



## PERU MULTICULTURAL CONSTITUTIONAL STATE: ANALYSIS OF THE RULINGS ISSUED BY THE PERUVIAN CONSTITUTIONAL COURT

### ESTADO CONSTITUCIONAL MULTICULTURAL DO PERU: ANÁLISE DAS SENTENÇAS EMITIDAS PELO TRIBUNAL CONSTITUCIONAL PERUANO

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#### ABSTRACT

The purpose of this article is to analyze the recognition of Peru as a Multicultural Constitutional State, through judgments issued by the Peruvian Constitutional Court (TC), in contrast to the constitutional doctrine. This study was developed using a qualitative documentary analysis methodology that allowed the identification and examination of the selected information according to inclusion and exclusion criteria. The results indicate that the TC recognizes in its jurisprudence the relevance of the ethnic and cultural rights established in the Constitution. This study concludes that the Court plays a pivotal role in developing its rulings, which demonstrate the commitment to protect, respect, guarantee, and promote the rights of indigenous peoples. However, it also highlights the need for further doctrinal development to fully consolidate this multicultural approach in the legal and social practice of the country.

**Keywords:** Language, culture, ethnicity, law, and jurisprudence.

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## RESUMO

O objetivo deste artigo é analisar o reconhecimento do Peru como um Estado Constitucional Multicultural, através das sentenças emitidas pelo Tribunal Constitucional (TC) peruano, em contraste com a doutrina constitucional. Este estudo foi desenvolvido através de uma metodologia qualitativa de análise documental que permitiu identificar e examinar a seleção da informação selecionada através de critérios de inclusão e exclusão. Os resultados indicam que o TC reconhece na sua jurisprudência a relevância dos direitos étnicos e culturais consagrados na Constituição. Este estudo conclui que o Tribunal desempenha um papel fundamental ao desenvolver os seus acórdãos, que demonstram o compromisso de proteger, respeitar, garantir e promover os direitos dos povos indígenas ou originários. No entanto, também destaca a necessidade de um maior desenvolvimento doutrinário para consolidar plenamente esta abordagem multicultural na prática jurídica e social do país.

Palavras-chave: Língua, cultura, etnia, lei e jurisprudência.

## Introduction

Peru is home to a diversity of languages and cultures. In that order of ideas, ethnic-cultural rights are recognized in the Peruvian Political Constitution to safeguard this cultural diversity, which positions the Constitutional Court as a key actor in the interpretation and application of these rights in the legal sphere.

The Peruvian Constitutional Court, through its various rulings, has demonstrated a commitment to ensuring that the constitutional rights of indigenous peoples are respected, promoting a legal environment that acknowledges and defends their cultural identity, languages, and collective rights. However, while significant progress has been made, gaps remain in the practical implementation of these rulings, particularly concerning the full participation of Indigenous peoples in decision-making processes that affect their territories and way of life.

This article explores the key rulings of the Constitutional Court that have shaped the legal landscape surrounding the rights of indigenous peoples, examining their implications not only for constitutional law but also for the broader process of nation-building in Peru. In doing so, it seeks to assess whether these rulings have contributed to



the evolution of a more inclusive and equitable state and whether significant barriers exist to achieving true cultural pluralism in the country.

Through this analysis, the article critically examines the balance between national policies and indigenous rights, emphasizing the ongoing challenges indigenous communities face in their struggle for recognition, protection, and empowerment in a multicultural society.

## 1. METHODOLOGY

This article is developed through a qualitative approach, specifically through documentary analysis, to identify, examine, and explain through the selection of jurisprudence and constitutional doctrine that study the recognition of Peru as a Multicultural Constitutional State (Hernández-Sampieri and Mendoza, 2018). On the other hand, a descriptive scope is chosen, employing the dogmatic-legal method, to analyze the constitutional regulation and then contrast it with the jurisprudence related to the topic.

For this purpose, the inclusion and exclusion criteria were as follows:

**Table 1** *Inclusion and exclusion criteria*

Inclusion criteria		Exclusion criteria	
CI1	Constitutional regulations related to the recognition of multiculturalism	CE1	Constitutional regulations that do not expressly recognize multiculturalism.
CI2	Jurisprudence on recognition of multiculturalism and the Constitution (2002 to present)	CE2	Jurisprudence before 2002 on multiculturalism and the constitution.
CI3	Doctrine on recognition of multiculturalism and constitution. (last 5 years)	CI3	Outdated doctrine.

