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INTRODUCTION

Diana Kwan and René Kuppe

Over the course of the last decade, international awareness of issues faced by indigenous peoples has grown tremendously. This awareness has especially resulted in the United Nations' *Draft Declaration on Indigenous Peoples*, a significant outline of indigeonous peoples' rights finalised in 1993. In addition, the UN declared 1993-2004 the *International Decade of the World's Indigenous People*. The hope of the UN was to encourage awareness, discussion, and recognition of indigenous issues.

The acknowledgement of indigenous rights at an international level has spurred the growth of legal pluralism. Basically, legal pluralism is the existence of two or more different socio-legal systems within the borders of one state. The existence of indigenous groups alongside state governments provide a perfect example of legal pluralism. Of significant interest is the intersection between indigenous systems and state systems. What are the practical implications of multiple parellel systems?

This edition of *Law and Anthropology* contains 7 articles which explore the practical implications of legal pluralism.

Antonio Peña-Jumpa, in *The Limits of International Human Rights and Refugee Law:An Analysis of the Case of the Aymara from the Perspective of Legal Pluralism* explores a conflict inherent in legal pluralism. By using the example of a traditional practice of the Aymara in Peru, Peña-Jumpa analyses the issue of reconciling international standards with unique cultural standards.

In *Indigenous Rights in Chile: Elaboration and Application of the New Indigenous Law (Ley No. 19.253) of 1993,* Wolfram Heise focuses on the emergence of indigenous law in Chile as an example of legal pluralism. While Heise considers the existence of indigenous legislation a positive step in the recognition of indigenous rights, he also provides insight into the gap between the recognition of rights and the enforcement of these rights.

Lorenzo Nesti takes this analysis one step further in his article, *Indigenous Peoples' Rights to Land and Their Link to Environmental Protection: The Case of the Mapuche-Pehuenche.* Nesti undertakes an in-depth study of the Mapuche-Pehuenche people in Chile, and their struggle to preserve their traditional lands from dam development. He provides an analysis of existing international legal instruments that protect indigenous rights, the international framework that exists to enforce these rights, and the conduct of international actors that affects these rights. Nesti further links the protection of indigenous rights with biodiversity and environmental

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protection. Overall, Nesti provides an analysis of legal pluralism at the international law level, and demonstrates the difficulty in the practice of this concept on an international level.

On a similar theme, Monika Ludescher, in *Indigenous Peoples' Territories and Natural Resources: International Standards and Peruvian Legislation,* examines the impact of Peruvian national legislation on indigenous peoples. Ludescher provides a background on international legal developments, and then analyses the conformity of national legislation to these international standards. The nature of recognition of indigenous peoples in Peru is thought provoking in light of existing international standards. In contrast to Nesti's article, Ludescher highlights the gap between international standards and national standards in indigenous rights.

In *Uncommon Ground: Occidental's Land Access and Community Relations Standards and Practices in Quichua Communities in the Ecuadorian Amazon,* Judith Kimerling focuses on how one company's operations impact an indigenous community in Ecuador. Kimerling clearly demonstrates an imbalance of power between indigenous communities and large-scale companies, as well as the inadequacy of protection provided to indigenous groups by state government. The need for a mechanism to enforce international standards is called for.

The similarities and differences in how two different systems approach indigenous rights is dealt with by Margret Carstens in *From Native Title to Self-Determination? Indigenous Rights in Australia and Canada - a Comparison.* Carstens adopts a comparative review of indigenous rights with the aim of developing a theory to govern indigenous land and self-determination rights. In her examination, she analyses history, politics, and jurisprudence. Most significantly, Carstens recognises the need not only for recognition of indigenous rights, but enforcement of these rights.

An example of indigenous dealings with government is provided by Melanie G. Wiber and Julia Kennedy in *Impossible Dreams: Reforming Fisheries Management in the Canadian Maritimes After the Marshall Decision.* This article focuses on the fishing dispute in Atlantic Canada following the decision of the Supreme Court of Canada acknowledging that the aboriginal right to fish was never extinguished. Wiber and Kennedy examine the Supreme Court of Canada decision as well as the practical implications of their decision. The direction of the Atlantic fishing industry in the context of ongoing indigenous and government negotiation provides an example of legal pluralism at work.

