



Indigenous Communities Challenging the Government Monopoly on Prior Consultation in Peru

RESEARCH ARTICLE

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ABSTRACT

Like most Latin American countries, Peru has ratified International Labour Organization Convention 169 requiring prior consultation with Indigenous peoples affected by any investment or infrastructure project. It also supported the United Nations and the American Declarations on the Rights of Indigenous Peoples, endorsing the principle of free, prior, and informed consent. Yet, for decades Peru has seen violent social conflicts between Indigenous communities and natural resource extraction companies because of perceived government failures to carry out effective consultations. The current international legal regime gives the Peruvian government the exclusive role to carry out such consultations. However, conflicting interests to promote national economic development, increase revenue from royalty taxes, and facilitate job creation have often overtaken the legal obligation to ensure respect for the human rights and self-determination of Indigenous peoples. This article examines the frustrations that led the Organización Regional AIDSEP Ucayali (ORAU), representing Indigenous peoples on both sides of the Ucayali River Basin in Amazonian Peru, to issue its Protocol on Prior Consultation in 2024. The Protocol challenges current Peruvian legislation on prior consultation and tries to ensure that any government-led consultation both promotes genuine intercultural dialogue and gives Indigenous communities a proactive role that avoids their interests being subsumed to those of the national or regional governments. They should be involved in drawing up the rules of convocation and procedure for each consultation as well as the mechanisms to ensure implementation of any agreement. ORAU's Protocol is part of a growing trend among Indigenous communities in the Peruvian Amazon, such as the Wampis and Awajún Nations, who are seeking greater decision-making autonomy and self-determination within their ancestral territories.



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The obligation to consult Indigenous peoples who have been affected by a proposed economic development or investment project is a recognized international human right in those countries that have ratified [International Labour Organization \(ILO\) Convention 169](#) on Indigenous and Tribal Peoples and/or incorporated into their domestic legal frameworks the principle of free, prior, and informed consent found in the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) and the American Declaration on the Rights of Indigenous Peoples. The legal obligation to consult falls squarely upon governments.

Peru has, for decades, been a focal point for violent social conflicts, involving deaths, due to the country's failure to adequately consult Indigenous communities harmed by natural resource extraction and infrastructure projects. The irony is that Peru was one of the first countries to ratify ILO Convention 169 and voted in favor of the UNDRIP in 2007 as well as the American Declaration on the Rights of Indigenous Peoples in 2016.

Social conflicts involving Indigenous peoples over land usage are not unique to Peru. While Indigenous peoples comprise only about 6.2 percent of the world's population, they are involved in at least 34 percent of the current documented socio-environmental conflicts stemming from extractive and industrial development projects ([Scheidel et al. 2023: 3](#)). That number may, however, represent an underestimation for a variety of reasons including government censorship (*Ibid.* 9). Four sectors account for most socio-environmental conflicts in the world involving Indigenous peoples: mining (24.7 percent), fossil fuels (20.8 percent), the agricultural, forestry, fishing, and livestock sector (17.5 percent), and dams (15.2 percent). In the case of the Americas, the presence of Indigenous peoples doubles the chances of high intensity conflicts such as massive mobilizations, violence, and/or arrests in mining projects ([Gómez-Liendo et al. 2024: 17](#)). The demand for lithium and other critical minerals required for the transition to a greener energy matrix raises the potential of an explosion in social conflicts, as these resources are often found on or near Indigenous lands.

This article provides an overview of the current international legal regime for consultation with Indigenous peoples, and of how this has been incorporated into the national legal framework of Peru. It then examines a series of problems arising from inadequate or ineffective government-led consultations in Peru. This forms the background to a discussion of an emerging movement among certain Indigenous communities in the Peruvian Amazon to assert greater autonomy and the right to self-determination within their ancestral territories. The article also discusses how frustration with the way that the prior consultation mechanism is currently administered in Peru contributed to the Protocol on Prior Consultation issued by the Organización Regional AIDESEP Ucayali (Regional Organization of AIDESEP Ucayali – ORAU).