*Note:* The author's elaboration

Table N°1 describes the inclusion and exclusion criteria used to add relevant and updated bibliography on the subject. In the case of jurisprudence, a search was conducted from 2002 to the present to analyze the evolution of the cultural rights of indigenous peoples in Peru.

## 2. CULTURAL AND LINGUISTIC DIVERSITY IN PERU

Cultural diversity, often called multiculturalism, is Peru's defining characteristic. Multiculturalism is described as "the view that cultures, races, and ethnicities, particularly those of minority groups, deserve special acknowledgment of their differences within a dominant political culture" (UoPeople, 2022). This concept is vital for understanding Peru's identity as a multicultural state, where diverse indigenous languages and cultural practices coexist with the dominant Spanish-speaking culture.

### 2.1 A snapshot of Peru's cultural and linguistic diversity

Peru is home to an extraordinary range of indigenous cultures and languages. It is a multicultural and multilingual country inhabited by 55 indigenous or native peoples (51 Amazonian and 4 Andean peoples) who speak a total of 48 indigenous languages, according to the Official Database of Indigenous Peoples of the Peruvian Ministry of Culture. (Rebaza and Seminario, 2018; Solis-Castillo and Seminario-Hurtado, 2022)

These languages are classified into linguistic families: Quechua, Aimara, Arawak, Jibaro, and Pano. The most widely spoken indigenous languages are Quechua and Aimara, both of which are rooted in the Andean region, while other languages, such as Shipibo-Konibo and Ashaninka, are prevalent in the Amazon. The table below summarizes key data from the Ministry of Education's 2021 list of recognized Indigenous languages:

**Table 2** *The most widely spoken indigenous language in Peru*

Language	Linguistic Family	Primary Region	Official Recognition
Quechua	Quechua	Andes	R.M. 1218-85-ED
Aimara	Aru	Puno	R.M. 1218-85-ED
Shipibo-Konibo	Pano	Amazon Rainforest	R.M. 303-2015-MINEDU
Ashaninka	Arawak	Selva Central	R.M. 303-2015-MINEDU
Bora	Bora	Amazon Rainforest	R.M. 512-2015-MINEDU
Wampis	Jibaro	Amazon Rainforest	R.M. 303-2015-MINEDU

*Note.* Source: Bank of Indigenous or Native Languages (2021). Ministry of Culture of Peru.

As stated in the Ministry of Education's 2021 report, all these languages have been formalized with an official alphabet, facilitating their application to education, legal processes, and governance. Likewise, the government has implemented bilingual education programs in regions with the majority of indigenous populations. These initiatives contribute to the preservation of cultural identity, the facilitation of access to quality education, and the fostering of a sense of pride among Indigenous communities.

Despite these efforts, significant challenges persist. Migration, urbanization, and globalization have accelerated the decline of some indigenous languages, with the new generations prioritizing Spanish for socioeconomic reasons (Rousseau & Dargent, 2019). Furthermore, insufficient funding and logistical difficulties hinder the full implementation of revitalization programs in remote areas (UNESCO, 2023).

### 3. CONSTITUTIONAL RECOGNITION

The Peruvian Constitution ratified Peru as a pluricultural state that preserved the rights of indigenous peoples and acknowledged their unique cultural identities,



traditions, and languages. Additionally, the Constitution highlights the need for intercultural dialogue and the inclusion of indigenous perspectives in national development. This foundation reflects the country's commitment to defending its cultural diversity and promoting equality in legal and social systems. (Pérez-Romero et al., 2024). Below is a concise table summarizing these articles:

**Table 3** *Articles of the Constitution*

Article	Provision	Explanation
Article 2.2	Equality before the law	Ensures all individuals are equal regardless of language or cultural background.
Article 2.19	Right to cultural and linguistic identity	Protects the right of communities to preserve and develop their cultural identity and native languages.
Article 17	Bilingual education	Mandates the state to promote bilingual education, particularly in regions with significant indigenous populations.
Article 48	Official languages	Recognizes Indigenous languages as official in areas where they are predominant
Article 88	Indigenous communal property	Protects communal lands as integral to cultural identity and sustenance.
Article 89	Autonomy of native communities	Grants autonomy to indigenous communities to manage their lands and traditions.