Michael Davis, in *Law, Anthropology, and the Recognition of Indigenous Cultural Systems*, provides insight into the future of indigenous rights at the international level. By suggesting indigenous culture as the basic reference for all indigenous rights, he links the protection of indigenous rights to not only the environment, but to the field of intellectual property. His analysis raises the question of how a system based on individual rights can protect a system based on collective rights.

While there have been many significant developments in indigenous issues at both international and national levels, there are many difficulties in putting the recognition of these issues into practise. These articles illuminate some of these difficulties, and it is our hope that the ideas presented provoke further thought and discussion towards possible solutions.

CONTENTS

THE LIMITS OF INTERNATIONAL HUMAN RIGHTS AND REFUGEE LAW: AN ANALYSIS OF THE CASE OF THE AYMARA FROM THE PERSPECTIVE OF LEGAL PLURALISM

Antonio Peña-Jumpa

Introduction

The importance and evolution of International Human Rights and Refugee Law in relation to peace and security in the world cannot be denied. These rules constitute instruments of control over criminals and give citizens some support against vicious governments (Newman and Weissbrodt, 1990). However, the process of applying them in the world can have different results. In countries or groups of countries with cultural diversity, for instance, the effect of their application can produce a radical divergence between the theory of these rights and the reality.

This paper intends to explore that divergence. Particularly, it is our interest to analyse the relationship between the universal character of International Human Rights Law, including Refugee Law, and the cultural diversity of 'tribal' or 'indigenous' societies. For this purpose, we will analyse an Aymaran case, using fieldwork of the author completed years ago in the Southern Andes of Peru (Peña-Jumpa, 1991). The case is about a physical whipping of 'immoral commoners' in connection to the community's relationship with nature, and its description is followed by an analysis of the case from different perspectives.

Our hypothesis in this paper and in the Aymaran case is that the cultural diversity of the world, and specifically of Peru, constitutes a limit to the design and implementation of the International Human Rights and Refugee Law. The case is analysed, with this hypothesis, from the natural law, positivist, and relativist approaches. These approaches are directly related to the discussion of the universal criterion of human rights. In addition, our case and hypothesis are analysed within the concept of the 'particular social group' developed by North American jurisprudence in relation to refugee law. Throughout the analysis, the perspective of Legal Pluralism is present as developed from Anthropology of Law; however, in the last part of the paper it is specifically presented and applied to the case.

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The Aymara Case: Punishment by Nature

The Aymara ethnic group is one of the principal indigenous peoples of Peru and Bolivia, second only to the Quechua people, who are more numerous and live in the Andean region of both countries. This ethnic group has approximately 4.5 million members (Cruz, 1992)[1]. The following events took place in Peru, specifically in the Aymara communities of the *Sur Andino* (Southern Andes), near to Lake Titicaca.

In Peru, the Aymaras are officially identified as *Comunidades Campesinas* (peasant communities) in accordance with articles 88 and 89 of the Political Constitution. They are located in the rural areas and, based on these norms, have a relatively high degree of autonomy in relation to the state and the national economy. They have their own political, economic and cultural organization, and also their own system of solving conflicts (Peña-Jumpa, 1991). In cases of a serious nature, such as homicide, they appeal to the official system to resolve the conflict (Peña-Jumpa, 1991, 1994).

This case study concerns the relationship between the Aymara people and nature[2]. The Aymara communities believe in the existence of divine punishment by nature, a consequence of immoral acts. They believe that nature has a living force and has control over the development of all communities. This conception forms the basis of their cultural organization.

One example of nature's control is the change in weather in the region. In the *Sur Andino*, at certain times of the year, the *heladas* (severe frost), *granizadas* (hail storm) or *lluvias continuadas* (continuing rains) normally occur. The *heladas* and *granizadas* normally appear in the months of May, June and July, whereas the *lluvias continuadas* usually occur from November to February. The Aymara people are aware of the effects of these changes in weather and take precautions to deal with them. When sudden weather changes occur outside these months, the consequences can be fatal to the Aymara communities.