THE CURRENT INTERNATIONAL LAW REGIME ON CONSULTATION

INTERNATIONAL LABOUR ORGANIZATION CONVENTION 169

Enacted in 1989, ILO Convention 169 recognizes a role for Indigenous and tribal peoples in any endeavor that may affect their lives and the lands they occupy or otherwise utilize. As a treaty, it is legally binding on States that have ratified it, which to

date, number 24, the majority in Latin America.¹ Its Article 6 affirms that Indigenous peoples should be consulted *in good faith* with respect to legislative or administrative measures that may directly affect them, with the objective of achieving agreement or consent to the proposed measures. In addition, States should, when appropriate, ensure that studies are carried out in cooperation with Indigenous peoples to assess the social, spiritual, cultural, and environmental impact on them of planned development activities, and that these studies be considered as fundamental criteria for the implementation of these activities (Article 7(3)).

Article 15(2) specifically requires governments to consult with Indigenous peoples where the State retains ownership of minerals or resources before permitting exploration or exploitation of such resources. In addition, where possible, Indigenous peoples should participate in the benefits and receive compensation for any damages that may result from a natural resource extraction activity. Article 15(2) is tied to two collective rights recognized by the Convention: the right of Indigenous peoples to own and possess traditionally occupied lands (Article 14(1)); and the right to participate in the use, management, and conservation of resources pertaining to those lands (Article 15(1)).

Article 16 requires that where the relocation of Indigenous peoples is deemed a necessity, the government must obtain their “free and informed consent” before removal. Indigenous peoples shall also have the right to return to their traditional lands as soon as relocation is feasible (Article 16(2)) and shall be fully compensated for their losses and injury (Article 16(5)). Compensation can include lands of quality and legal status at least equal to that of lands previously occupied, suitable to provide for present needs and future development (Article 16(4)).

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In 2007, the United Nations (UN) General Assembly adopted the UNDRIP, which introduced the concept of free, prior, and informed consent with respect to projects that have a significant impact on Indigenous peoples and/or their way of life. This concept, as well as the duty to consult and the right to participate in decision-making find their genesis in the right to self-determination, first expressed in 1945 in the UN Charter, and then in 1966 in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (O'Bryan 2019: 14).

Article 32(2) of the UNDRIP specifically requires that States shall consult and cooperate in good faith with Indigenous peoples through their own representative institutions to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, use, or exploitation of mineral, water, or other resources.

The UNDRIP also requires the free, prior, and informed consent of impacted Indigenous peoples:

1. whenever they are forcibly removed from their lands or territories, with the added proviso that no relocation may occur until after an agreement on just and fair compensation and, where possible, with the option of return (Article 10);

¹ Argentina, Bolivia, Brazil, the Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Germany, Guatemala, Honduras, Luxembourg, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain, and Venezuela.

2. before the adoption and implementation of legislative or administrative matters that may affect Indigenous Peoples (Article 19); and,
3. before authorizing the storage or disposal of hazardous materials in the lands or territories of Indigenous peoples (Article 29(2)).

Free, prior, and informed consent, at a minimum, requires “that the relevant consultations should not be a mere formality, but, rather, should be conducted in good faith and with the objective of finding a common agreement” (Barelli 2018, p. 248). The term free implies that “the process of consultation should be conducted in the absence of any type of coercion and pressure”; prior “that consultations should take place before undertaking an action or implementing a project”; and, informed “that Indigenous peoples should receive satisfactory information in relation to the relevant measure or project” (Ibid: 250). Free also implies “allowing sufficient time for the engagement process to occur, so that [I]ndigenous communities do not feel rushed, or believe that the process was mere window-dressing” (Lehr 2014: 14).