*Note.* Retrieved from the Peruvian Constitution (1993).

### 3.1 Explanation of key articles

- Article 2.2: This section assures equality for all citizens, ensuring that no one is discriminated against by their language or ethnicity.
- Article 2.19: This article conveys the right to maintain linguistic and cultural identity, focusing on the importance of diversity as a national value.
- Article 17: The second sub-section focuses on bilingual education, to preserve indigenous languages and provide equitable access to education in native languages.
- Article 48: Indigenous languages have a certified status in regions where they are spoken, ensuring their involvement in public administration and legal processes.





- Article 88: Joint lands are protected to sustain indigenous maintenance and cultural practices, which are crucial for the preservation of the traditions associated with the land.
- Article 89: Acknowledge indigenous communities' autonomy and empower them to self-ruling by their customs and traditions, strengthening their cultural sovereignty.

These constitutional provisions have been translated into tangible policies and programs intended to achieve their objectives. For instance, the General Law of Indigenous Peoples (Law No. 29785) establishes a framework for the consultation and participation of indigenous communities in decisions affecting their territories and resources. Despite these advancements, the practical implementation of constitutional provisions often faces challenges. Inefficiency, insufficient funding, and a lack of political will hinder the realization of many initiatives.

#### 4. RULINGS ISSUED BY THE PERUVIAN CONSTITUTIONAL COURT

This section discusses and explains the rulings issued by the Peruvian Constitutional Court (hereinafter TC) from 2002 to the present on cultural and linguistic aspects. The main jurisprudential aspects that recognize Peru as a Multicultural Constitutional State are presented.

First, the ruling in Case No. 00018-2002-AI/TC established the right to a balanced and adequate environment. From an interdisciplinary perspective, the TC establishes the relationship of the existence of the environment as a system that interacts with living, social, and cultural elements, for which it mentions that its legal protection must be recognized in a democratic state, given that Peru is a country where Indigenous peoples live. Thus, this judgment refers to Article 13 of the American Declaration on the Rights of Indigenous Peoples, which emphasizes the need to guarantee the right to a dignified individual and collective life.

Second, the ruling of the jurisdictional plenary in case No. 0042-2004-AI/TC on the relationship between the social and democratic rule of law and the cultural Constitution. These rulings state that the current Political Constitution (1993) recognizes in its articles



2, paragraphs 2 and 19, the fundamental right of people to their ethnic and cultural identity, i.e., the State finds itself in a position to recognize the right of the people to their ethnic and cultural identity.

Third, the ruling in Case No. 10138-2005 -PC/TC notes that Peru is a multicultural and polytechnic country because it recognizes the existence of native peoples and cultures in its geographic spaces. Likewise, it provides an exhaustive analysis of Article 88 of the Constitution, emphasizing the right to communal or private land, as well as Article 89, which recognizes the legal existence and legal status of the Peasant and Native Communities. Although it is true, here the Constitutional Court does not develop in a broad sense the difference between indigenous peoples and the Peasant and Native Communities, but it does emphasize the cultural aspects of the Peruvian territory.

Fourth, the ruling in Case No. 0006-2008-PI/TC, which established in its legal basis 21 the right to cultural identity recognized in Article 2, paragraphs 2 and 19, also explains its relationship to Article 48 of the same Constitution. In Peru, Indigenous peoples manifest their cultures through cultural practices, customs, habits, practices, and linguistics; thus, Peru is a Multicultural Constitutional State that recognizes this diversity.

Fifth, the ruling in Case No. 0022-2009-PI/TC on legal grounds 5 mentions that people who are recognized as indigenous or original people belong to specific ethnic groups, so their customs and traditions must be respected. Therefore, the right to promote cultural manifestations is strictly related to the right of the ethnic group to exist, following the inheritance of ancestral values. (Bermúdez-Tapia and Seminario-Hurtado, 2022).

Sixth, the ruling in Case No. 02196-2014-PA/TC, in its legal basis 3, establishes that the current Peruvian Constitution (1993) recognizes cultural pluralism because they harbor different cultures, uses, and habits duly manifested by native peoples, so this group has the right to receive protection by the State and the population in general. (Fonseca-Ortiz, Sierra-Zamora, Bermúdez-Tapia and Seminario-Hurtado, 2022).

