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**CONGRESS OF THE REPUBLIC**

**Law of the Right to Prior Consultation to Indigenous or Native Peoples, recognized in the Convention 169 of the International Labour Organization (ILO)**

**LAW N° 29785**

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

The Congress of the Republic

Has given de following Law:

**LAW OF THE RIGHT TO PRIOR CONSULTATION TO INDIGENOUS OR NATIVE PEOPLES, RECOGNIZED IN THE CONVENTION 169 OF THE INTERNATIONAL LABOUR ORGANIZATION (ILO)**

TITLE I

GENERAL ASPECTS

Article 1. Object of the Law

The present Law develops the context, principles and procedures for the right to prior consultation to Indigenous peoples or native regard to the legislative or administrative measures that directly affect them. It is interpreted in accordance with the obligations under Convention 169 of the International Labour Organization (ILO), ratified by the Peruvian State through the Legislative Resolution 26253.

Article 2. Right to Consultation

It is the right of Indigenous peoples or native to be consulted previously about the legislative or administrative measures that directly affect their collective rights, on their physical existence, cultural identity, quality of life or development. Also appropriate is to make consultation on plans, programs and national and regional development projects that directly affect these rights.

The consultation referred to this Law is implemented on a compulsory basis only by the State.

Article 3. Purpose of consultation

The purpose of consultation is to reach an agreement or consent among the State and Indigenous or native peoples according to the legislative or administrative measure that affects directly, through an intercultural dialogue that ensures their inclusion in decision-making process of the State and respectful measures of their collective rights.

Article 4. Principles

The guiding principles of the right to consultation are as follows:

a) Opportunity. The consultation process is performed prior to the legislative and administrative measures to be adopted by state agencies.

b) Interculturalism. The consultation process is developed recognizing, respecting and adapting to the existence differences between cultures and contributing to recognition and value of each one of them.

c) Good faith. State agencies analyze and value the position of Indigenous or native peoples during the consultation process, in a climate of trust, collaboration and mutual respect. The State and representatives of institutions and organizations from the Indigenous peoples or native have the duty to act in good faith, be prohibited from party proselytizing and anti-democratic behavior.

d) Flexibility. The consultation should develop by appropriate procedures to the kind of legislative or administrative measure that is sought to adopt, as well as taking into account the circumstances and particular characteristics of Indigenous peoples and native involved.

e) Reasonable period. The consultation process is carried out considering reasonable period that allows the representative institutions or organizations from the Indigenous or native peoples to know, reflect and make concrete proposals about the administrative or legislative measure object of the consultation.

f) Absence of coercion or conditioning. The participation of the Indigenous or native peoples in the consultation process should be carried out without coercion or any conditioning.

g) Timely information. Indigenous peoples or native have the right to receive from state agencies all the information necessary for them to express their point of view, adequately informed on the legislative or administrative measures to be consulted. The State has the obligation to give this information from the beginning of the consultation process and with due notice.

TITLE II

INDIGENOUS OR NATIVE PEOPLES TO BE CONSULTED

Article 5. Subjects of the right to consultation

The titleholders of the right to consultation are Indigenous peoples or native whose collective rights can be affected directly by a legislative or administrative measure.

Article 6. Form of participation of Indigenous or native peoples

Indigenous or native peoples participate in the consultation process through their representative institutions and organizations, chosen according to their uses and traditional customs.

Article 7. Identification criteria of the Indigenous or native people

To identify Indigenous or native peoples as collective individuals, are taking into account objective and subjective criterion.

The objective criteria are the following:

a) Direct descendants of native populations of the national territory.

b) Lifestyles and spiritual and historical bonds with the territory that traditionally use or occupy.

c) Social institutions and proper customs.

d) Cultural patterns and lifestyles different from other sectors of the national population.

The subjective criterion is related to the collective conscience of the group of having an Indigenous or native identity.

Peasant or Andean communities and native communities or Amazon peoples can be identified also as indigenous or native peoples, according to the criteria outlined in this article.

The naming used to designate the Indigenous peoples or native do not alter their nature or their collective rights.

TITLE III

STAGES OF THE CONSULTATION PROCESS

Article 8. Stages of the consultation process

The state agencies that promote the legislative or administrative measures should comply the following minimum stages of the consultation process:

a) Identification of the legislative or administrative measure that should be object of the consultation.

b) Identification of the Indigenous or native peoples to be consulted.

c) Publication of the legislative or administrative measure.

d) Information about the legislative or administrative measure.

e) Internal evaluation in the institutions and organizations of the Indigenous peoples or native about the legislative or administrative measure that affects them directly.

f) Dialogue process among State representatives and Indigenous or native peoples representatives.

g) Decision.

Article 9. Identification of the measures object of the consultation

The state agencies should identify, under responsibility, the proposals of legislative or administrative measures that have a direct relation with the collective rights of the Indigenous or native peoples, so that conclude that would be a direct impact on their collective rights, to proceed to prior consultation in respect of such measures.

The representative institutions or organizations of the Indigenous or native peoples may request the application of the consultation process respect to certain measure that considers that affect them directly. In this case, should send the corresponding petition to the state agency that promotes the legislative or administrative measure and responsible for executing the consultation, which should evaluate the appropriateness of the petition.

In the case that the state agency belongs to the Executive Power and dismiss the request of the institutions or organizations representing Indigenous peoples or native, such act can be challenged to the specialized technical organ on Indigenous matters of the Executive Power. Exhausting administrative remedies before this body should appear before the competent courts.

Article 10. Identification of Indigenous or native peoples to be consulted

The identification of Indigenous or native peoples to be consulted should be made by state agencies that promote the legislative or administrative measure on the base of the context of proposed measure, the level or direct relationship with the Indigenous peoples and the territorial scope of their reach.

