rights to water, and this inequity has been comprised by the legal system of Peru.

“Although Peru has ratified ILO Convention 169, and hence recognizes indigenous jurisdiction, the Peruvian law still fails to recognize indigenous rights due to the fact that public policy and governmental bureaucracy regarding water either deny or ignore acknowledge the validity of local common law and indigenous norms governing water resources” (Gil *et al* 2002 :46). The quotation mentioned above can illustrate that the Peruvian government does not respect indigenous water rights at any national or international scale.

This is in stark contrast to the fact that the government recognizes the indigenous people as a legal category, through political programmes and directives aimed to alleviate poverty.

It is now worth drawing attention to the consequences of inequity in the natural resources, and especially water rights, as this has received relatively little attention. For instance, the indigenous population in various communities is without access to safe drinking water and is without access to adequate sanitation. This is really the motivation to claim water rights. The situation was also seriously questioned by the authorities of Chinchero in 2005 and 2006. Teofilo Gomez Gutierrez, mayor for Chinchero district, declared that:

“We insist to the state government that they have to give back to us our hydraulic resources. SEDACUSCO Water Company uses the lake of Piuray and they supply more than 222 l/s to Cusco by a gravity system and add the spring’s water that they have caught in our jurisdiction. The fact is that we do not have water to collect for the district of Chinchero, as all the existing springs by gravity are collapsed in the high parts of the communities due to the climate change. We do not have water for users now, and it is a reality that water now is our first priority” (Gomez, personal interview).

The situation was tragic indeed, and it became a clear violation of indigenous water rights in Chinchero. To further illustrate the situation of indigenous people, there is no running water in several villages. The essential problem is drinking water due to the same of the Ayllus (one Ayllu may be formed by several villages) had access to water only 30 min or 1 hour for daily life. The Ayllu of Yanacona was the most effected, and it inevitably imposed hardship on this and other communities. Several assemblies from the district have claimed into this important question water right. The lack of water in Chinchero affects all livelihoods, cultural integrity and their sustainable economic and social development. Considering the Chinchero district and its surrounding land, where the lake of Piuray was located, belonged indigenous territories since the times of the Inca civilization.

After the Spanish invasion, Inca land ownership is backed up by data found in 1564 in written documents from when the high Spanish visiting authority granted possession of all land and small farms contained in the above-mentioned title to Mr. Juan Llamoc and to Mr. Garcia Cusihuaman (who are main leaders of Cuper and Pongo in present day Chinchero). The indigenous people should use this evidence to gain their rightful ownership of land. Discussing the concept of ownership, in article 14 of ILO Convention No 169 it is stated that:

Article 14

”1. The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively

occupied by them, but to which they have traditionally had access for their subsistence and traditional activities... ”

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

As far as this article 14 is concerned, the Peruvian government violates this article from an international viewpoint. The actions of states in the international arena are governed by a self-help/ self-interest. They are generally not decided by any ethical or moral consideration, but what will benefit their respective interest and position relative to others in a given situation (cited in Lawrence Kukk 2001:41). This line of argument demonstrates the strength of the state when it comes to access and/ or control over natural resources. Maybe an international framework needs to be stronger. Considering ILO as an instrumental theory for protecting indigenous land rights, the Chinchero culture should enjoy rights over their traditional lake. This line of argument is based on the principles of the following norms *“The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy”*(ILO 169, art. 14). First, Chinchero property perceives the Quechua cosmogony as a cosmic unity that cannot be divided. It contains the concept of land, and water cannot be divided as a Cartesian view. Once again, cultural integrity is to be understood as a whole entity.

Second, the ILO Convention 169 works on a principle discussing “who used to live in a territory prior to conquest or colonization, or creation of the state”(ILO 169). From this point of view, introduced by the ILO Convention 169 mentioned above, internationally recognised legal “in time” and “in right” principles are valid terms. In reality, this means that the oldest water rights imply water rights for indigenous people, among them the Chinchero as heritage of an Inca civilization. In this regard, this ideology endorses the idea that indigenous of Chinchero should have the rights of ownership of land including water over the lake of Piuray. This in turn is based on the principles on the collective human rights of indigenous and local communities. It also contends to increase the financial power of indigenous and they should have the rights of self-determination. In this sense, this article can be interpreted to protect Chinchero dwellers over land and including watershed. Furthermore the same ILO convention expands its remarks to include natural resources which is infringed under Article 15:

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples...