For example, an early *helada* or *granizada* may cause destruction of the crops and the loss of the Aymara resources for the whole year, including the food for the

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[1] Cruz and others (1992) from a study of the 1982 Peruvian census and the 1975 Bolivian Census give the following ethno-linguistic populations in Peru and Bolivia:

ETHNIC GROUP	PERU	BOLIVIA
Quechuas	9,900,000	3,150,365
Aymara	1,540,000	2,850,000
'Hispanic'	10,252,000	900,000
Amazonians	308,000	600,609
TOTAL	22,000,000	7,500,870

[2] The case was initially cited in the thesis of the writer (Peña-Jumpa, 1991), in particular see chapter 7.

livestock[3]. In the same sense, the absence of *lluvias continuadas* can produce *sequia* (drought) with the same negative effects on the lives of the Aymara communities.

The Aymara people believe that the sudden weather changes and their consequences relate to the anger of nature produced by the 'bad behaviour' of some persons in the community. They may consider that an early *helada* or *granizada*, or the absence of *continuadas lluvias* is caused by adultery or, in extreme cases, by abortion followed by clandestine burial of the foetus. This 'bad behaviour' is identified with a conflict against the community from 'bad *comuneros* (peoples of the community)' who must be sanctioned. The Aymara feel the need to solve the problem of the 'bad behaviour' to restore the *armonía* (harmony) with nature.

In this context, the people of the community affected apply their own mechanisms for the resolution of a conflict. The president (head authority) of the affected community with a *comisión comunal* (commission of the other authorities) summons all members of the community to a special assembly to investigate the events. In the development of the assembly, the members of the community are divided into two groups. The males are separated to one side, and the females to the other. The investigation concentrates on the female group. A special woman, called *matrona* (matron) checks the women's bosoms and specifically their nipples. By doing this, the *matrona* can determine who has been pregnant, and can relate this to any possible clandestine burial of the foetus.

The people of the community can determine who the 'guilty' woman is in other ways, as well. The tight relationship of the community leads to the dissemination of activities and information between the *comuneros* and it is hard to keep private acts such as adultery secret. This information is shared by the *matrona,* and it is also used by the *comuneros* in the principal meeting after the investigation of the *matrona* to accuse the 'guilty' woman.

The participation of the Aymara people in the solution of the problem or conflict is fundamental. Once there is an environmental disaster, the *comuneros,* women and men, give opinions and discuss the case. Many people take part and help in handling information in the investigation process. They eventually decide on who is 'guilty' in relation to the sanctions of nature, and on the degree of their responsibility. Furthermore, the Aymara people who are affected feel that the only way to resolve the problem with nature is to restore the situation that existed before the 'bad behaviour' of the *comuneros* occurred. In this sense, they understand that the compensation for the 'bad behaviour' has two aspects: the personal punishment of the 'guilty' *comuneros* and the exhumation of the foetus to give him a Christian burial. After both acts have been carried out, the community believes that they can regain *armonia* with nature.

With the 'guilty' woman, the 'guilty' man is also identified, and both are subjected to the community assembly. The personal punishment applied to the 'guilty' couple consists of a physical whipping and the payment of a high fine. The whipping is applied to a naked part of the body of the 'guilty' couple, and between 20

[3] The *helada* in particular is more feared by the Aymara communities. It can destroy the young plants in much the same way as fire would burn up paper.

and 50 lashes are given, depending on the harm afflicted. The fine is used to compensate the families most affected[4]. After application of the punishment, the commission of the affected community goes to the place where the foetus was buried, where they exhume it and, after a simple Christian ceremony, bury it again.

II. Understanding the Problem: The Aymara Case vs. Human Rights and Refugee Law

The present case allows us to analyse two aspects relating to international Human Rights and Refugee Law:

- The issues of the Aymara physical punishment as a case of the violation of human rights; and
- the possibility that the 'guilty' couple can ask for asylum and that they can be considered as refugees.

