



**PONTIFICIA UNIVERSIDAD CATÓLICA DEL PERÚ - PUCP  
FIELD SCHOOL PROGRAM IN PERU**

***INDIGENOUS RIGHTS AND LEGAL PLURALISM 2018***

**GENERAL INFORMATION**

<b>Course:</b>	Indigenous rights and legal pluralism
<b>Location:</b>	Lima and Madre de Dios, Peru (Amazon)
<b>Time Period</b>	3 weeks
<b>Number of Hours:</b>	120 hours
<b>Coordinator:</b>	Raquel Z. Yrigoyen Fajardo
<b>Professors:</b>	Raquel Z. Yrigoyen Fajardo, Zulma I. Villa Vílchez, Soraya K. Yrigoyen Fajardo and members of the <i>Instituto Internacional de Derecho y Sociedad-IIDS</i> (International Institute on Law and Society-IILS)
<b>Professor's Assistants:</b>	Carlos J. Elguera Alvarez, Rocío Trujillo

**SUMMARY**

The course shall deal with the situation and rights of indigenous peoples in the Americas, from both theoretical and empirical interdisciplinary approach, with a focus in a case. The course shall enable students to visit an indigenous community of the Peruvian Amazon affected by gold mining, to know directly the issues and struggles of indigenous peoples to enforce their rights. This community won the first case before the Constitutional Court of Peru that recognizes the rights of self-determination, territory and autonomy.

The course shall address the following topics:

- Cultural and legal pluralism.
- Policies applied to indigenous peoples throughout the History of the Americas.
- Globalization and contemporary issues of indigenous peoples in Latin America.
- International Law on the rights of indigenous peoples and defense mechanisms.
- Case study of the native community *Tres Islas* (Three Islands), formed by the *Shipibo* and *Ese'ija*, peoples and its struggle to defend its territory and autonomy from mining.
- Field trip to the native community *Tres Islas* in Tambopata, Madre de Dios, in the Peruvian Amazon.

This course is organized by the PUCP and the International Intitute on Law and Society-IILS/ *Instituto Internacional de Derecho y Sociedad-IIDS*, as part of the International Exchange Program in multiculturalism, legal pluralism, and indigenous rights.

**OUTCOMES**

As result of the activities of the course, students shall be competent to:

- Understand the situations of cultural and legal pluralism in the region.
- Differentiate the policies applied to indigenous peoples throughout the History of the Americas.
- Analyze the current situation of indigenous peoples and issues faced in the globalization context and extraction of natural resources in their territories.
- Know the *corpus* of the international law of indigenous peoples.

- Identify the violated rights and actions to take for the defense of such rights in specific cases.
- Have a direct approach to indigenous peoples, with respect and openness to intercultural learning.

## REQUIREMENTS

The program is addressed to researchers, activists and students from undergraduate and graduate programs of Law, Social Sciences and related disciplines, interested in indigenous peoples issues.

No experience in previous fieldwork on the subject is a requirement, but interest and any approach or knowledge of indigenous peoples is desirable.

Educational material in Spanish and partially in English shall be provided. Some lectures shall be conducted in English and others bilingual (Spanish-English). Workshops shall be conducted in English and Spanish. Students may have basic knowledge of Spanish in order to make easy the interaction with members of the community and authorities at the local level.

## METHODOLOGY

The activities in this program shall be aimed at developing different types of skills being organized in three types of methodologies:

### a. Lectures

#### **Topic 1. Introduction to cultural and legal pluralism.**

This course provides tools for the understanding of cultural and legal pluralism situations that occur in the region by the co-existence of different peoples in one geo-political area, in particular, by the presence of native peoples.

#### **Topic 2. Historical policies applied to indigenous peoples in the Americas.**

This course shall present an overview of the policies pursued by States to indigenous peoples throughout the history of the Americas, within the framework of indigenous resistance. The course reviews: a) the pre-Columbian era, b) policies of the Colonial era (16<sup>th</sup>-18<sup>th</sup> centuries), c) the era of the independent construction of nation-states, excluding indigenous peoples, and policies of liberal constitutionalism in the 19<sup>th</sup> century; d) the social constitutionalism and the integration of indigenous peoples in the 20<sup>th</sup> century in Latin America and, e) recent changes in international law and pluralist constitutionalism, from multiculturalism to self-determination of indigenous peoples.

#### **Topic 3. Globalization and contemporary issues of indigenous peoples.**

This course shall provide tools to contextualize conflicts and issues currently suffered by indigenous peoples within the context of globalization and the development of extractive activities or infrastructure projects in territories of such peoples. Since the Washington Consensus in 1989, the states of the region have initiated structural adjustment policies, including the contracting of the state apparatus, the reduction of social rights and the easing of rules to facilitate the presence of transnational corporations devoted to extractive activities, with counterproductive effects on the rights of indigenous peoples.