Seven, Case No. 00367-2016-HC/TC (Case “Oscar Ríos Silvano”) establishes that indigenous languages are the official languages of Peru, following their recognition in





Article 48 of the Magna Carta in force, and establishes that their use at the administrative and judicial level is mandatory. In addition, these rulings state that in the case of a judicial process, and either or both parties do not understand the language, they must be granted an interpreter as a right related to due process, so that judges must impart justice in Spanish, and one of the 48 native languages. (Seminario-Hurtado and Avellaneda-Vásquez, 2024).

Eighth, Case N° 00889-2017-PA/TC (Case “María Antonia Díaz Cáceres de Tinoco”) declared an unconstitutional situation due to violations of linguistic rights, i.e., the right of all native language speakers to use their mother tongue in the public and private spheres. (Seminario-Hurtado, 2024). The Peruvian Constitutional Court in its legal basis 9 mentions that its collective dimension is reached when it is predominant in a geographical area of the country (the area of predominance being understood as the minimum unit, the province, or the region, according to what is established in article 7 of the law of languages) because in this case, the language must be official in the referred area (Seminario-Hurtado, Castillo-Gamarra and Buendía-Casafranca, 2020).

Ninth, Case N° 00015-2020-PI/TC (Case “Extraordinary Measures for Land Acquisition in the Apurímac-Cusco Corridor”). This case concerns the Peruvian Constitutional Court’s review of the constitutionality of Urgency Decrees N° 026-2019 and N° 027-2019, which aimed to implement extraordinary measures for the acquisition of land necessary for the Apurimac-Cusco Corridor. A key issue in this case was whether these measures infringed upon the collective rights of Indigenous peoples, particularly their right to prior consultation as mandated by the International Labor Organization’s Convention 169 and Peru’s Law on the Right to Prior Consultation. The resolution aligns with prior jurisprudence on the multicultural character of Perú as a constitutional state, underscoring any legislative or administrative procedures impacting Indigenous lands must recognize and defend their collective rights, including their right to cultural identity, and the link between their territories and their cultural heritage.

Tenth, the ruling in Case N° 00015-2020-PI/TC (Case “Extraordinary Measures for Land Acquisition in the Apurímac-Cusco Corridor”). This case is based on the Peruvian



Constitutional Court's review of Urgency Decrees N° 026-2019 and N° 027-2019, which wanted to implement an extraordinary assessment for the acquisition of land necessary for the Apurímac-Cusco Corridor. A significant issue here was whether these actions infringed upon the collective rights of Indigenous peoples, particularly their right to prior consultation as mandated in the International Labour Organization's Convention 169 and Peru's Law on the Right to Prior Consultation.

Eleventh, the ruling in Case N° 01171-2019-PA/TC (Case "Federación de la Nacionalidad Achuar del Perú - FENAP") highlights the critical convergence of constitutional rights and the recognition of Indigenous sovereignty within Peru's multicultural groundwork. The Federation of the Achuar Nation of Peru (FENAP) listed a constitutional protection action seeking acknowledgment of their legal personality, territorial rights, and autonomy over natural resources. The general opinion found the claims to be inadmissible, citing gaps in the administrative and judicial procedures FENAP pursued. Key points of this case include the concept of "integral territory", which aimed to incorporate natural resources within the Achuar territory—challenging constitutional provisions that designate these resources as state property. Regardless of the procedural rejections, this case consolidates the role of the right to prior consultation and the lack of stronger procedural frameworks to guarantee the implementation and protection of Indigenous rights, which are crucial to the defense of Peru's identity as a multicultural state.

In twelfth place, the ruling in Case N° 03326-2017-PA/TC (Case "Comunidad Campesina de Asacasi") reviews the constitutional protection filed by the Community of Asacasi against certain state entities for the alleged violation of indigenous rights following the establishment of 27 mining concessions within their ancestral territory without prior consultation. This case focuses on the intersection between national constitutional obligations as a multicultural state and the challenges of balancing indigenous rights with national mining policies, which are part of development efforts and national interest.