The first point involves the analysis of local law and international law with regards to human rights. What would happen if the lashed Aymara couple decide to apply to a non-governmental organization (NGO) or to the International Committee on Human Rights concerning the violation of their human rights? Is it a case of violation of human rights? Is the Aymara punishment a case of torture or other kind of violence? All of these are questions which refer to the ambit of *positivist* analysis of international human rights. However, it is also important to analyse these aspects from other perspectives. The dimensions of the problem allow us to ask about the nature of human rights. In this sense, it is appropriate to explore the issues from the *natural law* approach and from the *relativist* approach. In all these approaches, we find that the discussion about the *universal* criteria of human right is useful in the analysis of this case.

Faced with the issue of whether the Aymara physical punishment is a case of the violation of human rights, we are forced to ask: What human rights? The Aymara communities' conception of human rights or an international conception of human rights? What do we understand as an international conception of human rights? Is it possible to talk of a universal conception of human rights in all cases? Are there limits to this universal conception? All of these questions discuss human rights at the philosophical level.

The second point is related to the concept of a particular social group in relation to refugee law. Is it possible to talk about a particular social group in the case of the Aymara communities? What is the particular social group protected in this case: the 'guilty' couple or the Aymara community affected by the environmental disaster? How does the concept of the particular social group operate in the case of the Aymara communities, as they are one of a variety of different cultures in a countries where

[4] In the last years, some Aymara communities have changed this personal punishment. The new punishment is based exclusively in the payment of a hard fine. In this case, the community can expropriate some valuable belongings of the 'guilty' couple, such as livestock or land.

there is another dominant culture? Is it possible to seek another alternative in the interpretation of the Aymara case in relation to refugee law?

Conditions to the Analysis

The questions formulated above need to be analysed in a context which places the Aymara communities in the country of origin. In this sense, it is important to have the following conditions present:

1. The domestic law about human rights is the same as that of international human rights. The Peruvian constitution protects civil and political individual rights, as well as the social, economic and cultural rights in a way equivalent to the 1966 UN International Covenants and the 1969 American Convention on Human Rights. For example, the first chapter of the Peruvian constitution protects the right of life, humane treatment, personal liberty, a fair trial, a right to compensation, to privacy, to nationality, the right of the family, to a name, to property, to judicial protection and freedom of conscience and religion, of thought and expression, of association, and others. All of these are regulated under the same terms as the 1969 American Convention on Human Rights.

Furthermore, the Peruvian constitution has a special article to recognize cultural identity as a human right. It is regulated in article 2 (19), in the following terms:

> Toda persona tiene derecho: ...
>
> A su identidad étnica y cultural. El Estado reconoce y protege la pluralidad étnica y cultural de la Nacion. ... (PUCP, 1994)[5]

2. The Peruvian state is party to different International Conventions about human rights. Thus, the Peruvian state has subscribed to the Universal Declaration of Human Rights of 1948; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; the International Covenant on Economic, Social and Cultural Rights of 1966; the International Covenant on Civil and Politic Rights of 1966; the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries of 1989; the American Convention on Human Rights of San José/Costa Rica of 1969; the Inter-American Convention to Prevent and Punish Torture of 1985.

3. The Peruvian constitution has an article that recognizes the special jurisdiction of the *Comunidades Campesinas*, of which the Aymara communities are a part. This article recognizes the autonomy of the Aymara people in solving their own conflicts, and reads as follows:

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[5] 'Every person has the right: ...

To their ethnic and cultural identity. The state recognizes and protects the ethnic and cultural diversity of the Nation. ...'

> Articulo 149.- Las autoridades de las Comunidades Campesinas y Comunidades Nativas, con el apoyo de las Rondas Campesinas, pueden ejercer las funciones jurisdiccionales dentro de su ámbito territorial de conformidad con el derecho consuetudinario, siempre que no violen los derechos fundamentales de la persona. La ley establece las formas de coordinacion especial de dicha jurisdicción especial con los Juzgados de Paz y con las demás instancias del Poder Judicial. (PUCP, 1994)[6]

In the last part of the article, we can find reference to fundamental or human rights as a limit to this communal jurisdiction. This means that the Aymara communities, as *comunidades campesinas*, cannot overrule the protection of human rights in the resolution of their own conflicts. In this point, it is interesting to ask again: *What do we understand as fundamental, or human rights?*

4. The problem of the physical whipping of the Aymara 'guilty' couple in the present case has direct relation to the human right of human treatment regulated in article 5 of the 1948 Universal Declaration of Human Rights:

> No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. (Brownlie, 1992)

The same right has been recognized in subsequent International Conventions such as the International Covenant on Civil and Political Rights of 1966, the American Convention on Human Rights of 1969 and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 1984.