#### **Topic 4. International law of indigenous peoples.**

This course seeks to develop capabilities in order to learn the management of the *corpus* of international law on the rights of indigenous peoples, in particular on the rights of self-determination, territory, consultation and prior, free and informed consent, customary law, etc. Likewise, this course shall provide knowledge of the mechanisms for the protection of indigenous rights and develop skills to learn the identification of violated rights and mechanisms for specific cases.

**Topic 5. Case study:** The case of the native community *Tres Islas* in Madre de Dios shall be studied and the judgment of the Constitutional Court in favor of the community, as well as the existing challenges for the enforcement of the judgment shall be discussed.

**b. Workshops**

The workshops shall enable the deepening of topics, discussions and working groups for the implementation of the theoretical approaches to specific cases, as well as the analysis and the exchange of ideas and experiences. It is necessary to read the indicated materials to better participate.

**c. Field work (Field Trips)**

The field work shall consist of a trip to the Madre de Dios region to visit the native community *Tres Islas*, formed by the *Shipibo* and *Ese'ija* peoples. The visit shall make it possible to see directly the lifestyle of the community and the impacts of the gold mining activity in its territory besides the manner how the community fought to win the case before the Constitutional Court of Peru and the challenges to achieve the effectiveness of its rights to present.

The trip shall also allow students participate in some forums or public presentations on indigenous rights in the region.

## SCHEDULE

This program shall last three (3) weeks from July 2nd to July 20st, 2018.

**First week**

Introduction of the course and participants. Introduction to cultural and legal pluralism. Historical policies applied to indigenous peoples in the Americas. Liberal constitutionalism and indigenous exclusion. Social constitutionalism and indigenous integration in the 20th century. Contemporary policies: from multiculturalism to self-determination. Globalization and contemporary issues of indigenous peoples. Workshops

**Second week**

International law on the rights of indigenous peoples: Autonomy rights. Territory rights. Rights to participation, consultation and prior, free and informed consent.

Case study: Native community *Tres Islas* in Madre de Dios. Analysis of the judgment and challenges in its implementation.

Flight to Puerto Maldonado: Visit to the native community *Tres Islas* in Madre de Dios.

**Third week**

Field work in Puerto Maldonado: Visit to the affected area by mining in the *Tres Islas*'s indigenous territory. Visit to institutions of Puerto Maldonado, Madre de Dios. Forum/Workshop on indigenous rights. Feedback and Report. Return to Lima.

The trip shall also allow students participate in some forums or public presentations on indigenous rights in the region.

## EVALUATIONS

The students are required to read the materials that will receive to be able to participate in workshops and prepare presentations, as well as to participate in all the activities organized during the fieldwork trip. The evaluation is continuous.

Qualification for the course shall be based on 100 points. Qualification scale: A (90-100); B (80-89); C (70-79); D (60-69); F (0-59).

Categories	Value in points	Percentage
Active participation during lectures and workshops, and evaluations during the first week	50	50%
Active participation and evaluations during the fieldwork in the second week	50	50%

## VIDEOS AND BIBLIOGRAPHY

### VIDEO

- ✓ Video with subtitles in ENGLISH “The case of the native community *Tres Islas* and its self-determination” Link: <http://www.youtube.com/watch?v=Stu7vkkE8GM>.



### TOPIC 1

#### IN ENGLISH

- ✓ Engle Merry, Sally: Legal Pluralism, within: Law & Society Review. Page [869] of 869-896. Published by: Wiley on behalf of the Law and Society Association. Stable URL: <http://www.jstor.org/stable/3053638>
- Yrigoyen F. Raquel Z. (2001): “Judicial Treatment of Cultural Diversity and the Special jurisdiction in Peru”. En: Beyond Law, Vol. 7, issue 23, February 2001. ILSA.
- Yrigoyen F., Raquel Z. (2002): “Peru: Pluralist Constitution (1993), Monist Judiciary - A Post-Reform Assessment”. En: Sieder, Rachel ed.: Multiculturalism in Latin America: indigenous rights, diversity and democracy. London: Palgrave Macmillan.

