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**Analysis of the implementation of the United Nations Declaration on the Rights of
Indigenous Peoples**

Case study application of territorial rights in Tundayme-Ecuador

**Graduation work prior to obtaining the title in Bachelor of Science in International
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Dedication

To my parents and my sister who are reason for my motivation and improvement.

To my grandmother in heaven.

To the people of Tundayme.

Gratitude

To the University of Azuay and its teachers who in four years have trained me professionally. To my thesis director, Pablo Orellana Matute, who has helped me complete this graduation work. To the people of the Parish of Tundayme from its authorities to its residents, who have opened their doors to their homes and have shared their history with me. To my parents, who have been my motor and main support.

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Abstract

With the granting of territories to transnational companies in places rich in minerals, indigenous peoples have seen their rights violated, especially the right they have over their territories. As a result of this, international declarations are created aiming to reach all the points of view of an international community with different needs. In this range of rights is the right to prior consultation to any activity that may violate indigenous people's rights. Taking this into account, a field investigation has been carried out in the Tundayme parish, where there has been a series of evictions applying mining servitudes in the community. The analysis of application of the United Nations Declaration on Indigenous Rights seeks to demonstrate the degree of applicability of this declaration by taking into account the content of its lines as supported by the Ecuadorian Constitution, and comparing it with the reality found in the parish.

Resumen:

Con la concesión de territorios a empresas transnacionales en lugares ricos en minerales, los pueblos indígenas han visto violentar sus derechos, sobre todo el derecho que tienen sobre sus territorios. A raíz de esto, nacen las declaraciones internacionales que procuran cubrir las mismas tratando de llegar a todos los puntos de vista de una comunidad internacional con necesidades diferentes. En esta gama de derechos está el derecho a la consulta previa a cualquier actividad que pueda vulnerar sus derechos. Tomando esto en cuenta, se ha realizado una investigación de campo en la parroquia Tundayme. En esta parroquia ha existido una serie de desalojos aplicando servidumbres mineras en predios de la comunidad. El presente análisis de aplicación de la Declaración de las Naciones Unidas Sobre los Derechos Indígenas busca demostrar el grado de aplicabilidad de esta declaratoria tomando en cuenta lo expresado en sus líneas, respaldado por la Constitución ecuatoriana y comparándolo con la realidad encontrada en la visita de campo.

INTRODUCTION:

There are at least 5,000 indigenous groups composed by 370 million people living in more than seventy countries on five continents. They constitute 5% of the world population and that percentage represents 15% of the total of poor people in the world. Excluded from decision-making processes, many have been marginalized, exploited, assimilated by force and subjected to repression, torture and murder when they raise their voice in defense of their rights. Fearing persecution, they often become refugees and sometimes have to hide their identity and abandon their traditional language and beliefs (United Nations Organization).

This work seeks to demonstrate the scope of the United Nations Declaration on the Rights of Indigenous Peoples (DRIPS) and the national regulations that support it, applied to a specific case study in southern Ecuador. The population of the parish of Tundayme for several years has had to face many conflicts ranging from the Cenepa War in 1995 to the confrontation with large mining concessions located in their area. Since 2013, there have been displacements in the area and residents say they have not been previously consulted. The Ecuadorian Constitution and the DRIPS support the right to prior consultation and affirm that any activity that may interrupt their daily life and their collective rights must be previously consulted.

To make this analysis, we have started from two visions for the dissemination of international norms. The first vision is the traditional one which affirms that the norms must be fulfilled as they have been written. And the second vision is an alternative that explains that localization is an option to be able to spread norms in a better way. This alternative takes into account the needs and cultural differences of each nation interested in the creation of a norm.

Taking this as a guide and starting point, the DRIPS and the national legislation on the rights of indigenous peoples that support this declaration have been analyzed. In this sense, part of the process of localization that has been made to spread these rights and those of nature. To finally make the analysis of the case study based on compliance with the DRIPS and national legislation within the parish of Tundayme in the canton El Pangui in the province of Zamora Chinchipe.

This work was carried out to analyze the scope of this declaration in the country. This analysis will focus on the territorial rights of indigenous peoples, specifically on their right to be consulted to reach consent in any activity that is carried out that violates their rights. In this way, the actions of the Tundayme population for the creation of norms that may have the scope they require, can be analyzed. The case of this parish has been taken to answer the question of the scope of the declaration.

CHAPTER 1. INFLUENCE, ADOPTION AND REJECTION OF INTERNATIONAL NORMS IN LOCAL POLICY

1.1 Diffusion of international norms: adoption and rejection

Countries are guided by a moral cosmopolitanism, which is guided by a traditional line of thought. Within this line of thought, what is often called correct is what is established by those great countries that are the precursors of the creation of norms of international scope. However, since the world is endowed with different currents of thought and needs, given by the culture of those who live in every place in the world, the actors in International Relations must take into account all the aspects necessary for the diffusion of inclusive regulations.

Prior to the DRIPS analysis, it is necessary to deepen the norms and what they represent for the countries. In this development of the presented theoretical framework, two visions can be found. The first that will be taken into account is the traditional vision that establishes that norms are written so that they can be fully complied with. This obviates the agency of local actors and their autonomous capacity to act. The second vision, an alternative, proposes a localization process for a better application of norms in the locality. To better understand these two visions, it is necessary to know the concepts of "diffusion" and "norms."

In the first place, diffusion is understood as the transfer or transmission of objects, processes, ideas and information from one population or region to another (Dickson and Hugill, 1988, 264). This diffusion occurs when the idea that is about to be transferred is communicated through different channels among the members of a society so that they can obtain this information and consider the innovation that has been presented to them. Society and, more specifically, those involved in International Relations are those who consider whether or not to take into account new ideas.

According to Rogers (1983), the elements of the diffusion of new ideas are the following: an innovation, which is communicated through certain channels over time among the members of a social system. An innovation is an idea, practice or object perceived as new by an individual or another adoption unit. A communication channel is

the means by which messages are transmitted from one individual to another. Time is involved in the diffusion process in the following elements: the innovation decision process, the innovation capacity and the level of adoption of an innovation. A social system is a set of interrelated units that are dedicated to the joint resolution of problems to achieve a common goal (34-37).

The second definition that needs to be analyzed is the meaning of norms. There is a general agreement on the definition of a norm as a standard of behavior appropriate for actors with a given identity (Finnemore and Sikkink, 1998). By involving different norms of behavior, given by the cultures of each nation, there are numerous conceptions of what is appropriate and what is not. In this sense, there is a rupture in the conception of what norms should mean in the international field, that is, a standard idea of what humanity needs.

Next, both visions previously mentioned will be analyzed taking into account that these are visions of the diffusion of norms from a constructivist¹ point of view within the theories of International Relations. For this, the studies carried out by Finnemore and Sikkink (1998) will be used to develop the traditional vision, and Amitav Acharya (2004) for the alternative to this vision.

1.1.1 Traditional vision of the diffusion of international norms

This traditional vision of the diffusion of international norms establishes that the norms must be taken by the countries as they are written. The reason why they should be taken in this way is because international norms have been drafted considering the needs traditionally known as universal of the different States. These norms go through a life cycle where the persuasion of those who lead the creation of norms to the different States is a basic and fundamental step.

According to Finnemore and Sikkink (1998), a logical perspective about the norms is that by definition, from the point of view of the one that promotes the norm, all are valid since they lead to improve some type of procedure to promote the welfare of the

¹ According to Bylis, Smith and Owens (2017) Constructivism is an approach to international politics that deals with the centrality of ideas and human consciousness; emphasizes a holistic and idealistic view of structures; and considers how the structures construct the identities and interests of the actors, how their interaction is organized and restricted by the structures, and how their very interaction serves to reproduce or transform those structures (147).

community. An example of this are the international treaties on non-proliferation of nuclear weapons that no one can deny as they take into account the devastation of the war.

Commonly the norms that would be considered bad are those that would attempt against the integrity of the people and their inherent rights. However, there were times in history where, for example, racially biasing an ethnic minority was the right thing to do because it was specified in a norm and because that was the conception of what was "appropriate" within a given territory. Such is the case of the Jim Crow Laws in the United States that promulgated racial segregation in public spaces (American Experience, 2011).

Given this idea, a norm can be considered good or bad depending on its localization. This is why the diffusion of international norms play an important role because it takes into account the different incidents that the creation of an international standard will bring. The promoters of the rules use persuasion to get countries to consider adopting them. Within this dynamic, they find themselves in a position in which their acceptance is absolutely necessary in order to achieve the objectives set out in a global manner. Next, it will be analyzed what Finnemore and Sikkink call the life cycle of norms.

The life cycle of norms goes through three stages. The first is the emergence of the norm in which the promoters of the norms attempt to convince a significant group of States to adopt the norm. The second stage is characterized by dynamics of imitation as the leaders try to spread the ideas in terms of the rules under discussion to other States so that they become followers of it, where "norm cascade" occurs to the rest of the possible participants. Finally, the third stage is internalization where norms are taken for granted and are no longer a matter of public debate (Finnemore and Sikkink, 1998).

Within the first stage the promoters of the norms are those who are endowed with knowledge and notions about the appropriate behavior of their community and these are representatives of the States with knowledge of the subject under discussion. In this stage, organizational platforms are also necessary. These platforms are created with the very purpose of creating the standard. That is, they arise from the need created by the existing problem within a certain scope. For example, the Working Group on Indigenous Populations formed to create the DRIPS. A prominent feature of modern organizations is

their use of experience and information to change the behavior of other actors (Finnemore and Sikkink, 1998, 899).

The second stage of the norm life cycle is characterized by a dynamic of imitation while the leaders consider educating other States about the approach of the norms so that they become followers of them (Finnemore and Sikkink, 1998, 902). For example, the International Committee of the Red Cross did not disappear after the Second World War; instead, it remained as a socializing agent among the States to teach the new rules of war to the soldiers. In this stage there is a dynamic of "cascade" where socialization to the rest of States is the main tool.

The third and final stage of the norm's life cycle is internalization. There comes a moment in the norm life cycle in which the topics that were addressed are already so common that they are taken for granted. For example, the case of the rights of women to exercise their right to vote. However, there are other areas where there is still a debate about the topic despite being something that has been addressed for several years. Such is the case of the rights of nature that are formally addressed in the international field since 1972 with the creation of the United Nations Environment Program (UNEP), until the most recent United Nations conference on the climate change, the COP23 of the year 2017.