“How can consultation with indigenous people be insured, and their representation and decision-making power in public-interest hydraulic project affecting indigenous territories? How and when should indigenous and peasant communities be compensated for such projects?” (WALIR 2002:39). The indigenous leaders of Chinchero affirmed, when interviewed, that they never were consulted over the lake of Piuray.

Peruvian government’s approach is not concerned with this principle of “consulting” on the indigenous land. An indigenous peoples’ ILO report from Peru says that indigenous people lost their natural resources by more than 30 concessions of natural resources per year without any consultation to the leaders of indigenous communities.

The indigenous are going to denounce the various acts of violation committed against indigenous rights, by the president of Peru Alan Garcia. This denouncement will be presented to the Inter American Human Rights, and the claim will be that the president Alan Garcia violates the article 89 in the Political Constitution of Peru, the Decree law 22175 (this article is concerned with the law of native communities and farmers) and the violation of the ILO convention 169 and its article 15. It is referred to as the principle of consultation with the indigenous organizations.

5.4 Emphasis on the position of parties involved: are they aware of ILO Convention 169?



I am participating with other indigenous leaders in a meeting dealing with regional water-related problems in Cusco, 2006. I am distributing copies of ILO Convention 169 leaflets to the indigenous representatives.

It should be underlined now, as seen in the fieldwork, that the indigenous people of Peru are not aware of the ILO convention 169. In my opinion, laws in favour of indigenous people must be used when these are applicable and when they are necessary for the respect of the indigenous peoples and their rights. Moreover, the damage has been twofold for the indigenous communities. Firstly, the excessive water pumping exploitation has deprived the people in the district of chinchero from waters of the lake of Piuray. Secondly, it has also caused a major erosion of crop growing land surrounding the lake. This may be observed in the Pucamarca community (1993) and in the Pongobamba community (2000).

In some of my interviews, indigenous peoples have expressed the idea that the SEDACUSCO S.A has been found guilty of excessive water exploitation certain participants have raised the point that the above mentioned company has not recognised the ILO Convention 169 nor has it respected the UN Declaration on the Rights of Indigenous peoples.

In order to further, highlight this claim it is worth noting that, apart from indigenous base observation stated in the preceding Paragraph, I have Interviewed political actors who work for state institutions the Ministry of Agriculture, the Institute for Environment (IMA), the Supervision of Services and Sanitation (Sunass), the Municipal Government of Chinchero and the Centre of Health in Chinchero. Other informants are from indigenous organizations of the communities from Cusco. Furthermore, the traditional authorities gave me permission to talk with the main affected communities around the lake of Piuray – whose leaders were from different Ayllus.

Peru has ratified the ILO Convention 169. In fact, since 1995 the contents of rights granted to the indigenous peoples have not been turned into laws or regulation (Gil *et al* 2002:49). The Ministry of Agriculture, as well as different governmental institutions, only respect the political Constitution of Peru. During the first meeting of my fieldwork, on the 26th of June at the Ministry of Agriculture, I got in contact with the director and we spoke about water rights. He surprisingly told me that he did not know about ILO 169. In addition, he provided me information relating to statistics and maps of the water project of CEDACUSCO S.A. Further, he gave me information concerning other project involving other water springs located around of Piura Lake. Even his assistant, who is a specialist in water laws, did not know about ILO 169 Convention. He said: “I am not aware of any international laws and I would have to be an ambassador to know about such laws” (personal interview). This situation reflects the fact that indigenous peoples are being ruled out from the ILO Convention 169, in the sense that special indigenous jurisdiction and basic right such as drinking water are not respected. Other institutions like IMA, SUNASS, SEDACUSCO and the Health Center of Chinchero do not apply the above-mentioned ILO Convention 169 laws nor other regulation in favour of indigenous peoples.

On the 27th and 28th of June I attended a conference on water and environmental issues in Cusco. At that time, I also contacted the Institute of water management and environment (IMA). The director, who was willing to cooperate, further contacted me to provide me with additional information. At his office, there was supposed to be a document based on the analysis concerning the eroded crop-growing land surrounding the lake in Chinchero. However, this document turned out to be missing. Nevertheless, the IMA has provided me with a film record of the Piuray Lake when earth erosion took place in 1993 and the indigenous community lost about 42 hectares of annual crop production.