Finally, Case N° 00883-2019-PA/TC (Case "Comunidad Nativa de Nuevo Lamas de Shapaja and Consejo Étnico de los Pueblos Kichwa de la Amazonía - CEPKA"). This case addresses the conflict between indigenous land rights and state conservation policies. The Native Community of Nuevo Lamas and CEPKA filed a constitutional protection claim against state entities for the alleged violation of their rights to property, consultation, cultural identity, and self-determination in the context of the creation and management of the Cordillera Escalera Regional Conservation Area (ACR-CE). This case highlights the need for comprehensive structures that integrate prior consultation with Indigenous communities on the establishment of conservation areas, focusing on the balance between environmental priorities and the preservation of the territorial and cultural autonomy of these communities.

All these cases are listed in the following table, organized by the year of publishing:

**Table 4** *Cases from 2002 to 2020*

Case Number	Publishing Date	Rights	Summary
00018-2002-AI/TC	2002	Right to a balanced and adequate environment	The environment was recognized as an interactive system involving cultural, social, and living elements. Linked environmental protection to Indigenous rights under Article 13 of the American Declaration on the Rights of Indigenous Peoples.
0042-2004-AI/TC	2004	Ethnic and cultural identity	Affirmed the Peruvian Constitution's recognition of ethnic and cultural identity (Articles 2.2 and 2.19). Stressed state obligations to protect these identities as part of the democratic and cultural Constitution framework.
10138-2005-PC/TC	2005	Communal/private land rights and the legal status of communities	Highlighted Peru's multicultural identity and rights under Articles 88 and 89 of the Constitution, including land and legal recognition of the Peasant and Native Communities.
0006-2008-PI/TC	2008	Cultural Identity	Established the right to cultural identity and its connection to



			linguistic and cultural diversity in Peru (Articles 2.2, 2.19, and 48).
0022-2009-PI/TC	2009	Cultural manifestations and ethnic group existence	The relationship between Indigenous customs
02196-2014-PA/TC	2014	Cultural pluralism	Recognized cultural pluralism and state obligations to protect Indigenous cultures, uses, and habits.
00367-2016-HC/TC	2016	Linguistic rights, due process	Affirmed Indigenous languages as official languages. Mandated interpreters in judicial processes involving native languages, ensuring due process.
00889-2017-PA/TC	2017	Linguistic rights	Addressed linguistic rights in the public and private spheres. Declared areas of linguistic predominance to ensure the official status of Indigenous languages.
03326-2017-PA/TC	2017	Property rights, cultural identity, and self-determination	Addressed the creation of the Cordillera Escalera conservation area, emphasizing the integration of Indigenous consultation to balance environmental and cultural priorities.
03326-2017-AA	2017	Indigenous participation and consultation rights	Reviewed mining concessions on indigenous land without prior consultation. Urged regulatory reforms for consultation protocols to balance Indigenous rights with national legal and economic stability.
01171-2019-PA/TC	2019	Indigenous sovereignty, ancestral land rights	This study explored the legal personality and territorial autonomy of the Achuar Nation. Highlighted gaps in procedural frameworks for Indigenous self-determination under international and constitutional obligations.
00883-2019-PA/TC	2019	Territorial rights, cultural identity	Conflicts between indigenous land rights, state rights, and conservation policies were explored, focusing on the need for prior consultation with indigenous communities to ensure



			cultural and territorial autonomy.
00015-2020-PI/TC	2020	Land rights, cultural identity, and prior consultation	Reviewed urgent decrees on land acquisition in the Apurimac-Cuzco Corridor. Demonstrated the need for prior consultation under ILO Convention 169 and the national legal structure to protect cultural and territorial identity.

Note: The author's elaboration

## CONCLUSIONS

In conclusion, the Peruvian Constitutional Court played an essential role in recognizing the rights of indigenous communities within the framework of the country as a multicultural state. These cases provide clarity on issues related to cultural identity, language, and land rights, contributing to a more inclusive vision of the Peruvian state.

However, challenges are evident in the lack of national programs that promote these rights, especially in areas such as prior consultation. Despite the progress achieved, a latent need for continued monitoring and legal reforms that close the gap between constitutional principles and their practical application. Strengthening mechanisms for Indigenous people to participate in decisions that affect their lives and territories is crucial to ensure that all the promises stated in the Constitution are fully realized, ensuring a just and equitable society for all its citizens.

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