Many times States are under so much pressure to maintain a good position in the international arena that norms must be adopted to avoid disapproval on the part of the international community. The behavior of the States considering this social pressure is a traditional constructivist vision. Within the norm life cycle in the traditional diffusion model, a continuous sharing and a search for stated objectives are observed. It is possible to observe that those who promote certain norms use persuasion as a key and fundamental weapon to achieve acceptance. That is why when faced with a lack of options, certain States prefer to adopt the norm.

1.1.2 Alternative vision of the diffusion of international norms

To have a more comprehensive vision of the functioning of international relations, it is necessary to take into account all the factors and participants that could have an influence on world welfare and peace. This not only involves good management of economic policies or armament policies, but mainly respect for life. The United Nations

(UN) takes into account all these aspects. However, it is easy to observe that, despite the existence of international behavioral norms that enact behaviors in the interests of better coexistence, what is established in a norm is not fully complied with, is misinterpreted or is partially fulfilled at convenience.

Taking this into account, those who study International Relations looking for an alternative to the traditional model of analysis of the norm diffusion consider the following questions, what is the operation and which is the viability of international norms really like? This alternative vision questions the habit with which the diffusion of norms at an international level is usually analyzed from a traditional constructivist approach, since it tends to make the role and agency of local stakeholders invisible in the norm diffusion. Questions about norm diffusion in world politics are not simply based on whether an idea is important or how people arrive to this conclusion. The questions are also focused on which ideas matter and from whom. According to Acharya (2004), traditional Westernist views establish that the foreign norms considered good should prevail over local thoughts and beliefs. Amitav Acharya (2004), for this reason, proposes an approach to analyze these processes based on localization processes. That is to say, an approach that emphasizes the role of local agents resulting in an alternative to the traditional analysis on norm diffusion at an international level.

The proposal of Acharya (2004), additionally, is based on a criticism of the traditional vision due to its moralistic character in which only ideas and norms called cosmopolitan or universal, are considered such as the promotion of human rights (242). However, this cosmopolitan thought has led to two negative tendencies. First, a causal primacy is assigned to international prescriptions, emphasizing that the foreign norms (usually from the Western norms) are better than those of the locality. And second, the moral cosmopolitans see norm diffusion as "teaching" of transnational agents, which minimizes the agency of local actors and communities (Acharya, 2004, 242).

In this sense, according to Acharya (2004), the alternative vision in question looks at the diffusion of norms beyond the international prescription. In this way, it highlights the role of local political and cultural variables in the preparation of the reception of new global norms. According to this idea, norm diffusion is faster and more effective when

an international norm reasons and "dialogues" with domestic norms. In this way, we look beyond international prescriptions and underline the role of local political, organizational and cultural variables in receiving new international norms (Acharya, 2004, 243). For example, when analyzing the environmental protection norms as in the case of Ecuador, the national law has a wide range of rights granted to natures that were driven primarily by domestic agents and activists rather than by international norms.

Within this approach, then, Acharya (2004) explains that localization is a process in which the role of local actors is much more crucial than the role of foreign actors. Taking the case of Southeast Asia as an example, Acharya (2004) shows that these societies were not passive recipients of cultural and political ideas taken from countries such as China or India, but active borrowers and locators. In this sense, localization describes a process of transmission of ideas in which this society borrows ideas about authority and legitimacy and adapts them to indigenous traditions. In this way, ideas can be constructed to adapt to indigenous traditions and those with more potential for the locality are taken (244).

Acharya (2004) explains that there are four factors that make location an alternative for the process of norm diffusion. Taking these factors into account, this process would be a feasible and achievable one. The factors are the following:

1. Foreign norms used to highlight the legitimacy and authority of its institutions and practices.
2. Empowerment of local predecessor norms.
3. Availability of local actors with discursive influence.
4. Sense of identity of policy makers.

The location of norms tries to create a certain kind of congruence between international norms and local beliefs. These are guided by national political structures that are important because they condition access to policymaking forums and privilege certain participants in political debates (Cortell and Davis, 2011, 66). Localization is a process that unfolds gradually. It is developed day by day, and its application is optimal when an existing institution responds to a foreign idea and creates new policy instruments to carry out its tasks without supplanting its original objectives (Acharya, 2004, 253).

After compiling these two visions of the theoretical framework of norm diffusion it is possible to affirm that the vision of Acharya (2004), is an option for the diffusion of international norms. This is because it takes into account the aspects to consider when applying international norms such as the country's culture, needs, ideologies, policies or ideals. Ecuador has carried out localization processes, for example, in the issues of implementation of the popular and solidarity economy. This has been done following the trends of Latin American countries such as Venezuela or Bolivia, as promoters of the creation of protective norms of the rights of nature at an international level. Next, the dynamics and influence of international norms in Ecuador in a generalized way will be analyzed.

1.2 Dynamics and general influence of international norms in Ecuador

Ecuador is a country that has sovereign powers and had exercised them from the moment of its creation as a nation. However, its sovereignty emerges from a specific dynamic of interaction and dialogue with the international community. Within this dynamic, the dissemination of international norms is a fundamental aspect. In this sense, Ecuador has taken its international relations to establish peace agreements with its neighbors and to obtain improvements in its economy through economic treaties with the countries of the region. Formally, one of the concrete examples of Ecuador's involvement in the international scene, and therefore in the dynamics of the dissemination of international norms, was its adherence to the Vienna Convention on the Law of Treaties.

To achieve a profitable interaction within the international community, countries have created international treaties and agreements with the aim of expanding their reach as a nation and to achieve a better coexistence among nations. International treaties have been considered as a very important way to achieve global objectives and is considered the main mechanism for the diffusion of norms. That is why the Vienna Convention on the Law of Treaties was created to regulate international instruments concluded between States.

In this convention, held on May 23, 1969, the member countries of the UN considered it important to create a specific document to help countries in the celebration of their

agreements for better global development. The agreement establishes that treaties have a fundamental function from a historical point of view in International Relations. In this way the convention recognizes the importance of these as promoters of international law through which it is possible to develop peaceful cooperation among nations (Vienna Convention on the Law of Treaties, 1969).

Ecuador acceded to the convention in July 2003. The agreement contains everything related to the conclusion of treaties, reservations, entry into force, interpretation, application, amendments, etc. However, its most important points are the following. First, the establishment of the "*pacta sunt servanda*" which means that every treaty in force binds the parties and must be fulfilled by them in good faith (Vienna Convention on the Law of Treaties, 1969).

Another important point in the Vienna Convention is described in Article 27. It states that a party cannot justify non-compliance with any treaty by taking into account the provisions of its domestic law (Vienna Convention on the Law of Treaties, 1969). This means that what is established in the Constitution or lower hierarchical norms is below the international treaties ratified according to this agreement.

These two points have been taken into account to contrast them with the provisions of the 2008 Ecuadorian Constitution. Article 417 establishes that international treaties that are ratified by Ecuador will take into account what the Constitution establishes. This invalidates the principle of compliance in good faith established in convention's Article 26 in addition to the breach of Article 27 of the convention. But Article 84 of the Constitution establishes that the rules of the locality must be adapted to be on par with what is established in the Constitution and international treaties.

That is, Ecuador, being a signatory to this agreement, is immersed in the global regulatory dynamics in which the agreement establishes the procedure of international treaties. The existence of treaties ratified by the country has demonstrated the influence of international norms in Ecuador and the actions of its local actors to bring thematic discussion to improve their condition. According to the Ministry of Foreign Affairs, the country has collaborated with many declarations in the international field. Some of these are the following:

Declaration against international terrorism,

declaration for the disarmament and non-proliferation of weapons of mass destruction,

declarations that fight against transnational organized crime,

creation of missions for the establishment of peace, etc.

But the country has also participated in treaties in the field of the rights of the nature becoming an example for the international community. Ecuador was the first country to grant rights to nature officially by supporting them in the Constitution. However, the country's rulers have followed the trends of other Latin American countries with respect to the creation of laws that protect nature. Ecuador has taken into account its own needs to include all those needs and has turned nature into a subject of rights like any other Ecuadorian citizen. According to the Ministry of Environment, with regards to the international norms on environmental issues, Ecuador has signed around twenty declarations. Among these are the following:

United Nations Framework Convention on Climate Change. Signed on June 9, 1992 and ratified on February 23, 1993.

Convention on Biological Diversity. Signed on June 9, 1992 and ratified on February 23, 1993.

Convention to Combat Desertification. Subscribed on January 19, 1995 and ratified on September 6, 1995.

Inter-American Convention for the Protection and Conservation of Sea Turtles. Subscribed on December 31, 1998 and ratified on October 6, 2000.

Kyoto Protocol. Subscribed on January 15, 1999 and ratified on January 13, 2000.

Paris Agreement on Climate Change. Subscribed on December 12, 2015 and ratified on June 26, 2016.

The procedure of international norms within the country derives from the instructions and powers that the Constitution provides to them. International declarations are treated within the country guided by a constitutional normative basis, but also an international one such as the Vienna Convention on the Law of Treaties. There must be a harmonious relationship between the two. As a result of this influence of international norms,

Ecuadorian legislation has parameters to follow for the application and control of international norms. Within the Constitution, a process and certain requirements for the application of international norms established in international instruments are established. These procedures will be analyzed in the following section.

1.3 Process of adopting international norms and declarations in Ecuador today

As previously mentioned, Ecuador's Constitution establishes the parameters to follow for a declaration to be approved in the country and the norms that these declarations establish to be applied. First, according to Article 1 of the Constitution, Ecuador is: "... a constitutional State of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular. It is organized in the form of a republic and governs in a decentralized manner "(Constituent Assembly, 2008).

Starting from this idea, the term sovereignty is taken into account once again because it creates relevance when establishing the proper recognition of a State in the international arena. The sovereignty is the faculty of the State to self-enforce and self-determine obeying its own authorities and legal systems not to those outsiders to their own. This means that, being a sovereign State, there is a substantive, supreme, unappealable, irresistible and exclusive power that acts and decides on its being and mode of ordination (Borja, 1971, 35).

Sovereignty is known as the most basic constitutive norm within International Relations. According to Barkin (2006), sovereignty mainly grants the right to other States not interfere in their development. But for sovereignty to fulfill its objective, it needs the legitimacy granted by the international community (48). Within Ecuador it is specified that sovereignty is in the people since its will is the principle of authority, said sovereignty is exercised through public entities and forms of direct participation (Constituent Assembly, 2008).

The world develops in an accelerated way and the global system is constantly evolving and its impression within the legislative and normative field is evident. But there are also several difficulties in creating legal mechanisms that create binding responsibilities for States, taking into account their position as sovereign States. Ecuador establishes in its Constitution in the third Article No. 2, that it is a primary duty of the State to "Guarantee and defend national sovereignty" (Constituent Assembly, 2008).