Article 11. Publicity of the legislative or administrative measure

The state agencies that promote the legislative or administrative measure should make it known to institutions and organizations representing Indigenous or native peoples that will be consulted, using culturally appropriate methods and procedures, taking into account the geography and environment they inhabit.

Article 12. Information about the legislative or administrative measure

Applies to state agencies to provide information to Indigenous or native peoples and their representatives, from the beginning of the consultation process and with due notice, of the reasons, implications, impacts and consequences of legislative or administrative measure.

Article 13. Internal evaluation of the institutions and organizations of the Indigenous or native peoples

The institutions and organizations of Indigenous or native peoples should have a reasonable period to carry out an analysis on the scope and incidence of legislative or administrative measure and the direct relation between its content and the effect of their collective rights.

Article 14. Intercultural dialogue process

The intercultural dialogue is carried out both on the fundaments of the legislative or administrative measure, its possible consequences in regard to the exercise of the collective rights of the Indigenous or native peoples, as on the suggestions and recommendations that they make, which should be made known officials and public authorities responsible for carrying out the consultation process.

The opinions expressed in the dialogue process should be contained in the minutes of consultation, which contains all the acts and occurrences made during its development.

Article 15. Decision

The final decision on the approval of the legislative or administrative measure corresponds to the competent state agency. This decision must be duly substantiated and involves an assessment of points of view, suggestions and recommendations raised by Indigenous or native peoples during the dialogue process and the analysis of the impact that the adoption of a particular measure would have on their constitutionally recognized collective rights in the treaties ratified by the Peruvian State.

The agreement between the State and the Indigenous or native peoples, as a result of the consultation process, is binding in both parties. In case no agreement is reached, corresponding to state agencies to take all necessary measures to ensure the collective rights of Indigenous or native peoples and the rights to life, integrity and full development.

The agreements of the result of the consultation process are required in administrative and judicial site.

Article 16. Language

To carry out the consultation, taking into account the linguistic diversity of Indigenous or native peoples, particularly in areas where the official language is not spoken by the indigenous majority. To do this, the consultation process must have the support of trained interpreters in the topics to be consulted, which must be registered with the specialized technical body on Indigenous of the Executive Power.

TITLE IV

OBLIGATIONS OF STATE INSTITUTIONS REGARDING THE CONSULTATION PROCESS

Article 17. Competent authority

State agencies that will issue legislative or administrative measures directly related to the rights of indigenous or native peoples are competent to carry out the consultation process, according to the stages in conformity with this Law.

Article 18. Resources for the consultation

State agencies should ensure the resources that claim the consultation process to ensure the effective participation of indigenous or native peoples.

Article 19. Functions of the specialized technical body on Indigenous matters of the Executive Power.

Regarding the consultation processes, are functions of specialized technical body on Indigenous matters of the Executive Power are the following:

a) To enter, articulate and coordinate state policy implementation of the right to consultation.

b) To provide technical assistance and training prior to state agencies and Indigenous or native peoples, as well as addressing the questions that arise in each particular process.

c) To keep a record of institutions and organizations representing Indigenous or native peoples and identify those that should be consulted regarding an administrative or legislative measure.

d) To issue an opinion, ex officio or upon request of any entity authorized to request consultation concerning the status of the legislative or administrative measure projected by the responsible entities on the scope of the consultation and determination of Indigenous or native peoples, to be consulted.

e) To advise the entity responsible for executing the consultation and to the Indigenous or native peoples who are consulted in defining the scope and characteristics of the consultation.

f) To develop, strengthen and update the database related to Indigenous or native peoples and their representative institutions and organizations.

g) To record the results of consultations held.

h) To maintain and update the record of qualified facilitators and interpreters of Indigenous or originating languages.

i) Other contained in this Law, other laws or in their regulation.

Article 20. Creation of the official database of Indigenous or native peoples

Hereby created the official database of Indigenous or native peoples and their representative institutions and organizations, which is in charge of specialized technical body on Indigenous matters of the Executive Power.

The database contains the following information:

a) Official denomination and self denomination with which the Indigenous or native peoples are identified.

b) Geographical and of access references.

c) Cultural and ethnic relevant information.

d) Ethnolinguistic map with the determination of the habitat of the regions Indigenous or native peoples occupy or used in some way.

e) System, organization rules and bylaw approved.

f) Representative institutions and organizations, representation scope, identification of their leader or representatives, period and representing powers.

COMPLEMENTARY FINAL PROVISIONS

FIRST. For purposes of this Law, is considered the Vice Ministry of Interculturalism of the Ministry of Culture as the specialized technical body on Indigenous matters of the Executive Power.

SECOND. The present Law does not repeal or amend the rules on citizen participation right. Neither amends or repeals the legislative measures or revokes the administrative measures enacted prior to its validity.

THIRD.Repealed Supreme Decree 023-2011-EM, which approves the Regulation of Procedure for the Implementation of Right to Consultation to Indigenous peoples for Mining Energetic Activities.

FOURTH. This Law enters into force on the ninetieth day of its publication in the official gazette El Peruano, so that state agencies responsible for carrying out consultation processes have the budget and the organization required for this.

Communicate the President of the Republic for its promulgation.

In Lima, at thirty-one days of August of two thousand and eleven.

DANIEL ABUGATTAS MAJLUF

President of the Congress of the Republic

MANUEL ARTURO MERINO DE LAMA

First Vice-President of the

Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

THEREFORE:

To be published and enforced.

Given in the district of Imaza, on September the sixth day, of two thousand and eleven.

OLLANTA HUMALA TASSO

Constitutional President of the Republic

SALOMON LERNER GHITIS

President of Council of Ministers