III. Natural Law Approach

The first theory used here to analyse human rights comes from the *natural law approach*. The *positivist approach*, which will be developed in the following section, is a continuation of this theory and both together support the *universal conception of human rights*.

McDougal, Lasswell & Chen (1980) state that the natural law approach begins with the assumption that there are natural laws, both theological and metaphysical, which confer particular rights upon individual human beings (1980:333). From this perspective, natural law constitutes a *higher law* and these rights find their autonomy either in divine will or in specified metaphysical absolutes (Ibid). In the sense of this theory, the Universal Declaration of Human Rights of 1948 and subsequent

[6] 'Article 149. The authorities of the Peasant and Native Communities, with the support of the Peasant Circles, may exercise judicial functions within their territorial jurisdiction in accordance with customary law as long as they do not violate the fundamental rights of the person. The law provides for the forms of coordination of special jurisdiction with the Justices of Peace and the other instances of the Judicial Power.'

instruments about human rights articulate this 'higher law' and put it in written norms (Price, 1991:15).

Thus, the Universal Declaration in its first article states:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Brownlie, 1992)

This norm recognizes natural laws which are based on freedom and dignity, and led by a spirit of brotherhood. But the norm does not recognize this right itself; we are free or we have dignity because this natural law or 'higher law' states it. In other words, it is clear that the article cited has a natural or metaphysical basis. In this sense, Morsink (1984) agrees:

> ... one would therefore expect Article 1 to contain a reference to either nature or God as the transcendent normative source of the rights listed in the document. (1984:334-335)

In the same sense, when the Universal Declaration of Human Rights of 1948, in its article 5, states: '(n)o one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment', it refers to the 'higher law' about the physical wholeness (integrity) of all people. All human beings are prohibited from torturing, or inflicting cruel, inhuman or degrading treatment or punishment on another human being because there is a 'higher law' which states it. Human beings are under this 'higher law' and we must respect its principles.

However, who defines 'free', 'dignity' or 'torture', 'cruel treatment', 'cruel punishment', 'inhuman treatment', 'inhuman punishment', 'degrading treatment' or 'degrading punishment' of these two cited norms? In the same sense, who decides whether or not the acts of the Aymara communities, in relation to the adultery or the supposed adultery of a couple are cruel treatment or cruel punishment? Who decides whether or not the relationship of the Aymara communities to nature is the legitimate reason for these actions and that the punishment that they inflict is legitimate according to this natural law approach?

In the natural law approach, a divine authority exists who defines such concepts from a metaphysical point of view. However, this authority is difficult to discern. The normal human being can not see this authority and it is difficult to appeal to him or her to obtain the solution to any problems. This absence constitutes the principal inadequacy of the natural law approach (McDougal, Lasswell & Chen, 1980:333).

Consequently, the natural law approach is insufficient in solving or explaining the issues arising from the Aymara case. But, curiously, this approach allows us to think about a possible natural relationship between the Aymara communities and nature. We can affirm that the harsh weather is assumed to be a punishment of the 'higher law' in the belief of the Aymara communities. In this sense, the procedure and the punishment that they impose on the 'guilty' couple is understood for them as directly concerned with nature or God, and the need to return to harmony with both.

IV. The Positivist Approach

The absence of an authority that specifically defines the rights is a weak point of the natural law approach that is overcome by the positivist approach. According McDougal, Lasswell and Chen (1980), the positivist approach assumes that the most important measure of human rights is to be found in the authoritative enactment of a system of law sustained by organized community coercion (1980:334). In this approach, the 'higher law' is defined by the authority which is found in the perspective of an established official (Ibid). The authority is a human being, and his or her resources to define the human rights are not found in some specified methaphysical absolutes but in the reason and experience of this human being (Price, 1991:17).