To know what interference international laws have within national territory it is necessary to know their hierarchy in the country. In Title IX of the Constitution, the matters concerning the supremacy of the Constitution regarding the application of laws are set. Article 424 of the 2008 Constitution states the following:

The Constitution is the supreme norm in Ecuador.

Any rule and provision of public power must take into account the provisions of the Constitution otherwise they may not have legal effect.

International human rights treaties ratified by the State that recognize these rights in a better way than the Constitution does, will prevail over it or any other norm.

Then, the hierarchical order of application of the norms according to the Ecuadorian Constitution will be explained in Table 1:

Table 1 Hierarchical order of the application of norms in Ecuador. Author: Toledo Kimberly

	Hierarchical order of the application of norms in Ecuador	
	Norm	Example
1.	The Constitution	Constitution of 2008.
2.	International treaties and agreements	United Nations Declaration on the Rights of Indigenous Peoples.
3.	Organic laws and ordinary laws	Organic Law of Jurisdictional Guarantees and Constitutional Control.
4.	Regional norms and district ordinances	Andean Sanitary Standard for trade and intrasubregional mobilization and with third countries of birds and their products.
5.	The decrees and regulations	Executive Decree No. 386, published in Official Gazette No. 86 of December 11, 1998, created the Development Council of the Nationalities and Peoples of Ecuador, CODENPE.

6.	The ordinances	Ordinance that regulates the mining activity for arid and stone materials in the Cuenca Canton.
7.	Agreements and resolutions	Ministerial Agreement no. 010, which is the Regulation that regulates the verification and certification of the origin of the export goods.
8.	The other acts and decisions of the public authorities	

According to the Constitution in Article 425, when there is a conflict in compliance with norms specified in different normative documents, the one with the highest hierarchy will prevail (Constituent Assembly, 2008). The Constitution of the Republic of Ecuador grants *supralegal*² status to international instruments ratified by the Ecuadorian State. With respect to the principles of International Relations between Ecuador and the international community, these are celebrated as long as these relations ensure the interests of the Ecuadorian people, respecting the principles of the country established by their leaders within the Constitution (Constituent Assembly, 2008). Among these principles are the following:

Independence and legal equality of States.

Peaceful coexistence and self-determination.

The peaceful solution of international disputes and conflicts.

Condemn the interference of States in internal affairs.

Promote peace and universal disarmament.

Recognize the rights of the different peoples that coexist within the States.

Recognize international law as a standard of conduct and demand the democratization of international organizations.

Promote the creation, ratification and validity of international instruments for the conservation and regeneration of life cycles of the planet and the biosphere.

² Having a *supralegal* rank means that although they are under the Constitution in hierarchy, they are on the ordinary laws. The Constitution even grants constitutional rank when said instruments correspond to human rights and recognize rights more favorable to those contained in the Constitution.

Ecuador recognizes international law as a norm of conduct, and demands the democratization of international organizations and the equitable participation of States within these (Constituent Assembly, 2008). The Constitution is the maximum representation of the laws of a country and it establishes what concerns how they should be applied and under what circumstances the International Declarations within Ecuador should be approved. Title VIII, Second Chapter of the Constitution of Ecuador establishes everything concerning international treaties within the country.

First, international treaties ratified by Ecuador must be subject to what is established in the Constitution on every aspect related to human rights. In the case of treaties or other international instruments that refer to the issue of promulgation of human rights, the principles: of human being, of non-restriction of rights, of direct applicability and of open clauses established by the Constitution shall apply (Constituent Assembly, 2008, art 417). That is to say, those international norms that promulgate human rights and are of greater scope than those specified in the Constitution will be applied directly.

The president of the country is the one who has the responsibility and the power to sign or ratify international treaties. The president of the Republic must inform the Assembly about the treaties that he or she subscribes. It is necessary to explain clearly what they are about and what their content is. Treaties can only be ratified ten days after the Assembly has received notification about it (Constituent Assembly, 2008, art. 418).

The ratification of international treaties on certain specific issues must be approved first by the National Assembly and not just the president of the country. These specific issues previously mentioned are as follows:

1. Refer to territorial matter or limits.
2. Establish political or military alliances.
3. Contain the commitment to issue, modify or repeal a law.
4. Refer to the rights and guarantees established in the Constitution.
5. Commit the economic policy of the State established in its National Development Plan to conditions of international financial institutions or transnational companies.
6. Commit the country to integration and trade agreements.

7. Attribute powers of the internal legal order to an international or supranational organization.
8. Compromise the natural heritage and especially water, biodiversity and their genetic heritage.

With respect to how to ratify treaties in Ecuador, the Constitution in its Article 420 establishes that the ratification of international instruments can be requested through three modalities. These are: by referendum, by citizen initiative or by the president of the Republic. The chief executive is also responsible for the denunciation of an approved treaty.

Finally, in this second chapter, the Constitution of Ecuador establishes that international treaties cannot be concluded if the State had to cede its sovereign jurisdiction at the request of international arbitration, nor in commercial disputes between the State and private individuals or legal entities (Assembly Constituent, 2008).

Ecuador within its Magna Carta recognizes the importance of international treaties and instruments and devotes a very important section to cover key points on this issue. Next, the United Nations Declaration on the Rights of Indigenous Peoples will be analyzed, the same being celebrated and signed by Ecuador taking into account the requirements of the Constitution.

CHAPTER 2 THE DECLARATION OF THE UNITED NATIONS ON THE RIGHTS OF INDIGENOUS PEOPLES AND NATIONAL NORMATIVE

2.1 United Nations Declaration on the Rights of Indigenous Peoples (DRIPS)

According to official information from the UN, indigenous peoples have experienced different situations of disrespect throughout their history in every corner of the world and represent 15% of the total world poverty. With this in mind, the need to create norms that safeguard the rights of indigenous populations has been considered. The United Nations Declaration on the Rights of Indigenous Peoples, DRIPS, adopted in 2007, is the maximum representation of the commitment of the international community to enforce the rights and beliefs of indigenous communities existing in their territories. With 144 votes in favor, 11 abstentions and 4 votes against by Australia, Canada, the United States and New Zealand, it was approved. However, over the years, the latter have joined the declaration (Office of the High Commissioner for Human Rights 2013, 4). But, in spite of being the most complete declaration and the only one directed directly to enforce the rights of indigenous peoples, this declaration was not the first to take into account these often lagging needs, not only by the international system, but also within the systems of local legislation.

2.1.1 Predecessor declarations to the DRIPS

Convention No.107 of the International Labor Organization (ILO) signed in 1957 and ILO Convention No. 169 signed in 1989, are the two predecessor documents on the most relevant analysis statement on the subject. The first one is concerned about the protection and integration of indigenous populations and other tribal and semitribal populations in independent countries and ILO Convention No. 169 focuses mainly on non-discrimination, respect for their way of life and its institutions (Office of the High Commissioner for Human Rights, 2013, 10).

ILO Convention No. 107 entered into force in June 1959. It demonstrated past ideas and assumptions about what indigenous peoples needed. These necessities were primarily an insertion in society and that outsiders make decisions about their development as a society. However, the provisions for it were obsolete years later. According to

information from the ILO, in 1986 a commission of experts called by the Organization's Administrative Council came to the conclusion that the international approach of the agreement was no longer applicable to the present and the needs still persisted. As a result, Convention No. 169 on indigenous and tribal peoples, was adopted in 1989 (International Labor Organization 2013, 4).

ILO Convention No. 169 is in force for the countries that have ratified it since 1991. This treaty reflects the decision of the leaders to create a document that fills existing gaps regarding the rights of indigenous peoples. The Agreement is based on respect for the different cultures and ways of life of indigenous peoples. In this way, it recognizes the rights they have over their lands and the natural resources existing in them. It also emphasizes the right that peoples have to decide on their priorities in terms of development processes (International Labor Organization 2013, 1). This agreement has served as a guide for protective policies within local regulations.

With regard to the legal scope of this agreement, ILO Convention No. 169 is adopted by all countries that wish to be participants, taking into account their sovereign will to adopt them. States that decide to ratify the agreement must apply it in good faith, in legislation and in practice and ensure that indigenous peoples are consulted and can participate in the process. In some countries the agreement acquires the force of law from the moment of its ratification. However, for its application, specific legislative provisions are generally needed to guarantee the application of the agreement (International Labor Organization 2013, 5-6).

According to the ILO, with the signing of this agreement there are certain commitments linked to it. These commitments consist in that at least every five years, the ratifying States must present reports on the application of the agreement. It is advisable that, in order to ensure the veracity of the agreement at the moment of writing the reports the participation of the indigenous peoples should be active through a consultation through their traditional institutions where compliance is taken into account. The ILO reports that there is a control body that receives problems in the fulfillment of the agreement. The most frequent problems presented are the lack of consultations with indigenous peoples regarding the measures or projects that affect their lands (International Labor Organization 2013, 7-8).

2.1.2 Global idea of the DRIPS

The United Nations, through its human rights system, has been a fundamental part in the process of creating regulations that are inclusive of indigenous peoples. This has been achieved specifically through bodies such as the Working Group on Indigenous Populations of the United Nations³. Today, the Human Rights Council is the one that has absorbed the Working Group and works on everything related to the rights of indigenous peoples. One of its greatest achievements was the creation of the DRIPS, which was approved by the General Assembly in 2007 (Office of the High Commissioner for Human Rights, 2013, 1).

The rights invoked in the various articles of the declaration are closely related to each other, which means that they are indivisible. However, within the declaration can be identified different areas of rights that are dealt with throughout it, but as previously explained, they cannot be separated. For example, the will of the peoples to determine freely goes hand in hand with their right to remain on their land, or that their culture and customs are fully respected by people outside the communities. That is why the rights expressed in the declaration can be separated into five groups of different purposes and objectives, these are:

1. Self-determination
2. Economic, social and cultural rights
3. Collective rights
4. Equality and non-discrimination
5. Right to lands, territories and resources

All of these are guided by the purposes and principles of the Charter of the United Nations and by good faith in fulfilling the obligations assumed by States in accordance with the Charter, as expressed in the first point of the preambular part of the declaration. (Organization of the United Nations, 2007). Next, these groups of rights will be analyzed in a generalized manner.

³ According to official information, the open-ended intersessional working group on the draft declaration was established in 1995. Its main objective was to prepare the draft declaration under analysis.