I also visited the National Supervision of Services of Sanitation (Sunass) on the 4th and 5th of July – an institution that works solely in urban areas. They excused themselves and explained that they were not authorized to speak about indigenous water rights in Chinchero. Representatives of this institution said that rural or indigenous areas are under the wing of the Ministry of Agriculture, and that apart from this they do not have any idea about the ILO 169. This Ministry also conducted assemblies with the leader irrigation group of Cusco regarding water and new tariffs. I also participated at these meetings, and I had the opportunity to interview indigenous leaders concerning rights to water. In addition, I provided information and more than 200 copies of the ILO Convention 169 that now have been distributed in Cusco and Chinchero. The indigenous peoples should have the right to be informed about the international legal framework concerning them.

Lajo (2005) states that we know that to talk about indigenous rights in Peru is to contrast theories like modernity and globalization. “Furthermore, there is no chance to fight for our right at the global level. Thus, our indigenous brothers have not become familiar with the existence of the ILO Convention 169, which ought to defend the interest of all indigenous nationalities” (Lajo, 2005:73). In this case, the one of the indigenous people in Peru, they lack a tool to defend their right and they are not aware of the ILO Convention 169.

Water law at an international scale legally recognises the concept ‘indigenous peoples’ and ‘rural communities’. “The law calls for Andean people to organise legally as rural communities in order to qualify for any legal entitlement, and to register administratively as user boards or irrigators’ communities in order to have any water right, is legitimate” (Gil *et al* 2002:49). Nowadays, communities are organised according to the political constitution of Peru with reference to the control system of the members of water users. There are two boards and commissions who represent the local communities in Cusco (JUADIR) and (JASS). Both of them have been in contact with governmental institutions, more precisely with the Ministry of Agriculture. The result, as I found when I was in my fieldwork in 2006, was that in 100 % of the cases the indigenous peoples from Chinchero, as well as 100 % of the people of Cusco, did not have knowledge concerning the ILO Convention No. 169. Other leaders from different parts of Peru are at the same level. In this context, the indigenous people do not possess the legal capability to negotiate on an equal footing at any international or national level.

In the same manner Jones and Schanche (2004) observed that “Common land holding and ILO Convention 169” it requires both a cultural understanding of the distinction and a well developed judicial system able and willing to enforce it. In most countries where ILO Convention 169 might be applied, the cultural and legal foundation to apply the trust institution would be missing (Jones and Schanche, 2004:181,182,183).

5.5. To what extent does the “Water Law and Indigenous Rights” (WALIR) apply?

With regard to the water law of indigenous people WALIR (Water law and indigenous rights), it is stated that “WALIR attempts to define and clarify the legal and cultural grounds for water management and compare positive (statutory) and local indigenous law” (Gentes 2002:36). Concerning Andean Culture, including the case of Peru, the Water Law recognises indigenous people and rural communities (Gil *et al* 2002:49). These schemes generally involve the implementation of legal mechanism concerning watersheds. In this sense, the case of Chinchero should be protected at the international level. Nevertheless, The WALIR also observes indigenous demands for a flexible legal framework including water uses and customs by indigenous peoples (Gentes 2002:36). In addition, water rights are based on human rights and are linked with cultural rights and identity. Likewise, WALIR project is managed by Wageningen University (Netherlands) in cooperation with the United Nations Economic Commission for Latin America (UN-ECLAC). This entity is also responsible for addressing water rights issues in the Andean region of South America. It also contends to analyse water legislation and suggest alternative ways of recognition for legal pluralism issues in present water resource reform in several Andean countries (Report of International congress WALIR Cusco- Peru, November 28- 30 2006). This cooperation forms part of a key focus that is the empowerment of those sectors which are oppressed, discriminated against and marginalized in the context of water law and practice (WALIR 2003).