Unlike ILO Convention 169, which is legally binding on ratifying States, the UNDRIP is not unless the State has incorporated specific UNDRIP provisions into its domestic legal framework. However, some legal scholars argue, that as the UNDRIP was adopted by the UN General Assembly “with overwhelming support, and coupled with the important subsequent endorsements by the four States that at the time of adoption voted against the Declaration” then this “provides strong support for the contention that many of the substantive provisions of the UNDRIP reflect and express norms of customary international law” (Scheinin, M and Åhrén 2018: 64). In particular, UNDRIP’s “land rights provisions and the necessary participation of Indigenous peoples in decisions which affect them, are generally considered as a codification of customary international law” (Binder 2018: 89).

AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

On June 15, 2016, the General Assembly of the Organization of American States (OAS) approved the American Declaration on the Rights of Indigenous Peoples over Canadian and U.S. objections, with Colombia dissenting from specific provisions on free, prior, and informed consent that could be in conflict with how the country interprets ILO Convention 169’s obligation of prior consultation as well as with military operations impacting Indigenous communities. Pursuant to Article XXIX(4) of the American Declaration, States “shall consult and cooperate in good faith with the [I]ndigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources”.

Even before promulgation of the American Declaration, the inter-American human rights system, which monitors, promotes, and protects human rights in all 35 OAS member countries, had already attempted to inject greater uniformity into the myriad interpretations by national governments of what constitutes adequate and effective consultations with Indigenous peoples. For example, the Inter-American Court of Human Rights (IACtHR) has “held that the duty of States to consult Indigenous peoples must now be regarded as a general principle of international law” and, in the case of large-scale development or investment projects, States “have a duty to not only consult with Indigenous peoples, but also to obtain their free, prior,

and informed consent” (Barelli 2018: 257–258). The inter-American human rights system also recognizes the special relationship between Indigenous peoples and their ancestral lands as “the fundamental basis for the maintenance of their physical and cultural integrity, their economic survival and for the protection of Indigenous peoples’ rights to land and natural resources” (Cabrera Ormazá 2017: 172). In this regard, the IACtHR has established three safeguards that apply to large-scale projects affecting Indigenous peoples: (1) their effective participation in the project plans; (2) a reasonable benefit from such plans; and (3) no issuing of concessions or licenses until an independent body carries out an environmental and social impact assessment (Wright and Tomaselli 2019: 2).

OPERATIONALIZING PRIOR CONSULTATION IN PERU

Peru ratified ILO Convention 169 on February 2, 1994. However, the procedural rules for how to carry out a consultation were not adopted until the enactment of Prior Consultation Law No. 29875 in September 2011² and Regulatory Decree of Law No. 29875 issued in April 2012.³ The catalyst was the infamous *Baguazo* in June 2009 when Indigenous protesters clashed with police at Bagua in the Department of Amazonas over legal changes, made in conjunction with implementation of the U.S.-Peru Free Trade Agreement, that facilitated energy, mining, and agricultural concessions on their traditional lands. The organized Indigenous communities understood that these measures, made without consulting them, put at risk their right to collective property as guaranteed by ILO Convention 169 (Gómez 2018: 199). The violence resulted in the deaths of approximately 24 police personnel and 10 civilian protestors as well as injuries to more than 200 people (Salmón 2013: 376–377).

Adoption of the Prior Consultation Law and its implementing regulations was plagued with controversy. Then President Alan García (2006–11) pulled a draft of the law that had been developed by Indigenous and government representatives and approved by Congress in 2010, adding a provision that gives the government the right to make a final decision in cases where consent is not forthcoming (Doyle 2019: 62). A new version of the law with the provision added by García was finally adopted during the subsequent presidency of Ollanta Humala (2011–2016). Although the Humala administration initially consulted with Indigenous organizations on the implementing regulations, the most important of these Indigenous groups soon abandoned the process when the government refused to renegotiate perceived shortcomings (Flemer 2019: 108). The most significant was the failure to require obtaining consent for large-scale extractive and energy projects in accordance with decisions of the IACtHR (Doyle 2019: 62–63). Also problematic were the following: the definition of who is deemed “Indigenous”;⁴ what it means to be a “directly affected” community

2 The *Ley del Derecho a la Consulta Previa a los Pueblos Indígenas y Originarios, Reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*, Ley No. 29785 is available in Spanish at: <https://cdn.www.gob.pe/uploads/document/file/7471487/6360191-ley-n-29785-ley-del-derecho-a-la-consulta-previa.pdf?v=1736441781>.