1. Self-determination

The meaning of self-determination according to the political encyclopedia of Rodrigo Borja (1997), is the ability of people to define the form of government they want to have in order to choose their social development in community. It also specifies that it is the faculty that a community has to decide its belonging to a State or its separation from it. It is, in general, the ability of a people to choose their destiny.

The desire for self-determination of indigenous peoples is not born of resentment with the State in which they reside. That is to say, there is no secession that occurs when there are resentments within a State, for whatever reason. Article 3 of the declaration expresses, "Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development "(Organization of the United Nations, 2007).

According to Marco Aparicio Wilhelmi (2008), autonomy refers to the ability of indigenous peoples to choose their own authorities since they have what is necessary to legislate and administer the interests of the people. They have the capacity to demarcate their territories and the power to choose the kind of relationships they will have with State entities (15). That indigenous peoples have autonomy means that they are recognized as public entities with legal capacity and with the capacity to issue norms within their jurisdiction (Figuera Vargas, 2010, 115). The DRIPS affirms that indigenous peoples are equal to all other peoples and recognizes their right to be different, to consider themselves different and to be respected as such (Organization of the United Nations, 2007).

2. Economic, social and cultural rights

With respect to the economic, social and cultural rights of indigenous peoples, the declaration primarily promotes respect for cultural diversity and variety within the different indigenous populations and non-discrimination for carrying out the practices of their community. It is well known that cultural practices are linked to any action and any decision made within the community. Currently, indigenous peoples are fully recognized as a new social subject and their organizations as political participants. However, its social organization has required the interconnection of several dynamics such as the

construction of struggle platforms where these demands are expressed to the State's rulers (Iturralde, 2004, 234).

According to the application analysis of the DRIPS, the cultural, social and economic rights specified within it are distributed as follows:

The right of indigenous peoples to preserve their cultural institutions.

Right to determine their membership in a community or nation in accordance with its traditions.

Right to practice and revitalize their cultural traditions and customs.

Right to compensation in respect of cultural, intellectual, religious and spiritual goods that have been deprived without their free, prior and informed consent or in violation of their laws, traditions and customs.

Right to manifest, practice, develop and teach their traditions, customs and spiritual and religious ceremonies and to maintain their religious and cultural sites, in addition to obtaining the repatriation of their human remains.

Right to a culturally appropriate education.

Right to their own traditional medicines and to maintain their health practices.

3. Collective rights

The rights contained in the declaration, not only take into account individual rights, but also highlight the collective rights of indigenous peoples. They are necessary to guarantee the continuity of the existence, development and well-being of these peoples (United Nations Organization, 2013, 18). Collective rights refer to the fact that within a society there are different forms of citizenship than those existing in traditional visions that place citizenship in a condition of individuality (Tukui Shimi and CONAIE and IWGIA, 2009, 45).

The fact that a group of people have, in addition to their human rights as individuals, rights as a community, allows the need for a specific community to be avoided, as is the case of the rights of indigenous peoples as a community. Within the declaration under analysis, it is stated that indigenous peoples have the right as population and as individuals.

4. Equality and non-discrimination

The articles that start the declaration clearly mention that the intention of the declaration is to establish parameters for non-discrimination and for the assurance of equality. The first two articles express that collectively and individually, indigenous peoples should enjoy all the rights promulgated in the Charter of the United Nations and the Universal Declaration of Human Rights.

According to the analysis carried out by the UN on the DRIPS, "Non-discrimination and equality are fundamental components of international human rights law and essential elements for the exercise and enjoyment of civil, political, economic, social and cultural rights" (United Nations Organization, 2013, 11). In Article 15, No. 2, the declaration urges States to adopt effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and promote tolerance, understanding and good relations between indigenous peoples and all other sectors of society (United Nations Organization, 2007).

As in any society what should prevail is mutual respect within the community, as well as respect for the rest of the communities, understanding that all realities are different. However, every community have common goals that are primarily the welfare of their people and peace.

5. Right to lands, territories and resources

The declaration specifies the right that people have to maintain their lands, territories and resources in which they live and those that have traditionally owned and are being used by other hands. For the indigenous peoples, their lands are part of their being and their spiritual connection with the land. As the subject of this research is focused on the territorial rights of the indigenous peoples specified in this declaration, they will be analyzed in section 2.2 of this work to be further studied and discussed.

2.1.3 Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

The declaration was approved by Resolution 61/295 of the General Assembly on September 13, 2007. Unlike treaties or agreements, resolutions do not in themselves generate legally binding obligations for States (Organization of the United Nations, 2013, 39). That is to say, they are considered what within the International Relations is

called Soft Law, which means that said statements are not strictly binding. However, these serve to show a way in the actions of States guided by morality (International Council on Human Rights Policy, 2006, 5).

The rights of indigenous peoples have existed before the creation of this declaration. That is why within the declaration have not been created new rights or with specificities that make them different from other rights, they are based on human rights instruments. However, the declaration is responsible for emphasizing all these rights and specifies in which situations they can be used and exploited. The language used in the declaration imposes obligations and responsibilities on the States that sign it. The UN recommends that such measures be adopted guided by the value of respect (United Nations Organization, 2013, 39-40).

2.2 Analysis of the rights to lands, territories and resources specified in the DRIPS

Within indigenous communities there is a close relationship between the people and the place where they live. People are totally linked to the land that saw them grow. It contains the knowledge of their ancestors, their histories, their traditions. The declaration under analysis takes into account these issues and elaborates a group of articles where the rights that indigenous people have over their lands, territories and resources are specified. First, it is necessary to analyze the meaning of these words, since confusion is easy, especially in the true meaning of lands and territories in International Law.

When norms speak about "lands" they refer to the right of property or possession of the indigenous people over a certain area of land. The "territory" refers to a larger space that has less delimitation. In the case of indigenous peoples the "territory" refers to the total of the regions that each indigenous people occupies and this includes the natural resources offered by this territory (Snoeck , 2013, 4).

The word territory is used to highlight that indigenous peoples have a special relationship with the place where they are settled and that in that place they confer more rights. These rights are not only the right to their property, but also the rights of self-determination and autonomy, indigenous justice, use of resources, spiritual life, cultural identity, right to health, etc. This does not mean that International Law analyzes a possibility of separation of these peoples from the State to which they belong. But

States, on the other hand, must respect this importance that people give to the place where they live and respect the rights that people have over the natural resources of those territories (Sonoeck, 2013, 4).

There are several reasons why indigenous people can be separated from their lands, but all these reasons have something in common, they seek to generate some kind of wealth. In the past the indigenous peoples were expelled from the fertile lands and thrown into the arid mountains and ravines. Now, in these places, they are not allowed to remain either, because the land is rich in mineral resources and they are being stripped again (Olmos, 2013). If the lands, territories and resources of the indigenous people are taken and expropriated, the people in charge of carrying out these actions must assert the right of reparation or compensation, as the case may be, in order to somehow supplant the space that has been retired to them.

The primordial part of the life of the indigenous peoples, is the close relationship they have with nature. That is why any violation of it must be repared. For Ecuador, nature is not an object of legal protection. The Constitution of Ecuador specifies that nature is subject to rights, which puts it at the same level as Ecuadorian citizens when claiming their rights. The big difference is that for there to be respect for the fulfillment of these rights, nature must have a lawyer who is its voice and is its intermediary, said lawyer would be the Ecuadorian. However, for the human being, their intentions will always be more present than those of nature.

2.2.1 Article 10 of the DRIPS

This declaration provides an article, specifically number 10, on the subject of consultations that must be held prior to any activity that may violate the collective rights of indigenous peoples to reach their consent

Article 10 of the DRIPS

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”.

Within international law, it is not rare to mention the unique bond of indigenous peoples and their territory as it has become an issue of vital importance for understanding the measures that must be taken to address this special issue. The rights conferred on indigenous peoples are linked to each other. As an example of this, land rights are linked to the freedom of indigenous peoples to conserve their cultures and, on the other hand, the rights to preserve their cultures are linked to people maintaining their economic and political systems within their territory and with its people, rights that are linked to the freedom of peoples to determine themselves, etc.

There are several international bodies that include the proximity of the lands with their people and are not only the UN or the Inter-American Human Rights System, but also multilateral organizations such as the Inter-American Development Bank (IDB) or the World Bank (WB). That is why the consultation before any decisive action for indigenous peoples and their territories is paramount.

One of the recommendations made by the Human Rights Committee⁴ is precisely that of consulting the communities before breaking into their territories. The committee has considered that the omission of consultation in cases of exploitation and exploration of natural resources in the indigenous territories violates the right of ethnic minorities to preserve their own culture, contemplated in Article 27 of the International Covenant on Civil and Political Rights (Buriticá, Morris, Salinas and Rodríguez, 2010, 61).

It is pertinent to analyze each of the aspects established in Article 10 of the DRIPS. First, the Article mentions that no move will take place as there is no free, prior and informed consent of the interested parties. The Article does not refer to a proper consultation; however, both terms are linked. The consultation refers to a dialogue between the State and the indigenous community to reach a solution regarding activities that could have an impact on the lives of the inhabitants. But what does it mean to be free, prior and informed?

Being free means that it is without any kind of manipulation and that it does not follow a forced or violent procedure that forces the communities to consider something that may

⁴ According to the official website of the High Commissioner for Human Rights, the Human Rights Committee is the body of independent experts that oversees the implementation of the International Covenant on Civil and Political Rights by its State Parties, submitting periodic reports on the manner in which they exercise the rights specified in the Covenant. .

not be optimal for them. Being prior means that interested parties have the opportunity to internalize the problem and discuss the best option to provide a response to the State, this must be done prior to any intervention. Being informed means that the State provides the necessary and truthful information about the economic and social consequences of the project and everything that the realization of it entails. This information should be clear and freely accessible (Indigenous Territory and Governance, 2011).

Second, the Article mentions that the communities will not be displaced without a prior agreement of fair and equitable compensation and, if possible, they should have the option of returning. The existence of a compensation in these cases means that there must be a reparation for the victims of the eviction that tries to provide the facilities so that their life is not totally different, they have a place of housing, they can sustain themselves economically to be able to feed themselves, to offer protection, etc.

The populations must receive compensation by right, because there will always be consequences that threaten their social structure, their culture and the environment in which they live, which further complicates their livelihoods. In general, Article 10 establishes something that is also clear in the Ecuadorian Constitution, specifically in Article 57, paragraph 7: "Prior, free and informed consultation, within a reasonable time, on plans and programs for prospecting, exploitation and marketing of non-renewable resources found on their land ... " Taking this into account, it will be then analyzed the national regulations in relation to the DRIPS.