In this sense, all the norms of international instruments concerning human rights are made by this authority. International institutions, society of states, or the presence of special commissions or courts are all part of this concept of authority.

A key aspect of the positivist approach is connected with the idea of a *general application* of the legal rules[7]. The authority requires that norms are equal for all persons, and applied under the same conditions to all human beings. This requirement leads to the construction of an exclusive single legal system that makes it easy to implement this proposal. We can understand the principal proclamation of the United Nations in the Universal Declaration of Human Rights to be from this approach:

> The General Assembly ... (P)roclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction. (Brownlie, 1992)

This Universal Declaration applies a perpetual common standard addressed to all peoples and all nations. The reason for this criterion is to construct uniform minimum rights in the world, rights which are understood as fundamental. However, even if the world and its people are different and multicultural, the bill was written with reference to one particular cultural model. In this context, it is important to remember that the Universal Declaration of 1948 was made after the Second World War by the victorious countries. Consequently, the reference or paradigm used for this Bill of Human Rights was that of a group of States, particularly Western Europe and the U.S., and not from all countries or the greater part of the world´s countries.

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[7] This aspect is easier to understand as the philosophy of law which it emphasizes is one of the principal elements of the *modern law*, the law of Western society (Trazegnies, 1993). Weber (1967) develops it under the category of a rational-formal law.

In this reasoning, when the General Assembly formally proclaims the Universal Declaration as a *common standard* of achievement, it is principally using the ideological model of Western culture. And, when it states that 'every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures', it refers to the people or countries of a culture different than that of the West. These cultures must be integrated into this cultural model. The validity of International human rights is understood as a process, but finally leads to the importing of the application of the Universal Declaration and the common standard of Western Culture.

In this sense, the 'higher law' we have to apply to the case being studied is that which appears in the Declaration of 1948, and within it is included the other subsequent instruments. Specifically, the positivist approach can be shown in the application of article 5 of the 1948 Universal Declaration, cited earlier, and in article 7 of the 1966 International Covenant on Civil and Political Rights, article 5 of the 1969 American Convention, and articles 1 and 16 of the 1984 Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

Article 7 of the Covenant on Civil and Political Rights states:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. (Brownlie, 1992)

Article 5 of the 1969 American Convention reads, concerning the *Right To Humane Treatment:*

> 1. Every person has the right to have his physical, mental and moral integrity respected.
> 2. No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity for the human person.
> 3. Punishment shall not be extended to any person other than the criminal (...). (Brownlie, 1992)

On the other hand, articles 1 and 16 of the 1984 Convention Against Torture and Other Cruel Inhuman or Degrading Treatments or Punishment state:

> (Article 1): 1. ... the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

> person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
>
> (Article 16): 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ... (Brownlie, 1992)

In the analysis of the different definitions of the articles cited within the positivist approach, we can assess that all of them could be applied in relation to the Aymara case, but the reference of the authority again is important. The different instruments of analysis regulate the authority that will decide what definition to apply. In the case of the 1948 Universal Declaration and the 1966 Covenant on Civil and Political Rights, the authority is a special Commission along with the Human Rights Committee of the United Nations (Newman and Weissbrodt, 1990); in the case of the American Convention, the authority is the American Commission and the American Court on Human Rights; in the case of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the authority is the Committee against Torture.

The reasoning of these authorities, within the positivist approach, will consist of analysis about whether the violation of the articles cited occurred. They will determine if the fact or any event produced by a human being is in accordance with or against these rules. Within this analysis it is probable that the conclusion about our case will be against the community that lashed the 'guilty' couple. The Aymara community would be responsible for violation of article 5 of the 1948 Universal Declaration, article 7 of the 1966 International Convention on Civil and Political Rights, article 5 of the 1969 American Convention on Human Rights, and articles 1 and 16 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. The International Authority would be likely to have the following reasoning:

The physical lashes applied by the Aymara community are contrary to the common standard of human rights regulated by different international instruments. The supposed cause of weather changes affecting the Aymara community is not a reason to apply these physical lashes.

If the communal authority has the faculty to solve the conflicts of his or her own community, this function must be made within the framework of human rights according to article 149 of the Peruvian constitution and article 8 of the International