#### IN SPANISH

- ✓ Yrigoyen F., Raquel Z. (1999): “[Pautas de Coordinación entre el derecho indígena y el derecho estatal](#)”. Guatemala: Fundación Myrna Mack. Chapter I.1: Marco Teórico. Pluralismo legal, pp. 11-31.
- Yrigoyen F, Raquel Z. (2005): “*Hacia una jurisprudencia pluralista*”, within the Anuario de Derecho penal 2006: Derecho Penal y Pluralidad Cultural, First edition 2007, José Hurtado Pozo (Director). Publishing Office of the PUCP and the University of Fribourg, Switzerland, pp. 377 - 415. [https://www.unifr.ch/ddp1/derechopenal/anuario/an\\_2006\\_20.pdf](https://www.unifr.ch/ddp1/derechopenal/anuario/an_2006_20.pdf)

### TOPIC 2

#### ENGLISH

- ✓ Yrigoyen F., Raquel Z. (2000): “The constitutional recognition of indigenous Law in the Andean Countries”. En: Assies, W.,G. Van der Haar y Hoekema (eds.): The

Challenge of Diversity, Indigenous Peoples and Reforms of the State in Latin America. Amsterdam: Thela Thesis.

- ✓ Yrigoyen F. Raquel Z. (to be printed) The pluralistic constitutionalism: from multiculturalism to decolonization.

#### SPANISH

- ✓ Yrigoyen Fajardo, Raquel Z. (2006): “Hitos del reconocimiento del pluralismo jurídico y el derecho indígena en las políticas indigenistas y el constitucionalismo andino” within: Berraondo, M., coord.: *Pueblos Indígenas y derechos humanos*. Bilbao: U. de Deusto, 2006. Available in: <http://www.alertanet.org/ryf-hitos-2006.pdf>.
- ✓ Yrigoyen F. Raquel Z. (2010): “A los 20 años del Convenio 169 de la OIT. Balance y retos.” Within: *Pueblos indígenas, constituciones y reformas políticas en América Latina*. Lima: IIDS, ILSA, INESC. (First chapter).
- ✓ Yrigoyen F. Raquel Z. (2011): *El horizonte del constitucionalismo pluralista: del multiculturalismo a la descolonización*. Within: Rodríguez Garavito, César, coord. (2011). *El derecho en América Latina. Un mapa para el pensamiento jurídico del siglo XXI*. Buenos Aires. Publishing group *Siglo Veintiuno*, p. 139-160. <http://www.justiciaglobal.info/docs/librof.pdf>

#### TOPIC 3

##### ENGLISH

- ✓ About the “Washington consensus” and related concepts. <http://www.who.int/trade/glossary/story094/en/>

#### TOPIC 4

##### Texts in English:

- ✓ Indigenous and Tribal Peoples Convention (1969). Available in: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C169)
- ✓ United Nations Declaration on the Rights of Indigenous Peoples (2007). Available in: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- Interamerican Commission on Human Rights (2010): INDIGENOUS AND TRIBAL PEOPLES’ RIGHTS OVER THEIR ANCESTRAL LANDS AND NATURAL RESOURCES. Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09 30 December 2009. Available at: <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>

##### Texts in Spanish:

- ✓ Yrigoyen Fajardo, Raquel (2008): EL CONVENIO NÚM. 169 DE LA OIT Y SU APLICACIÓN EN PERÚ. Lima: Instituto Internacional de Derecho y Sociedad-IIDS. <http://www.ibcperu.org/doc/isis/11476.pdf>
- CIDH, OEA (2010): DERECHOS DE LOS PUEBLOS INDÍGENAS Y TRIBALES SOBRE SUS TIERRAS ANCESTRALES Y RECURSOS NATURALES. Normas y Jurisprudencia del Sistema Interamericano de Derechos Humanos. OEA/Ser.L/V/II. Doc. 56/09. 30 diciembre 2009. Disponible en: <http://cidh.org/countryrep/TierrasIndigenas2009/Indice.htm>
- Yrigoyen F., Raquel Z. (2011): “El derecho a la libre determinación del desarrollo, la participación, la consulta y el consentimiento”. Within: Aparicio, Marco, ed. (2011). *Los derechos de los pueblos indígenas a los recursos naturales y al territorio. Conflictos y desafíos en América Latina*. Icaria.

#### TOPIC 5

##### ENGLISH

- ✓ Video with subtitles in English “The case of the native community *Tres Islas* and its self-determination” Link: <http://www.youtube.com/watch?v=Stu7vkkE8GM>

##### SPANISH

- ✓ Yrigoyen F., Raquel Z. (2013): Litigio estratégico en derechos indígenas. La experiencia de la Comunidad Nativa Tres Islas, Madre de Dios, Perú. Lima: GIZ.
- Aide-mémoire of the case of the native community *Tres Islas*. (Link: <http://www.derechoysociedad.org/IIDS/Documentos/AYUDA-MEMORIA-CASO-COMUNIDAD-TRES-ISLAS.pdf>)
- Judgment of the case of the native community *Tres Islas*. Link: <http://www.tc.gob.pe/jurisprudencia/2012/01126-2011-HC.pdf>.