2.3 National regulations in relation to the United Nations Declaration on the Rights of Indigenous Peoples

Ecuador has one of the most complete Constitutions in favor of human rights and nature. However, within it there are contradictions that give rise to paradoxes about these specific issues.

2.3.1 Ecuadorian Constitution and the rights of indigenous peoples

Before the implementation of the Constitution of 2008, Ecuador was going through a neoliberal current in which there was instability in politics, the democracy was weak and Ecuador was mired in economic obligations. These facts led the country to go through a time when poverty and disrespect were two of its biggest symptoms.

The 1998 Constitution devoted an entire chapter to the rights of indigenous and Afro-Ecuadorian peoples. It recognizes their rights over their ancestral lands, their traditional forms of community organization and relations, their historical heritage, their knowledge, education and administration of indigenous justice. The 1998 Constitution also incorporates the protection of the environment with community participation (Cepeda and Paz, 2008). In this sense, it can be observed that new international norms of environmental protection already had a favorable context to be located taking into account the alternative theoretical framework offered in the previous chapter.

In this way, the Ecuadorian Constitution of 2008 starts from a different model that breaks with the neoliberal ideas led by right-wing parties. That is, with traditional international norms that do not prioritize environmental care. On the contrary, for this new Constitution, legislators, driven and influenced by local agents, especially indigenous peoples, are based on what they called the "social and solidary economy" and which complements pre-existing local ideas that combine economy and respect for the nature. In other words, the Constitution of 2008 includes environmental protection norms that rescue the knowledge of indigenous peoples in relation to nature.

The participation of citizens has been key to the application of these new constitutional reforms within Ecuador, an aspect that corroborates the role of local agents in the application of international norms. In Latin American countries such as Argentina, Bolivia, Brazil, Chile, Ecuador, Nicaragua, Paraguay, Uruguay and Venezuela, these needs have been taken into account with a similar dynamic regarding the participation and inclusion of civil society. For all this, it can be argued that within each country, and particularly in the Ecuadorian case, it is the local actors who take the issue into account from a point of view that is more focused on their reality.

The people affected are those who know more about the existing problems. That is why being aware of the information makes it possible to give a proper opinion in order to contribute to the subject. In the case of environmental laws and protection of the rights of indigenous peoples, in Ecuador it was the social and environmental groups that traditionally have confronted these needs and brought them into discussion. This has facilitated, as indicated, the application of international norms regarding environmental

care since pre-existing ideas on this subject were already present in the locality, that is, in the Ecuadorian context.

In the previous chapter, the alternative vision of the dissemination of norms was revised in which Acharya (2004) states that localization is an option for the diffusion of international norms. In his analysis he explores four factors by which the location is performed. To illustrate these factors, the Ecuadorian case will be exemplified in table 2.

Table 2 *Factors by which the location is made; example: Ecuador, environmental laws and indigenous peoples.*
 Author: Toledo Kimberly.

Factors by which the location is performed	
Factors	Examples
Foreign rules used to highlight the legitimacy and authority of their institutions and practices.	In Latin America, there is a variety of ideologies. However, the progressive, social democratic or left-wing governments have been the ones that have given reason to social struggles over the rights of indigenous peoples or of nature. In countries such as Bolivia, Venezuela, this kind of norms have been promoted. However, Ecuador has been based on this example, which has proposed constitutional reforms such as the rights of nature (Gudynas, 2009, 35).
Empowerment of local predecessor norms.	In the Constitution of 1998, an entire chapter was devoted to the rights of indigenous and Afro-Ecuadorian peoples. The 1998 Constitution also incorporated the protection of the environment with the participation of the community (Paz, Cepeda, 2008). Based on this, Ecuador was a participant in the DRIPS that was signed in 2007, when this Constitution was still in force.
Availability of local actors with discursive influence.	Gudynas (2009), highlights the denunciation of indigenous peoples about the justified action of exploiting nature in modernity. That is why it was necessary to create a constitutional arrangement to break those ties and recover the knowledge under a plurinational framework, which would allow another relationship with nature and with the original peoples (40), and the creation of the new

	Constitution, guided by these principles.
Sense of identity of policy makers	In Ecuador, foreign regulations that support national norms related to environmental issues or the rights of indigenous peoples are applied. Such is the case of the DRIPS application. It enhances the identity of indigenous communities by applying it to the reality of the people.

Bearing this in mind, Chapter Four of the 2008 Constitution expresses the "Rights of communities, peoples and nationalities" veiled by it. This chapter explores different rights that indigenous communities, towns, and nationalities have, the Afro-Ecuadorian people, the Montubio people, and the communes, since they are all part of the Ecuadorian State and are unique and indivisible" (Constituent Assembly, 2008). In this chapter the collective rights of these previously mentioned communities are specified.

As explained in previous sections, no right can be disconnected from another, since every right works together. Article 57 of the Constitution expresses all these collective rights, which are also mentioned in the declaration under analysis. These rights include the territorial rights of indigenous peoples and everything they involve, including the right to prior, free and informed consultation in case of expropriation of lands, the same one specified in number 7 of said article.

The collective rights that refer to the territorial rights of indigenous people are mentioned as follows:

Conserve the imprescriptible property of their community lands.

Maintain possession of ancestral lands and territories.

Participate in the use, usufruct, administration and conservation of renewable natural resources of their lands.

Not be displaced from their ancestral lands.

Maintain, recover, protect, develop and preserve its cultural and historical heritage as an indivisible part of Ecuador's heritage.

Participate through representatives in the official bodies determined by law, the definition of public policies and the design and decision of their priorities in State projects.

To be consulted before the adoption of a legislative measure that may affect any of their collective rights.

Paragraph 7 of Article 57 specifically states the following:

“Prior, free and informed consultation, within a reasonable period, about plans and programs for: prospecting, exploitation and commercialization of non-renewable resources that are found on their lands and that may affect them environmentally or culturally; participate in the benefits that these projects report and receive compensation for the social, cultural and environmental damage caused to them. The consultation that must be carried out by the competent authorities will be obligatory and timely. If the consent of the consulted community is not obtained, it will proceed according to the Constitution and the law” (Constituent Assembly, 2008).

Free and informed prior consultation is a right that indigenous communities have when their lands are going to be brought to public use. No. 7 of the previously mentioned Article specifies exactly what has to happen when the populations are going to be expropriated from their lands. However, there are some contradictions to the practice and prose of the law. The biggest problem is that, firstly, the compensations are often not fair. Territories that are rich in precious metals are sold at a low price that does not cover the cost of the size of the property and the real estate located there. Another problem with the right in question is that, according to testimonies collected, on several occasions there are no prior consultations, but previous threats to evict the land.

But the biggest problem that can be found is the support of the same Constitution for the expropriation of property, supporting the State to evict, with the objective that the lands are of public utility or of social and national interest in Article 323. While it is true that the State promises indemnities and payments in accordance with the law, the new idea established in the 2008 Constitution that protects indigenous communities and the State of nature subject to rights is surpassed.

In this sense a contradiction can be clearly observed. The Constitution supports and advocates for nature and its rights, however, with economic sustenance objectives, exploitation is seen as the only alternative to obtain welfare within the country. Ecuador has incorporated Good Living (*Buen Vivir* in Spanish) with a group of objectives that

ensure a good life for Ecuadorians, especially those who are more vulnerable to being cut off from their rights.

According to Acosta and Gudynas (2011) the called Good Living is considered from the perspective of the marginalized of history, from indigenous peoples and nationalities. The Good Living is created as an opportunity to build a society based on a coexistence between people and the environment in which they live. In this way, there would be created a balance and a harmonious relationship with nature. All this taking into account the cultural values existing in each country (103).

The national plan of the Good Living is based on the idea of giving relevance to vulnerable groups often not taken into account in the political debate. In the objectives of the plan are demonstrated a really desired world, pursuing an idea of development aimed at fulfilling these stated objectives. The plan is linked to a set of rights that require substantial changes to achieve development strategies (Acosta and Gudynas, 107, 2011). However, the plan is a representation of the alternatives that may exist to achieve another kind of development that is better with the needs of Ecuadorians, leaving aside extractivism oriented towards the exportation of natural resources. However, according to the criticism made by Acosta and Gudynas, "Good living or the dissolution of the idea of progress" (2011), the application of usual development strategies usually did not result in the benefits that were promised (105).

This subject will be analyzed below with the case study presented in the Tundayme community of El Pangui canton in the province of Zamora Chinchipe. In this territory is located one of the largest and most important mining projects carried out in Ecuador, the Mirador project, which is a type of open pit mine. This type of mining causes irreparable environmental damage, as well as it affects the health of people living in nearby areas and it also has a great cultural impact.

Comparing national legislation with DRIPS, several coincidences can be noted. Specifically regarding the rights under analysis, the territorial rights. Both documents highlight the importance of respecting the beliefs and ancestral knowledge of the populations. But above all both documents rescue the need to consult previously and reach a consent of a certain action that is intended to be carried out whose purpose produces some kind of damage to the welfare of the communities.

Within the international field, countries use the localization to achieve a better application of norms. It takes into account local needs and ideas and norms already established within the locality. According to the rights of nature promoted by social and ecological actions directed by the majority of indigenous populations, Ecuador has a vast range of new rights where nature ceases to be subject to legal protection and becomes a subject of rights as well as Ecuadorians.

This has been promoted at an international level specifically in the UN assemblies regarding the rights of nature, where the Ecuadorian Constitution has generated conversation and debate. According to official information from the Ecuadorian Foreign Ministry, the first United Nations Assembly on Environment held in Nairobi-Kenya, was the ideal platform for a debate between speakers and attendees regarding the proposal of the then President Rafael Correa to move towards the creation of a Universal Declaration on the Rights of Nature.

According to Campaña (2013), "within the national framework, the constitutional recognition of nature has aroused more than an enthusiastic adhesion in the legal world." However, some people consider that the application of these rights does not have a practical impact and its effects are not greater (11). The Constitution supports several activities such as eviction (art. 323) or exploitation of natural resources (art. 407), and despite the fact that within these laws that authorize the expropriation of property, communities are protected.

Taking this analysis into account, the territory of Tundayme has been chosen to carry out the investigation, based on the State's own statements and the interviews gathered during the field visit to conclude whether or not the rights celebrated by the Constitution and the Declaration of the United Nations on the Rights of Indigenous Peoples are fully implemented.