3 The *Reglamento de la Ley. No. 29785 No. 001–2912 Ministerio de Cultura* is available in Spanish at: <https://cdn.www.gob.pe/uploads/document/file/7471531/6360215-decreto-supremo-n-001-2012-mc-reglamento-de-la-ley-del-derecho-a-la-consulta-previa.pdf?v=1736442087>.

4 In Peru, the regulation of Indigenous rights, including for titling purposes under the Agrarian Reform Law of 1969, traditionally has omitted the legal denomination “Indigenous”, and used categories such as “communal groups”, including *campesinos* or peasants/rural communities, and natives (Salmón G. 2013: 354).

that would trigger the obligation to consult; limiting representative organizations participating in consultations to those from the geographic area of the proposed measure; excluding affected Indigenous communities from jointly developing the procedures and schedule for a particular consultation; and the inability to make the consultation requirement retroactive to when Peru first ratified ILO Convention 169 in 1994 (Flemmer 2019: 108).

On the positive side, Peru's Prior Consultation Law does conform to Article 16 of ILO Convention 169 and mandates the free, prior and informed consent of an Indigenous community in the case of forced relocations. It also prohibits storage or disposal of hazardous materials on Indigenous lands or territories, thereby explicitly incorporating UNDRIP's Article 29 (2) into Peruvian domestic law. In addition, consultations can be carried out by local and regional government entities and are not limited to those of the central government in Lima.⁵

Articles 1 and 2 to the Prior Consultation Law No. 29875 limit prior consultations to legislative or administrative measures as well as national or regional development plans, programs and projects that directly affect Indigenous Peoples collectively. Article 3 states that the goal of these consultations is to achieve an agreement or consent between the government and the Indigenous peoples based on an intercultural dialogue that includes them in the government's decision-making process.

The Decree regulating Law No. 29875 contemplates at least nine procedural steps for prior consultations that include: identification of the measure and the Indigenous peoples to be consulted (Article 14); preparatory meetings (Article 15); presentation of a procedural plan for the consultation (Article 16); dissemination of the proposed measure (Article 17); information sharing on the proposed measure in terms of motivation and impacts (Article 18); internal evaluation by the Indigenous peoples or representative organizations of the proposed measure (Article 19); dialogue between representatives of the government and the Indigenous peoples lasting a maximum of 30 days unless extended by mutual agreement (Article 20); inclusion of the results of the consultation in a formal *Acta* (Article 22); and, the final decision taken by the government entity with jurisdiction to issue the legal or administrative measure (Article 23). Article 24 sets a maximum of 120 calendar days for the consultation process from when the proposed measure is first disseminated until the issuance of the *Acta*.

Twenty-four consultations were concluded under the Humala government, the majority involving the hydrocarbons sector (Flemer 2019: 106). The entity responsible for carrying out and financing the consultation process is the one that has jurisdiction to plan the project or to issue the relevant legal or administrative measure, which is the Ministry of Energy and Mines in the case of mining (as well as hydroelectricity projects) (Ibid: 109). In the case of hydrocarbons, the consultation process is delegated to Perupetro, the same agency that awards petroleum exploration and production concessions. In both instances there is an inherent conflict of interest, as the government entity in charge of determining whether the rights of Indigenous peoples will be harmed and to what extent, is the same entity that is promoting the activity (Alva Arévalo 2021: 238). Meanwhile, the Vice-Ministry of Intercultural Affairs operating under the Ministry of Culture is tasked with providing "technical assistance" for any consultation process and is also the national entity responsible

⁵ Y. Peña Dávila, ORAU, Interview, August 29, 2025.

for guaranteeing Indigenous “concerns” nationally. Interestingly, it was established in 2010 without consulting any Indigenous peoples (Flemmer 2019: 109, 112 & 113).

