

*LIMITS AND OPPORTUNITIES OF LIBERAL CAPITALISM:  
LESSONS FROM THE IMPLEMENTATION OF FPIC IN  
INDIGENOUS TERRITORIES IN PERU*

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# Outline

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- Peru: Land Reform, Liberalism and indigenous territories
- Citizen Participation and State Reform in Latin America
- The ILO Convention and its initial implementation
- The *Baguazo* conjuncture
- Limitations and opportunities of the *Ley de Consulta*

# Peru: Land Reform, Liberalism and Indigenous Territories

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- Titling and registration of “communal” lands as recognition of (territorial) rights? – Differences between Andean and Amazonian landscapes
- The constitutional history of the three ‘*i*’s: **inalienability**, ***inembargable*** (immune from seizure), and ***imprescriptible*** (?)
- Fight for expanding land titling and registration: **Communal Reserves** (as part of the National System of Protected Areas) and **Territorial Reserves** (for initial contact and voluntary isolated peoples)

# Citizen Participation and State Reform

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- 1996: Public Hearing to review an EIS of a Mobil Exploration in the Amazon: “*The document is public in the moment is approved*’ (plop!)
- The “**second generation of reforms**” of the Washington Consensus: citizen participation, accountability, decentralization
- Slow and lasting learning process:
  - Developing of new *National Environmental Management System* (EIAs System, EQSs + MAPs) [*Talleres Informativos & Audiencias Públicas*]
  - *Decentralization* (*Presupuesto Participativo* and local & land use planning tools)
- Universal citizenship or Multicultural liberalism?

# The ILO Convention and its initial implementation

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- 1990's: a contractual issue (the case of hydrocarbon projects)
- Change of civil society participation rules / but lack of enforcement of the ILO Convention 169 (mining projects: Tambogrande in 1999, Majaz in 2004, and most recently Tia Maria in 2015).
- Who qualifies as “*pueblo originario*” and who governs the *Consulta*?

# The *Baguazo* conjuncture

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- Two facts prior to the events (2009): expansion of extractive industries' projects in the Northern Peruvian Amazon, and, in the context of the USA – Peru FTA, the approval of new Natural Resources legislation (Land, Water, Forest, and Environment). Neither with a single community participation activity.
- The pushing of the '*perro del hortelano*' (**the dog in the manger**) paradigm: forestry, biofuels, extractive industries, energy, infrastructure (*local communities as a barrier to foster large scale investment*)



## The *Baguazo* conjuncture II

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- The growing importance of the Ombudsman Reports on Social and Environmental Conflicts (2005-2017)
- From the stubborn rejection of the new Consultation Law to the dilemmas of the regulation of the recently approved Act (2011-2017)

## Limitations and opportunities of the *Ley de Consulta*

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- *Ley de Consulta* as part of multicultural policies for social inclusion: but it is not fully embedded into general state policies for indigenous peoples.
- Difficulties to implement FPIC in Andean and Coastal Peasant Communities: the definition of the data base --“*el padrón*”-- of indigenous peoples.





## Limitations and opportunities of the *Ley de Consulta II*

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- Two criteria for the definition of who is who is not in the Data Base: language and land. Not clearly defined rules for Andean communities
- First cases of FPIC implementation: health and education sectors, medium size mining projects in the Altiplano, regional conservation units, and two emblematic cases of large infrastructure: the Hidrovía, and the Block 192 (both in the Northern Amazon)

# Key issues in the implementation of the Ley de Consulta

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- ***Territorial scope***: beyond the identification dilemma. The private sector culture of defining an “area of influence” (impact approach) and the lack of public policies with a territorial approach.
- ***Approval mechanism***: how to formally achieve consensus? Local traditions or formal mechanisms? The Ministry of Culture has not clearly defined the answer.
- ***Veto right***: interpretation of ILO 169
- ***Representation dilemmas***: weak social capital of indigenous peoples at the national and subnational levels