WALIR organization is based on the principles of the Kyoto Declaration. The Kyoto Water declaration of March 2003, concerning indigenous water rights (paragraph 12), asserts that International law recognizes the rights of Indigenous peoples:

- With reference to “Self-determination”
- With reference to “ownership, control and management of our traditional territories, lands and natural resources”

Likewise, the Kyoto Water declaration under (paragraph 12), asserts; "... we have right to make decisions about water at all levels. Governments, corporations and intergovernmental organizations must, under international human right standards require indigenous people to free prior and informed consent and consultation by appropriate cultural means in all decision making activities and in all matters where they may have affect".

International regulations are in place however, the problem is that the State does not apply such laws in favour of Indigenous peoples.

6. Chapter Six: Summary and Concluding Remarks

In this thesis, I have discussed and showed how the unequal distribution of water rights has resulted in deprivation of economic, social, and cultural prospects for the indigenous peoples in Chinchero. In other words, I attempted to illustrate that Peruvian water legislation does not belong to the same context as the indigenous people's cultural perception. Firstly, the Peruvian legal context is based on the national Constitution and its framework of laws does not work in a culture with traditional background due to the ineffectiveness of water ownership on the indigenous territories. Secondly, the Ayllu is considered the indigenous' unit institution as far as water management is concerned, and, thus, it constitutes the cornerstone of a legal system that has been a model in an ancient Inca social structure or "collective community system of ownership". It also demonstrates that indigenous peoples have practiced their own rules, characteristics and principles with regard to water. As an extension, a strong argument may be made based on the "Ayni" principle, which connects humans and water.

I will now breakdown my findings into 5 major areas of study which, broadly speaking, correspond to the chapters in this thesis:

1) I point out empirical evidence suggesting that the indigenous peoples around the lake of Piuray already early in the seventeenth century had gained ownership rights to their land. Royal titles were awarded to the Indigenous peoples of Cuper and Pongo as well as to all others who had dwelled in the area. This empirical evidence provides the Chinchero people with legitimacy over the Lake of Piuray as well as over its surrounding lands by the internationally recognised legal "in time" and "in right" principles. How could the ILO Convention No. 169 warrant the rights to water for indigenous population in Chinchero? The answer to this question lies in articles 14 (land ownership) and 15 (natural resources ownership) of ILO Convention 169. It may also be explained in "Water Law and Indigenous Rights" (WALIR with regard to water self-determination). The above-mentioned international legal framework may be used as a local tool in terms of defending indigenous rights. However, this is the case only when those claiming these rights are aware of them, otherwise they become useless.

As late as 2007 the UN have recognised the right of indigenous peoples to self-determination

with the adoption of the Declaration on the Rights of Indigenous Peoples. Only now, it is finally possible for us to develop in economic and cultural terms as well as to acquire control over our natural resources.

2) I have come to the conclusion that, according to the traditional wisdom or Indigenous Andean “Cosmo-vision”, water is perceived as living being and is thus treated as a “subject” and taken care of accordingly. In this view, it has also been stated that water is regarded as very sacred and water ceremonies are based on *respect and dialogue* in indigenous territories, particularly concerning the Quechua speaking people of Chinchero around the lake of Piuray. In addition, Chinchero dwellers have pointed out that water possesses a kind of “spirit” with which one must constantly engage. Furthermore, the duality in the traditional way of thinking envisages a balance of negative and positive energies in relation to both lakes (the lake of Piuray and the lake of Guaypo Grande). Similarly, there are pertaining rules and regulations regarding water organization and protection for the future generations.

This key aspect of ancestral wisdom about how water is perceived contrasts sharply with that of the Peruvian state. Quechua cosmogony depicts how the world is divided into four spiritual categories and how an equal balance is obtained between them. This balance further explains the way in which the vital “*alive world*” conveys meaning and purpose. In this indigenous *Cosmic vision*, natural resources are made out to be one body i.e. land and water are grasped as a whole entity. In local communities, which are based on the Ayllu system of unity, this indigenous cosmogony is still prevalent nowadays. It lies in contrasts with the position of the Peruvian state, which recognises only the political validity of a community.

It is worth pointing out now that the traditional assumption of water observed in terms of “subject” differs harshly with the western “object” assumption. In other words, it contests this modern notion severely:

Subject (user) and water (object)

Moreover, the above conception conveys the idea of water looked upon as a commodity from which one can derive profit. By contrast, the significance of water for indigenous people is that it is a priceless “subject” (not object).