The key difference between the hydrocarbon and the mining sectors is that, in the former, consultations are conducted after the concession has been granted (or after there is a change in the original concessionaire). For mining projects, it is the part of the process to determine if a license should be issued for a project after all decisions pertaining to accessing, mitigating, and preventing potential adverse environmental impacts have already been made (Flemmer 2019: 109–110). This is not in conformity with Article 4(a) of Peru’s Prior Consultation Law No. 29875, which emphasizes that the consultation process should take place *before* any legislative or administrative measure is adopted by a governmental entity. It likewise conflicts with customary international law’s interpretation of “prior”: consultations *after* a concession is awarded or an environmental assessment is completed “do not afford Indigenous peoples an opportunity to influence project design or implementation, thereby robbing them of any say on how projects affect their rights and well-being” (Doyle 2019: 63). It also does not conform to the IACTHR’s past decisions that environmental impact assessments for large scale projects should be carried out by an independent body. These deficiencies create mistrust among Indigenous peoples because they assume that the decision has already made before the beginning of the consultation process and believe that the consultation process will not offer them a real opportunity to express their consent or otherwise (Alva-Arévalo 2021: 237).

GOVERNMENT-LED CONSULTATIONS WITH INDIGENOUS PEOPLES IN PERU: A SAGA OF DISAPPOINTMENT AND SOCIAL CONFLICT

For decades, the Amazonian and Andean regions of Peru have seen mobilizations of communities opposed to the negative impacts of mining, oil and energy operations. These are generally met with violent repression, delivered either by police or private security forces (Larrea Burneo 2023: 115). Police repression, coupled with a justice system severely affected by the corruption of prosecutors, judges and officials, results in the systemic criminalization of Indigenous leaders and activists. Unfinished land demarcation, uncertainty regarding land rights, and the contamination of soils and water sources have been identified among the main causal factors of the social conflicts in Peru (Ibid.). In 2022, 88 percent of murders of land rights and defenders within the Western Hemisphere were in the Latin American region making it the most dangerous globally for such activism, with Brazil, Colombia, and Peru the most lethal in recent years (Gómez-Liendo et al. 2024: 10).

In 2003, the government authorized several companies to begin open-pit gold mining operations in the northern Department of Cajamarca. In response, local Indigenous community members – who were never consulted nor provided their consent – captured the company engineers, burned their mining equipment, stripped them of some clothing, and expelled them from the municipality (Torres-Wong 2023: 44). A similar event led the mining company Estrella Gold Peru to halt its operations in 2013, arguing the “social costs” were too high (Ibid.).

In 2011, the Peruvian government revoked a silver mine concession initially granted to Canadian-based Bear Creek Mining Corporation near Puno in southern Peru, following violent protests from neighboring Indigenous communities that had never been

consulted. In 2017 Bear Creek won an US\$ 18.2 million award at the International Centre for Settlement of Investment Disputes for an uncompensated “expropriation” in violation of the Canada-Peru Free Trade Agreement ([Schacherer 2018](#)). Ironically, the Peruvian government’s defense in cancelling the project was premised on the company’s failure to consult with and obtain the consent of the Indigenous communities through their chosen representatives, the very people the government had prosecuted for voicing the communities’ opinions ([Doyle 2019: 67](#)).

Although Peru fully operationalized ILO Convention 169 by April 2012, the violence did not abate. For example, in July 2012 at least five protesters were killed and dozens of others seriously injured during protests that successfully prevented expansion of the Yanacocha gold mine in the Department of Cajamarca ([Jimenez 2012](#)). At least three persons were killed in 2015 during protests in the southern Department of Apurimac at the Las Bambas copper mine operated by a consortium of Chinese mining companies. Subsequent protests in 2016 resulted in an additional death. In recent years, operations at Las Bambas have also been suspended on multiple occasions due to road blockades set up by local Indigenous communities ([Villar S. 2023](#)).