CHAPTER 3 EVALUATION OF THE CASE STUDY: TUNDAYME ECUADOR

3.1 Brief history of the parish and settlements in the area

Tundayme is a parish located in the northeastern area of El Pangui canton in the province of Zamora Chinchipe. This parish was formally created on June 13, 1994. According to information obtained through the Parish Decentralized Autonomous Government (GAD, by its initials in Spanish), the history of Tundayme begins from its first settlements in the year 1830 where the first native Shuar inhabited the area. Captain Ramón Ambush and his wife María Nungay were the first owners of a property that extended from the banks of the Zamora River to the Cordillera del Cóndor, territories that were mostly inherited by their children because later more Shuar natives arrived (Tundayme Parish GAD, 2014, 1).

Figure 1 Map of El Pangui Cnaton. Source: Theoretical-methodological contributions for an Early Warning System of socio-environmental conflicts. Experiences around the Mirador Project, Ecuador



For 120 years, the territory of Tundayme was occupied by Shuar natives until in 1950. In this year peasants mainly from the province of Azuay began to arrive. In order to reach Tundayme, the first settlers used the bridle path from the Bomboiza River to the Las Peñas sector, from there they moved using a lever canoe upstream of the Zamora River. The Salesian Mission builds the first school with the support of Priest Fray Ángel

Andreta, calling it "Fray Jodoco Ricke" for Spanish-speaking natives. The first teacher was Rosa Sagbay Lituma in 1957 (Tundayme Parish GAD, 2014, 1).

In 1958, the Military Detachment of Tundayme was created under the orders of Commander Lieutenant Jaime Játiva. Shuar natives from the area participated in its creation. During the period from 1963 to 1966 more settlers arrived to settle in these lands. The peasants opened bridle paths along the left bank of the Zamora River and the Quimi using wooden canoes to paddle and leverage to cross (Tundayme Parish GAD, 2014, 2). With the arrival of the settlers, at the end of the 60s, the San Marcos neighborhood of the parish of Tundayme, was created (Municipality of El Pangui, 2015).

In 1978 the school "3 de Noviembre" was built in the San Marcos neighborhood, and in 1982 the school "Jaime Roldós Aguilera" in the center of Tundayme (Municipality of El Pangui, 2015). For 1991, the National Government approved the cantonization of El Pangui and in June of 1944, months before the conflict with Peru in the Cordillera del Cóndor, Tundayme was established as a rural parish of the canton El Pangui (Municipality of El Pangui, 2015). Later, both the Shuar community and the settlers confronted the Peruvian army in favor of the sovereignty of Ecuador and now settlers and Shuar live together in Tundayme.

This territory has experienced several territorial problems since its creation. First, the presence of settlers in the area caused tensions with the Shuar community. However, joining forces to face the conflict with Peru has made them work harmoniously. Subsequently, a peace treaty was signed to end the conflict. However, peace has not reached the territory and its inhabitants who live to this day conflicts with their most recent confrontations, which are mining companies and concessions. Although these initially provided benefits, they became the main actor for the realization of forced dispossessions of the Shuar community and the mestizo community (Acción Ecológica, 2017, 43).

3.2 Displacements in the área

In the past century the conflict that existed in the Cordillera del Cóndor, was clearly of international character. In these lands there was the battle between Ecuador and Peru, the well-known Guerra del Cenepa. However, in subsequent years, conflicts have occurred

intrastate, with the high command who have led a series of evictions in the area due to the growth of mining projects.

As mining projects have gained importance, the need of territory for companies has been higher. All this has given way to a series of disposessions of land by these companies with State support. These disposessions had led to a violation of universal human rights and, in this case specifically, the rights of indigenous peoples.

3.2.1 Historical background of the displacements

The existing mining activity in the area, dates back to the colonization of the territory since the 1960s. All these processes have been promoted by the State. Thus, around this same time the Directorate of Geology and Mines was created, which gave rise to a sustained public policy in mining matters in charge of this institution, which later had other denominations. Today Ecuador has other institutions in the mining sector such as the National Mining Company, ENAMI (by its initials in Spanish) or the Mining Regulation and Control Agency, ARCOM (by its initials in Spanish) (Acción Ecológica, 2017, 44).

In 1993, the World Bank approved a project of 24 million dollars in favor of the Ecuadorian government to finance the Mining Development and Environmental Control Project. From this, there is a record of the arrival of mining companies in the southern Ecuadorian region, like in Zamora Chinchipe. In this province are several large-scale mining projects. However, the Mirador project located in Tundayme is causing notorious environmental impacts because it is the only one that has an environmental license for the exploitation phase. It has a contract signed by the State and is currently building the beneficiation plant to start large-scale and open-pit mineral exploitation (Acción Ecológica, 2017, 45).

On the eve of the Cenepa war, the Gencor mining company arrived in the area. Despite the uncertainty of the military mobilization and the prohibitions of activities in the area established by the National Security Law, the company carried out investigations and discovered copper in the area. After the war, the Billington Company determined a large porphyry copper mineralization belt in the area. From this, the company began to get involved in the local population by providing job opportunities (Eguiguren, 2015, 119).

In 1999, advanced exploration works were started by the Canadian company Current Resources through its national subsidiary Ecuacorriente S.A. The most advanced exploration works began from 2000 to 2005, where as a result there were strong copper deposits in the town (Ortiz, 2010, 13).

Ecuador, prior to the government of the Economist Rafael Correa, lived in a time called neoliberal where the free market and capitalism were the forms of government. For the new government it was very important to put an end to this tendency and make the Ecuadorian citizens the center of attention of the rulers. Among many other things promised, on April 18, 2008, the Constituent Assembly of full powers issued the Mining Mandate. It was issued to try to bring order to the chaotic situation in the Ecuadorian mining sector (Sacher and Acosta, 2012, 17).

The Mining Mandate exposed some points as follows:

The extinction of projects that in the exploratory phase have not (Art. 1):

1. made any investment in the development of the project,
2. submitted environmental impact studies and
3. carried out prior consultation processes.

Expiration of concessions without paying conservation patents (Art. 2).

Extinction of concessions within natural protected areas (Art. 3).

Prohibition of monopolies in the industry (Art. 4).

Extinction of concessions to former officials of the Ministry of Energy and Mines (Art. 5).

For many people it was convenient to comply with the mining mandate. But the fact that the Mandate has not been fully complied with, was disappointing According to Sacher and Acosta (2012), among the points that were not met are: not all concessions were reversed to the State as provided for by the Mining Mandate, there was no way to extinguish concessions to the established monopolies and the concessions to former officials of the Ministries were not extinguished (19-20).

On January 12, 2009 the Mining Law was approved, an ordinary law that within the legal range is a law that entails a faster approval process. Despite the discontent, there was no dialogue. According to Acosta (2009), despite the opposition of the local communities affected by the mining activity as well as the opposition of indigenous and

environmental movements, it was not possible to open the door to a national dialogue (103). This law could not repeal the Mining Mandate due to its constitutional rank. In March of the same year the Confederation of Indigenous Nationalities of Ecuador (CONAIE, for its initials in Spanish) filed a lawsuit of unconstitutionality to the law (Acción Ecológica, 2015).

In June 2010, the Federation of Organizations of Azuay FOA (by its initials in Spanish) filed an Action of Non-compliance with the Mining Mandate in the Constitutional Court in Cuenca (Acción Ecológica, 2015). In the same month of the same year, the Chinese company Togguan purchases 96.9% of the shares of ECSA. Thus establishes the transfer of responsibilities to the new managers of the Mirador project (Eguiguren, 2015, 119).

In 2011, regarding information provided by the families of Tundayme, three lawyers begin to visit families asking them to sell their land. However, according to these testimonies, the petitions became threats. With regard to what is established, the villagers comment on the following:

"[...] Staying my dad alone in 2011, three lawyers from the company started visiting him. One of them always visited him to ask for the land. My dad always clinging to his territory. Between those visits they began to threaten him. Don [...], if you do not sell it right now, the State will take your land away."

According to researches by Acción Ecológica (2015), in February 2012 the Ministry of Environment approved the Environmental Impact Study submitted by the company ECSA for the phase of exploitation of metallic minerals of the project in question, as well as the Environmental License for the the phase of exploration of metallic minerals. In March of the same year Wilson Pástor, Minister of Non-Renewable Natural Resources, signed the first large-scale mining contract that allowed the open-pit exploitation of copper and other minerals for 25 years renewable in the Mirador Project. Between May and June 2012, social entities interpose two Actions of Non-compliance of the Mining Mandate against the Ministry of Non-Renewable Resources in the Constitutional Court (Acción Ecológica, 2015). These actions were presented with the aim that the indigenous peoples are consulted about the measures of the project prior to being put in place to ensure the fulfillment of their rights (Acción Ecológica, 2015). A

villager commented: "There was no dialogue, they wanted us to take the check. They did not want to negotiate. There was no socialization of the project. "

During the years 2013 and 2014, at the request of ECSA, the first mining servitudes were made to several families of the parish (Acción Ecológica, 2015). A mining servitude is made when in a property there are minerals that could be ceded to a mining concession and exploited by it, fully backed by the Mining Law.

According to official information established by ARCOM, the mining servitude consists of the use of a plot of land to carry out exploration and mining activities. The State, when granting land spaces to mining concessions, is obliged to grant these territories. That is why when there are settlers in these areas, mining servitudes are established with the objective of compensating the inhabitants and granting the concessioned lands to the companies. It is of vital relevance at the time of initiating a project and the declaration of public utility and collective interest always prevails. In the case study, ECSA demands ARCOM to apply the servitudes in the territories conferred to the company and that they can start with their activities.

In 2015, mining servitudes began to be applied, evicting the people who had their properties in the concession sector. Next, State official declarations will be analyzed regarding the behavior of the State entities when applying the mining servitudes will be contrasted with the information obtained in the field visit carried out in Tundayme and the interviews with the former owners of the properties of the that makes use of the mining concession.

3.3 Evictions

In 2013, the eviction processes began. The people that carried out the evictions began by notifying families that their territories would be used for mining servitude. This was done by the Mining Regulation and Control Agency (ARCOM by its initials in Spanish) at the request of ECSA. In 2014, the first servitudes were applied in the San Marcos neighborhood, in these the school and the church were destroyed. In 2015, the eviction process begins at dawn to the residents of the sector.

In June 2015 the members of CASCOMI⁵ went to Quito to present precautionary measures to prevent forced evictions in the area due to mining servitudes. But this precautionary measure was denied. There are opinions and statements aside regarding the situation of Tundayme and especially the evictions in the sector. To be able to reach a truthful conclusion, the official declarations of the State and the statements obtained by the residents, workers and authorities of Tundayme collected in the field visit about the application of the declaration and the national regulations will be analyzed.