3) Chinchero, surrounded by the lake of Piuray, has enjoyed a strategic geographic location during colonial and pre-Columbian times due to the foremost economic significance of water supplied by the above-mentioned lake to Cusco. Even the Catholic Jesuit priests during colonial times had used water deriving from this lake in order to drive the hydraulic mills of Tiqui for the production of Chinchero wheat flour. In this sense, the question of ownership of water, which had been held by the Ayllu community unit, was replaced by the Spanish western colonial legal system. Andean countries were forced to obtain water resource legal ownership titles in order to efficiently gain control over the hydraulic basin of Piuray. This process is more commonly associated with the formation of the Peruvian state, which also promoted the division of ownership over land and water on the indigenous territories.

Furthermore, government concessions over water rights were implemented without regard to indigenous community ownership Ayllu system. In fact, private and state companies primarily and almost exclusively utilized this concession system profitably. Traditional communities, under this western style model, were treated with great unfairness and driven out of their ancestral land. In this way, government state policy was and is hardly inadequate to deal with indigenous rights as far as natural resources are concerned.

In modern times, this case is reflected by neo-liberal policies such as, the Free Trade Agreement, imposed privatization and water concession rights, with are far from benefiting traditional interests. More recently, climate change considerations have cropped up and added a great deal of legal complexity to the water issue, especially due to the fact that this resource is such a crucial livelihood element. The wrongdoing and hardship which high land indigenous populations of Andean countries are enduring due to lack of water is, thus, very severe. A fact that is further compounded by the very little understanding of legal rights which these people possess. In other words legal government jurisdiction is divorced from the traditional peoples' cultural background.

4) So far, I have attempted to demonstrate the formidable extent to which the violation of human rights has been exerted upon the indigenous Chinchero dwellers. The SEDACUSCO S.A. public company is to be blamed for the extremely unequal distribution of water deriving from the lake of Piuray as well as from some of its adjacent springs. The reasons for ancestral peoples' exclusion from water rights are manifold and complex. Nevertheless, I have made an effort to summarise them as follows:

A) There is a difference in the contrasting approaches with respect to the concepts of water from the lake of Piuray. From an indigenous point of view, this element is conceived in spiritual terms as a living being. On the other hand, the Peruvian government thinks along the lines of hydrographic basins, an idea based on abstract political categories. These two approaches cause a grave misunderstanding of the traditional way of life and disrupt centuries old “Ayllu” cosmogony-based perceptions.

B) The local inhabitants of Chinchero have lost all water supplied by the lake of Piuray as well as from some of its adjacent springs by the year 2006. It is in this year that only 8 litres of water per second from one of the springs which SEDACUSCO had control over was granted to them.

C) All water rights over the lake of Piuray as well as over some of its adjacent springs have been conceded and guaranteed to the public company SEDACUSCO S.A.

D) Indigenous Chinchero peoples, due to scarce juridical knowledge, have not effectively claimed water rights as government regulation deem so. It is worth mentioning that local government authorities from the Ministry of Agriculture in Cusco are not eager to disclose legal requirements.

The various reasons for ancestral peoples’ exclusion from water rights pointed out above under points A), B), C) and D) have resulted in dire consequences. Perhaps one of the most critical ones is the economic hardship exerted by the company SEDACUSCO S.A. in terms of bringing about the erosion of their land which, ultimately, gives rise to a loss of crop production and revenue. Another grave consequence is the deprivation of drinking water, which hinders their survival likelihood.

5) Finally, as far as legal considerations are concerned, Peruvian water policy is based on the General Water Law of 1969, which states that: *“All water is, without exception, property of the state. This law is inalienable and irreversible”* (translated from Spanish by me) In practical terms, this means that water rights will permanently belong to the state and cannot become private. In other words, all inhabitants, whether they are indigenous or not, should enjoy this right which, in turn, transcends individual scope and must reach society as a whole.

However, in direct opposition to this strict law, the present Peruvian authorities have granted and are still granting water rights to *private* individuals all over the country.