The first consultation involving the mining industry did not occur until September 2015. One reason for the delay was that the Ministry of Energy and Mines, together with the Sociedad Nacional de Minería, Petróleo y Energía (National Society of Mining, Petroleum, and Energy) claimed that Andean peasant communities should not be considered Indigenous ([Flemmer 2019: 111](#)). There were also instances where mining companies forced some Andean communities to sign documents stating that they did not consider themselves Indigenous. These initial consultations were criticized for being rushed: the four that took place under Humala’s presidency took between 34 to 45 days to conclude. The Peruvian Human Rights Ombudsman also noted that company personnel interfered in communities’ internal decision-making processes (*Ibid*).

Peru issued an oil concession in 1971 to Occidental Petroleum Corporation for *Lote 192* (formerly known as Block 1AB) in the Department of Loreto in the northern Amazon that would affect various Indigenous peoples. Although major changes were made to the concession’s territorial coverage, associated easement rights, and operators after Peru ratified ILO Convention 169 in 1994, the affected Indigenous communities were never consulted ([Doyle 2019: 63](#)). *Lote 192*, among the largest and most productive oil concessions in the Peruvian Amazon, is infamous for producing some of the worst environmental damage of any petroleum extraction operation in Peru, including repeated oil spills ([Red Internacional de Estudios Interculturales 2015](#)). These environmental catastrophes have resulted in large scale protests by adversely affected Indigenous communities over the decades that have included shutting down oil facilities.

Following years of delay, the Peruvian government finally held the first consultation with Indigenous communities in May 2015 over whether to extend the oil concession for *Lote 192* for another 30 years. One explanation for the delays is that the Indigenous communities insisted that the Peruvian government first compensate them for 40 years of oil exploitation and use of their lands as well for environmental impacts, provide title to their lands, offer remediation of their lands and rivers, and pay for an environmental and social impact diagnostic ([Alva-Arévalo 2021: 240](#)). This led to the landmark *Acta de Lima* on March 2015 that included agreements on sanitation, intercultural development, environmental remediation, and land titling.

After only three months, the government declared the consultations regarding Lote 192 “successfully concluded” even though three of the four Indigenous Federations rejected what amounted to a benefit-sharing agreement (Doyle 2019: 64). Instead of making every effort to pursue a genuine inter-cultural dialogue to address ongoing and future impacts as well as the development aspirations and needs of affected communities, the consultation process ended up bypassing many of their core concerns and realities (Doyle 2019: 65). One key consequence is that no measures were included to compensate Indigenous peoples for future oil spills, which within two years totaled up to 40 (Alva-Arévalo 2021: 241).

Among the largest petroleum concessions in the Peruvian Amazon is Lote 95 that straddles both sides of the Ucayali River that eventually joins up with the Marañón River to form the Amazon near Iquitos. In 2018 Canadian-based PetroTal Corporation, the biggest crude oil producer in Peru, acquired the concession for Lote 95 that had originally been granted in 2005 without the prior consultation of local Indigenous peoples. In 2019, members of the Kukama Kukamiria people who live in the Puinahua district of the Department of Loreto launched protests and seized some of PetroTal’s facilities over oil spills that poisoned the fish in rivers and rendered agricultural land unplatable. Subsequent protests demanded the Peruvian government and the company provide funding to improve access to electricity, potable water, and health services. Three members of the Kukama Kukamiria community were killed during a protest in August 2020 at the hands of police guarding the Campo Breña facility (Vera 2022). In 2022, the Kukama Kukamiria community reached a deal with PetroTal’s Peruvian subsidiary that requires the latter to pay 2.5 percent of annual profits into a development fund, on condition that there would be no more protests and operational disruptions by community members regardless of any future environmental breaches (Amazon Watch 2023).

Instead of contributing to an ideal of “building rights-based consensual relationships with communities, assisting in remedying ongoing harms and empowering them to pursue self-determined development”, consultations in Peru remain largely formalities that ignore Indigenous peoples’ rights (Doyle 2019: 66). The Peruvian government has yet to understand that consultations are a mechanism to protect the rights of Indigenous peoples, and to achieve a balance of constitutional rights and societal interests in a manner that is proportionate, reasonable, objective and respectful.