3.3.1 State official statements regarding evictions in Tundayme

According to declarations and official information of the Ministry of Mining of Ecuador, the mining servitudes in Tundayme were carried out within the framework of the Mining Law and the constitutional rights. These mining servitudes were applied on September 30, 2015 and December 16 of the same year. According to information presented, on December 16, 2015, ARCOM proceeded with the peaceful intervention in 11 properties. On this date, 47 mining servitude processes were completed in the Mirador Project (Ministry of Mining, 2015).

Article 15 of the Mining Law establishes that public utility is declared to the mining activity in all its phases, which gives way to the necessary mining servitudes respecting the limits established in Article 407 of the Constitution of Ecuador. The latter prohibits extractive activity in protected areas and in intangible zones. However, these resources may be exploited at the request of the presidency and after a declaration of national interest by the National Assembly, which will lead to popular consultation.

Cristina Silva, executive director of ARCOM, said that the mining servitudes promoted in September and December 2015 were carried out respecting and taking into account the aforementioned Article 15. That is to say, that the current legislation has served as a tool to carry out the actions of those who were present at the time of the execution of the servitudes. A total of \$ 1,770,758 was assessed, according to the National Directorate of Appraisals and Cadastres, for instrumentation of mining servitudes in 11 properties (Ministry of Mining, 2015).

⁵ CASCOMI is the Amazon Community of Social Action Cordillera del Cóndor Mirador. This community is located in the Cordillera del Cóndor, Tundayme parish. It is part of the original SHUAR nationality of the Ecuadorian Amazon, is an integral part and subsidiary base of the CONFEDERATION OF NATIONALITIES ORIGINALS OF THE ECUADORIAN AMAZON "CONFENIAE"

Jalil Borrero, undersecretary Zonal South of the Ministry of Mining that year, claimed in his statements that all procedures were carried out in accordance with the law. In order to achieve with the objective of installing the concession, the territorial management team of the Ministry of Mining made more than eighty approaches to the communities of El Pangui to achieve commitments with ECSA. In the same way, Borrero clarified that the families that took refuge in the mining servitude were not abandoned, but expressed that the families were moved to their relatives' homes or other homes of their own (Ministry of Mining, 2015).

According to Carlos Castillo, mayor of Zamora Chinchipe police, explains that the evictions made on September 30, 2015, were carried out at dawn, peacefully as there was no abuse by the security forces or other authority. He explains that there was respect for the human rights of the relocated people (Governorate Zamora Chinchipe, 2015). Castillo also indicated that those affected received medical attention, despite the fact that no injured people were registered and none were detained by the police (Ministry of Mining, 2015).

According to official statements of the Ministry of Mining (2015), thirty-three owners of the land voluntarily received, as payment, a monetary value for use and enjoyment of the properties. These statements also establish that in five proceedings, the owners withdrew the compensation checks directly. It also establishes that 16 more were resolved through direct purchase and sale between the company that operates the mining project and the owners of the properties and, in 12 cases, they were finalized by a promise of purchase and sale.

Wang Yulin, Plenipotentiary Ambassador of the Republic of China in Ecuador, said that the Mirador mining project is a symbol of strategic cooperation between the two countries. According to him, the relations between both countries are currently at the best moment in its history. In addition, the Secretary of State reiterated that 60% of the mining royalties of the Mirador project will be invested in Zamora Chinchipe. In this way, the authorities should channel this economic income in the next 30 years for the wealth of the community (Ministry of Mining, 2015).

According to the president of that time the Economist Rafael Correa Delgado (2015), it is stated that mining is not the culprit of water pollution, but sewage from cities thrown

into rivers are the cause of pollution. In addition Mayor Castillo explains that when applying the servitude is not stripped of property or ownership of the property. The people who own the land are still the owners.

To summarize, according to the State declarations, the eviction processes were carried out in accordance with the Mining Law, applying the mining servitudes expressed in this law. The moment of the evictions was not shown hostility or force used. Additionally, they clarify that 60% of the project's royalties remain directly in the affected area and that responsible mining does not produce large impacts on the environment.

3.3.2 Statements collected during the field visit

In order to contrast and corroborate the State declarations, a field study was carried out where the information presented below could be collected. According to the testimonies of those affected, on the day of the eviction the policemen headed by people from the company and by government people arrived with the checks to buy the lands. However, many families abstained from receiving it and signing it because the amounts offered still did not meet their expectations. An inhabitant of the area explains how the eviction occurred from his lived experience:

"They arrived with 60 policemen, some with bars, and others with shovels, with backhoes and ahead of all of them was the people of the company saying, sir you do not own this place, and from this moment you have to leave, and the ARCOM with the check telling the owners to sign the checks. They took my dad's arms and throw him out. But he did not sign check. He says they wanted to put the check in his mouth, by force"

According to direct testimonies of the inhabitants of the area, the police took what they could from inside the buildings and took it out in pouches. The animals that they had in the properties, between cows and horses, were released in the streets. The families were not relocated and their belongings were not returned to them in some cases, in others they only settled outside the houses that they knew they were staying. According to members of the CASCOMI community, the second eviction took place on December 16, 2015 under the same circumstances. The eviction was executed by ARCOM at dawn hours between two and six in the morning. There was no prior warning for people to

save their belongings. Also police abuse was present with people who resisted the eviction.

On February 4, 2016, Rosa Wari, a 95-year-old Shuar woman who has lived in the area of Tundayme ancestrally, was evicted. She and her son said that this was not their first eviction. Fourteen years ago they had lived in the neighborhood of San Marcos, acquiring said land in an ancestral way. They were evicted from there after having burned their house, and they were reinstalled 3 kilometers from Tundayme, where Rosa Wari lives under deplorable conditions, and even from that place they evicted her (INREDH, 2016).

In addition, another of the statements provided by one of the residents is that families have to continue paying taxes for land ownership, even though they no longer use those lands. One affected woman commented: "And this law of servitudes says that the land is still yours, but let's see if it is yours. My parents still pay annual taxes on the rustic property and if they die, we will have to pay for it, when the territory is no longer in our hands. "

To summarize, all these evictions were carried out without prior notice so that people could plan their departure, they did not have the judicial orders (Acción Ecológica, 2017). According to the UN's "Basic Principles and Guidelines on Evictions and Displacement Generated by Development," evictions should not take place at night, and should only be carried out by State actors. In this case, the eviction was carried out at dawn hours and with private actors such as those in charge of the company.

When carrying out the field investigation of the case study, there were contradictions with the official positions presented by the State. This is why as a summary of what was previously described will be presented. These positions will be contrasted in Table 3 to reach a conclusion regarding the subject.

Table 3 Evictions in the parish of Tundayme. Author: Toledo Kimberly

EVICTIIONS IN THE TUNDAYME PARISH	
<u>Official Declarations</u>	<u>Field Research</u>
-The territorial management team of the Ministry of Mining made more than eighty approaches to the communities of the sector.	-The villagers commented that there was no dialogue or socialization of the project.

<p>-The mayor of Zamora Chinchipe explains that the evictions were carried out peacefully since there was no abuse by the public force or another authority.</p> <p>-There was respect for the human rights of the people.</p> <p>-The people who own the land did not lose ownership of the property.</p> <p>-The water in the rivers will not be contaminated because the water is recycled in the responsible mining projects.</p> <p>-There is no information about the completion of a prior, free and informed consultation.</p>	<p>-The elders were taken from their homes by the arms, on one occasion they tried to get the check forcibly by putting it in their mouths.</p> <p>- Evacuation of Rosa Wari, disrespect for ancestral rights over lands.</p> <p>- The residents still own the properties, therefore they must continue paying taxes.</p> <p>-In the field visit made it can be noticed the turbid waters and according to testimonies, the water cannot be used.</p> <p>-No prior consultation, free and informed.</p>
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As seen in Table 3, it can be argued that the inhabitants of Tundayme have been affected. Although it is true that the State's declarations establish that there was no violation of the law, in the field visit it can be stated otherwise. The main objective in this visit was to corroborate if there was a consultation process, to which the villagers allege that this has not been the case. To this day the effects of the evictions and the impacts they have caused on the development of society can be noted, since there have been effects on the environment, culture, social structure and family.

3.4 Impacts and effects on the inhabitants of Tundayme

The Cordillera del Cóndor is one of the most diverse natural paradises in the world with unique animal and plant species. The water springs that emerge from its mountains flow into the Amazon River. It is the ancestral territory of the Shuar community and in this same place has been approved the exploitation of the first large-scale mine in the history of Ecuador.

The impacts caused by the mining projects range from the deterioration of nature (see Table 4) with the pollution of the rivers, the contamination of the water, the danger of the animals and the plants that are unique in their species worldwide. And these impacts also been social and psychosocial (see Table 5), a situation that persecutes those affected until today having already spent more than two years of evictions, impacts on their health, changes in their social structure and cultural impacts.

Table 4 Environmental Impacts in Tundayme. Author: Toledo Kimberly

ENVIRONMENTAL IMPACTS	
<u>Water pollution</u>	<u>Deforestation, air pollution and noise</u>
<ul style="list-style-type: none"> - According to information provided by CASCOMI (2016), when processing rocks to obtain copper, 99% becomes waste, called tailings. These tailings will be located in mounds on the rivers. The Amazon is a place of constant rain and this material, when the rain falls, can move to reach the rivers and their tributaries. This way it can contaminate them and making this water source unusable. -To adapt the access roads to the pit of the mine, several hills were cleared, which has led to pollution in the Wawayme and Tundayme rivers, causing turbidity in the water and physical, biological and 	<ul style="list-style-type: none"> -According to information from the Parish GAD, 300 hectares of the forest have been cleared to locate the mine. -Elevated temperatures due to deforestation. -Fauna scattered by noise and lack of trees. -Contamination of air, for the construction of infrastructures and access roads for the transport of materials to the camp (Acción Ecológica, 2017). - Traffic is much more heavy, causing the dust to rise.

chemical modifications (Báez, Bayón, Larreátegui, Moreano and Sacher, 2016, 28).	
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Table 5 Impacts on Tundayme's society. Author: Toledo Kimberly

IMPACTS IN SOCIETY	
<u>Cultural, social and family impacts</u>	<u>Impacts to physical and psychological health</u>
<p>-The company does not assume the existence of indigenous peoples.</p> <p>-The food of the place has been cut. Farmers cannot plant on affected land just as they cannot irrigate crops with turbid water.</p> <p>-Destruction of church and school, which has caused displacement and social processes in the sector.</p> <p>-Impacts of cultural identity. There are posters in Chinese language and stores selling products that originate in China.</p> <p>-Separation of families and community. Many people are against the project, for various reasons, however, within the same families, several people work within the project which make them support the project.</p>	<p>-Impact on the health of the elderly, since the majority of owners of the territories are elder people.</p> <p>-The workers of subcontractor companies are not affiliated with Social Security.</p> <p>-The emotional health of the evictees has been seriously affected, since they claim that they have had to be involved in situations that they were not used to in their past life.</p> <p>-For the children, the evictions became a traumatic experience.</p> <p>Post-traumatic situations and feelings of anger for the inhabitants, especially the children of Tundayme.</p>

3.5 Analysis of the application of DRIPS and national legislation on the territorial rights of indigenous peoples in the parish of Tundayme

Throughout this study, the most important instruments that value the territorial rights of indigenous peoples have been mentioned. A tool that has been used to get to the conclusion of the existence of compliance with these instruments was the field visit carried out in Tundayme. There was an opportunity to talk with the workers in the Mirador Project, the evicted people, the parish authorities, the members of the CASCOMI community and indigenous Shuar.