If we now narrow our range of view and contemplate rights to natural resources with reference to *indigenous peoples* only, we arrive at the conclusion that international law is *ambiguous*. While some international organizations such as the Kyoto Water Declaration of March 2003, the ILO Convention 169, as well as the WALIR organization (Water Law and Indigenous Rights) recognize self-determination of ancestral inhabitants with reference to “ownership, control and management of traditional territories, land and natural resources”, other entities such as the ICCPR (International Covenant on Civil and Political Rights), arguing in a typical Western-style fashion, perceive self-determination in individual non-collective terms (in contradiction with a communal indigenous perspective). In this same line of reasoning this organization, in its optional protocol (article 1), only validates the right of *individuals*.

This ambiguity concerning international collective legal resource ancestral ownership is detrimental to indigenous people to the extent that the law is unclear and not stated in transparent terms. Thus, it does not serve as a useful and effective instrument in favour of defending the rights of collective ownership. It is most likely for this reason that countries such as Peru do not comply with these types of muddled and confusing regulations.

What should be done to change the legal situation?

Suggestions

1. Basic principles of traditional wisdom, explained in terms of “Cosmo-Vision” knowledge, should be of paramount importance when considering indigenous peoples’ right to resources.
2. As far as economic considerations are concerned, neoliberal policies should not be applied in ancestral territories because they are in defiance to the interests of ancestral populations.
3. Multinational and local state companies should compensate economically and/or share natural resources with traditional inhabitants. This would result in an improvement of their livelihood.
4. Indigenous peoples ought to be organized in associations in order to achieve their various goals, especially with regard to water ownership. They may also seek

interaction with NGOs.

5. In the case of Peru, ancestral populations should be required to name representatives so as to engage in dialogue with government administration and, thus, realize a harmonious society. To obtain this aspiration, local and regional management at grass roots level must be obtained.
6. SEDACUSCO S.A should be obliged to compensate financially the communities affected for the loss of crop growing land. This is to be coupled with a commitment to share water from the lake of Piuray with its rightful owners i.e. the Chinchero residents.
7. Traditional dwellers of Peru ought to propose legislation concerning the organization of natural resources such as water. This is to be done with close regard to their cultural and cosmological references.
8. In international terms, collective legislations rights relating to water, land and other natural resources ownership should be of pivotal importance.
9. Peruvian constitution law must also include the above mentioned ownership rights for indigenous peoples.
10. In both international and Peruvian terms, all legislation ought to be stated in a clear and transparent provisions.
11. The indigenous communities might consider mastering the dominating rules of the “modern” society: this includes adapting to the legal framework of Peru concerning water rights. In a modern society, the state should promote water legislation and then the indigenous peoples can secure their water rights either as a community or as individuals in the name of the community. The indigenous communities could consider various ways to register property (either as a community or, if necessary, individually) to ensure that they get their rightful access to water. At the same time, it is necessary to state that this is not an acknowledgment of their own culture. There are two perspectives – of the state and of the indigenous community. The state is not aware of the local problems and do not have adequate solutions to the indigenous problems. In this sense, the Peruvian government does not comply with international instruments treating indigenous peoples.
12. The state should promote water rights for the communities. The government must provide governmental representatives in the communities. As it is now, there are very few governmental officials on the indigenous territories and this hinders the dialogue between the government on one side, and the indigenous communities, on the other side.

13. Laws should be clear and transparent as well as the legal instrument concerning property ownership. The articles in the ILO conventions are not enough to protect the rights of indigenous peoples. Their provisions concerning property rights and natural resources are not so clear. Therefore, they need revision.

Water legislation needs to be globally reorganized because of the climate changes, people migration, pollution, etc. Companies engaged in water utilization need more sanctions and revision of their standards. Right now, there are many social problems related to water. There need to be provided solutions for the future and these solutions must be achieved with the participation of the whole society. The legal framework needs to be changed in order to meet the growing and changing needs of the humanity.

Remarks

I have presented a contemporary legal problem of an indigenous Andean community and its plight for access and participation in water resource distribution. My research has shown that the problem has many sides and faces. First of all, the indigenous community has proved to be ignorant regarding its rights under international law. On the other hand, the government has shown little knowledge of the traditional ways regarding water and natural resources in general. Indigenous interests are not heard on governmental level and this has led to the severe marginalization of the people of Chinchero. I have shown some challenges and made several suggestions for the improvement of the situation of the indigenous peoples in Peru. Their implementation is difficult but it is worth working for it in order to preserve the dignity of the original inhabitants of the Andes.

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