ASSERTING THE RIGHT TO SELF-DETERMINATION AND AUTONOMY IN THE PERUVIAN AMAZON

Given the repeated failure of the Peruvian government to carry out adequate and effective consultations with Indigenous peoples, a growing number of communities in the Peruvian Amazon have adopted “proactive strategies that combine the assertion of autonomy and customary law with the pursuit of judicial remedies” (Ibid: 67). The effort to achieve autonomy was emboldened by the *Baguazo*, where the bulk of the Indigenous protestors opposed to the reforms altering the system of communal landholding were Awajún and Wampis (Gómez 2018: 200, 212). While the 2009 protests did result in Prior Consultation Law No. 29875 and its implementing regulations, it soon became apparent that the consultation process had become a tool for government to convince communities of something already preordained (Gómez 2018: 202). Adoption of the law also led to the creation of Indigenous organizations

“with dubious claims to local or regional representation” that were often financed or backed by extractive industries “with the aim of co-opting political representation” and thus controlling consultation procedures (Larrea Burneo 2023: 117).

The Autonomous Territorial Government of the Wampís Nation,⁶ located in the northwestern Peruvian Amazon bordering Ecuador, was launched in 2015 with its own internal governance structures as well development plans and priorities. It provides a self-determined alternative to State-led land and resource planning (Doyle 2019: 67). The Wampís Nation has a population of around 13,000 people spread over 65 settlements whose territory has been a target for the expansion of a variety of extractive industries, such as oil extraction, legal and illegal gold mining, illegal logging, and even a possible hydroelectric dam project (Larrea Burneo 2023: 114). The territory of the Wampís Nation was also the site of an oil pipeline rupture in 2016 that resulted in a petition filed before the Inter-American Commission on Human Rights against the Peruvian government (Perez and Delgado 2019: 133).

Since 2015, the Wampís Nation no longer seeks Peruvian government recognition of its lands through the formal titling mechanisms as the autonomy of the ancestral territory has been self-recognized in its entirety with the goal of stopping its fragmentation into communities or settlements and yielding territory to the State in the form of “reserved” or “conservation” areas and for extractive concessions (Larrea Burneo 2023: 120). The fragmentation is a result of the Peruvian State’s formal definition of collective property which excludes forests, rivers, and subsoil resources that it manages in the “national interest” (Merino 2021: 137). Hence, utilizing the formal titling mechanisms pursuant to Peru’s Native Communities Law No. 20653 of 1974 “is equivalent to voluntarily yielding any untitled traditional territory to the State” (Ibid. 119–120).

The Wampís Nation’s government is premised on a participatory direct democracy governance structure (Ibid. 118). Articles 35, 36 and 37 of the Statute of the Autonomous Territorial Government of the Wampís Nation establishes that no extractive activity of any kind can occur within Wampís territory without the conclusion of a prior consultation process that obtains the consent of the Wampís Nation (Gómez 2018: 211). The Wampís Nation has two parallel governments for each of the two river basins that lie within its territory. The highest authority of each basin government is the *Matsutkamu Irútramu*, or Basin Assembly, which is made up of representatives from each of the two basin communities, and represents the Wampís Nation in any prior consultation process (Larrea Burneo 2023: 122). Even though the Wampís Nation is not officially recognized by the central government in Lima, it has obtained the recognition from the regional governments of the Departments of Amazonas and Loreto of its territory and political representation and has entered into cooperative relations with the local branches of the National Police and Navy to halt illegal mining activities (Ibid. 125).