One of the rights that values the Constitution and the DRIPS is the respect to everything that has to do with the care of their culture and their ancestral teachings. The Constitution establishes that indigenous peoples cannot be transferred from their ancestral territories. The DRIPS establishes that indigenous peoples have the right to the lands, territories and resources that they have traditionally possessed, and establishes that indigenous people have the right to maintain and strengthen their spiritual relationship with the land.

As has been previously discussed, for indigenous people the land is a gift that sustains their lives. There is an extremely important link between people and the earth. The core of this bond is the perception and awareness of everything that has life, absolutely everything is connected. The material and spiritual world are totally linked (UNESCO, 1997). Among the indigenous people of the whole world, their cultures are very varied. However, all of them consider the earth as the "Mother Earth" where the past knowledge of their ancestors can be found as well as their present in the sustenance of their day to day, and their future in the sustenance of their children and grandchildren.

There are different names and exaltations that are given to the same entity within the different indigenous cultures of the world. Speaking of the land, for the Ecuadorian indigenous people, in the Andes they call it Pachamama. For the Shuar, which is the population to whom the case study is dedicated, the name given is Nunkui which is, according to a member of this community, the representation of the Shuar woman. Nunkui is the one who causes the fertility of the farm and of women (Barrueco, 1985).

According to the information obtained from the field visit, the facilities of the mining concessions are located in Shuar ancestral territory. While it is true that many

indigenous people have been negotiating their land since the settlers arrived, there are still Shuar people living in the area. Such is the case of Rosa Wari who, as previously discussed, was been evicted from her property in the San Marcos neighborhood and today lives in deplorable conditions with her son near the concession.

The Constitution establishes that indigenous peoples have the right to participate in the use, usufruct, administration and conservation of renewable natural resources of their lands. The DRIPS establishes that indigenous peoples have the right to own, develop, use and control the lands they own because of traditional property. That is, they have the capacity and power to use all the resources that their territory offers them in a way that can sustain their lives.

According to the field research, there is a great problem around the use of water, which leads to a series of problems. The water is used for agriculture, to give the animals, and the water is fished, which is very difficult because several of the species have died due to contaminants, which affects people's food sovereignty. People use the river as a place for entertainment, but now that the water is polluted it is impossible for them to make use of the river in that way.

Another aspect to take into account in this analysis is the fact that the Constitution clarifies the right to maintain, recover, protect, develop and preserve its cultural and historical heritage as an indivisible part of Ecuador's heritage. The DRIPS determines that the State must recognize the customs, traditions and land tenure systems of indigenous peoples. For the Shuar community, the fact of relating to city cultures is very common, even many tourists visit them to learn about their traditions. That is to say, that they are already used to sharing their traditions. However, their land is still their source of life and sustenance. Today land tenure systems are violated by the displacements in the area, which causes a wear and tear on their society.

Finally, within the topics chosen for the analysis of the evictions in the parish, both the Ecuadorian Constitution and the DRIPS establish that any transfer will be carried out with the consent of the interested peoples. Although the Constitution refers to a free, prior and informed consultation and DRIPS to a free, prior and informed consent; both hint at the same thing. There can be no action within a territory if there is no consent of the people and this consent is recognized through a consultation.

According to the declarations of the inhabitants of the area, the project was shared in a way that people were forced to accept the fact that if the sales of the land were not made, servitude laws should be applied. Although it is true that sharing the project is an important step prior to the achievement of an activity that can alter the social order of a community, it is not the last step nor the final goal. Having been informed the project, the essential thing was to conduct prior consultation. This consultation, which according to the residents' statements, was not carried out.

The DRIPS determines that when there is a displacement, and passed the previous consultation, it is necessary to receive fair and equitable compensation. Likewise, the Constitution establishes that when there are expropriations, there must be a fair valuation and compensation according to the law. Regarding this issue, there is the point of view of the Ministry of Mining, which offered to buy the lands. But, in the case they couldn't make a deal with the owners, they would have to necessarily apply the servitude law. But there is also the point of view of those affected. According to the investigation in the area, the villagers affirm that although they were offered payments for the properties, it was not a fair compensation, because many of them were better placed or had specifications that increased their value

Having analyzed the case study, it can be concluded that in a certain way, the rules that support the economic sector take precedence over soft law rights. Although it is true, as established by former President Correa during his visit to Panguí in 2015, resources that are exploited responsibly, allow Ecuadorians to have the means to build schools, roads or hospitals. But this statement by the former president, invisibilizes an existing population and an ancestral culture that lives and gives life to the place.

With regard to this aspect in particular, it is possible to verify that there is greater importance to the application of economic rules than those of an environmental nature. What gives us an answer to a question previously made by Amitav Acharya (2004), where the questioning of which norms have more relevance and which are those that really matter is raised. While it is true that the rulers have connected the economic needs of indigenous populations, with the possibility of exploiting their territories to meet these shortcomings, the full compliance with environmental norms and respect for indigenous populations has been set aside.

Within the declarations of the rulers, it is affirmed that all these activities are carried out primarily to give an economic boost to the locality. However, according to José María Tortosa (2011), the starting point for the ideal of a good coexistence is the recourse to basic human needs. But the dominant action has been to reduce these basic needs and take the money as satisfactory. That is to say, welfare is achieved through money, in the same way that poverty depends on the amount of money people have or do not have (44).

There are several rights that, according to the field investigation, have been violated. In addition to not having consulted previously and the consent of the population has not been reached, the subsequent environmental, social, cultural, psychological and family impacts are several. These no longer violate only the right to their lands, but also the right to live in a healthy environment which should contain the necessary for a dignified coexistence of people.

Conclusions

By taking localization processes into account, it is possible identify the local stakeholders, their problems and needs, and recognize their role in the international dialogue. In this way a more comprehensive reading of how important statements such as the one analyzed in this work arise in the international system. In other words, using the alternative approach to the dissemination of international norms, it has been possible to make visible a population that for a long time has been left behind and outside the international dialogue.

The DRIPS is undoubtedly a very important step in the search for equality and peace for indigenous peoples. This declaration includes several areas of interest within the rights of indigenous peoples and shows in a more complete way the scope that a declaration can have, taking into account the behavior of local stakeholders. One of the important points of this statement, and that in fact was analyzed individually, is the one specified in Article 10 of the Declaration. This Article reveals that prior consultation is a right of indigenous populations to avoid events that violate their social structure, their culture, their environment and, in general, the way in which they lead their lives.

The work began with an approach regarding the application of the DRIPS and specifically Article 10 within the population of the parish Tundayme in the canton El Panguí the first major mining project in the country where is located. In this sense, by retaking the research question that guided this investigation, it could be stated that after having compiled official information and having gone to the place of the facts for answers, the inhabitants of Tundayme were not duly consulted for the realization of the eviction on September 30, 2015 nor the one on December 16 of the same year.

Consequently, it is possible to affirm that an important part of this problem arises not only from non-compliance with the international norms specified in the DRIPS, but also from non-compliance with national norms. The Constitution, which is contradictory, grants rights and removes them. This produces confusion and uncertainty within the population that is guided by this document.

An example of the above is the right of indigenous peoples to maintain possession of ancestral lands and territories and obtain their free allocation, a right specified in paragraph 5 of Article 57. The previously mentioned Article contrasts with Article 323

which provides that the authorities may declare the expropriation of goods and declare them of public utility. From this, Acharya's (2004) question as to what norms matter must be raised. If this question is answered based on the example given previously, it can be confirmed that the rules of an economic nature are those that prevail to the detriment of environmental norms or human rights.

In direct relation to the case of study, what has been observed from the field investigation is the existence of contradiction between the State statements about the evictions in Tundayme, and the testimonies taken from the people of Tundayme who are now displaced. According to State declarations, its actions were supported by the mining law and the rights established in the Constitution. However, to make the mining servitudes, the Mining Law has prevailed, when the Constitution, according to its hierarchical order, is above any other law. In addition, human rights declarations prevail over the Ecuadorian Constitution.

In Tundayme there were evictions in which force was often used, there was no fair compensation and they were not relocated. The Shuar population has been displaced and their rights over their ancestral lands have been ignored. All this has had physical and psychological impacts on the population, from the youngest to the elderly who are even more attached to their lands.

The population of Tundayme has expressed its discomfort with having as a protective shield the laws that protect them. However, according to the research carried out, the results have not been the best. The law establishes to displace people from a community, it is necessary to conduct a prior consultation. Like Article 10 of the DRIPS that establishes that a prior, free and informed consent is necessary to be able to start any expropriation process.

Having analyzed the DRIPS in relation to the case study, it is possible to answer the question posed at the beginning of this work. Taking into account the research carried out in the parish of Tundayme, it can be argued that DRIPS is not being fully complied within this sector, in this case, referring Article 10 of the declaration that states that people should be consulted and once their consent has been granted, authorities can proceed to carry out any type of activity in their settlement area.

The DRIPS is an instrument that has overcome barriers and taken the best of previous declarations to create a complete document that takes a generalized account of the rights of indigenous people. In this way, the role of local participants in the creation of norms has been an important step. However, as a signatory, Ecuador is a true example of the complexity that exists in the fulfillment of a human right's declaration. While what the DRIPS declares is not entirely different from what is specified in the Ecuadorian Constitution, over the years, fulfilling the rights of indigenous peoples has become an issue because current prevailing norms are more focused on economic affairs.

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