Eight other indigenous nations – the Awajún, Achuar, Chapra, Kandozi, Quechua del Pastaza, Kukama-Kukamiria, Shawi and Shiwilu – have committed to constitutional processes similar to that of the Wampís, in order to establish their own autonomous territorial governments with the ultimate intention of creating an autonomous Indigenous region in the Peruvian Amazon (Ibid. 118). The Awajún, the second largest Indigenous group in the Peruvian Amazon, consisting of approximately 70,468

6 The official website of the *Gobierno Territorial Autónoma de la Nación Wampís* is found at: <https://nacionwampis.com/>.

inhabitants, is mainly spread across four departments in the north of Peru (Amazonas, Cajamarca, Loreto, and San Martín) and a small part in the center-east (Ucayali) (Ramos Cortéz and MacNeill 2021: 76). At the end of 2021, the Awajún announced the first elections for the newly created Awajún Autonomous Territorial Government.⁷

THE PROTOCOL ON PRIOR CONSULTATION OF THE ORGANIZACIÓN REGIONAL AIDSESP UCAYALI (ORAU)

The ORAU was established in 1999 and is the umbrella organization for 15 Indigenous communities as well as 13 advocacy groups found on both sides of Ucayali River, a tributary of the Amazon.⁸ Based in Pucallpa, ORAU seeks to defend the rights and cultures of Indigenous peoples and promotes sustainable development and “good living” alternatives through a variety of programs, including titling of communal lands, creation of eco-businesses, communal oversight and protection of tropical forests, as well as advocacy of intercultural and bilingual education. ORAU forms part of the *Asociación Interétnica de Desarrollo de la Selva Peruana* (Interethnic Development Association of the Peruvian Jungle – AIDSESP), which is the most important contemporary Indigenous organization in Peru and a successor to a mutual-defense Awajún-Wampís Council founded in 1977 (Merino 2021: 138). The AIDSESP is made up of nine decentralized regional bodies (of which ORAU is one) that represent some 2,439 Indigenous communities in eastern Peru with about 650,000 members speaking some 19 different languages.⁹

In 2024, ORAU issued its own Protocol on Prior Consultation.¹⁰ This was inspired by the example of Indigenous peoples in the Brazilian Amazon such as the Juruna, Krenak, and Mundurucu who, as a reaction to the government’s non-implementation of ILO Convention 169’s obligation to ensure prior consultation as well as free, prior and informed consent, designed their own procedural protocols.¹¹ ORAU’s Protocol is designed to complement the existing Peruvian legislation on prior consultation by promoting a genuine intercultural dialogue in which Indigenous peoples play a proactive role and are not relegated to mere spectators. It is premised on the understanding that the right to self-determination is closely linked to the legal obligation to prior consultation and that consent is a fundamental requirement of collective decision-making among Indigenous peoples.

Under the ORAU Protocol, all decisions proposed by the government (including legislative proposals by Congress in Lima as well as regional and municipal governments) that can impact Indigenous rights and territories require prior consultation with any potentially affected Indigenous community(ies) so that they can give their consent. For infrastructure or investment projects, consultations should begin at the planning and design stage and continue periodically through the end

⁷ The official website of the *Gobierno Territorial Autónomo Awajún* is found at: <https://gtaawajun.org.pe/>.

⁸ <https://orau.org.pe/>.

⁹ <https://aidesep.org.pe/>.

¹⁰ The full text is available in Spanish at: <https://observatorio.dereitosocioambiental.org/wp-content/uploads/2024/12/Protocolo-de-consulta-previa-de-ORAU-vf.pdf>.

¹¹ I. Olivera Gómez de Serna, DAR, Interview, September 1, 2025; Mello Neiva 2019: 235.

of a project. The Protocol expressly rejects the qualifier about communities being “directly” affected found in both ILO Convention 169 and Peru’s Prior Consultation Law No. 29785. In addition, the Protocol is applicable to *all* communities regardless of whether they have received formal titles from the Peruvian government, and permits the presence during consultations of designated organizations that can provide technical expertise and logistical support.¹²

The ORAU Protocol complements Peru’s Prior Consultation Law and implementing regulations by requiring that a consulted Indigenous community must be included in developing the procedural plan for any consultation as well in drafting informational material to be distributed to ensure it is culturally appropriate and properly translated. During the preparatory meetings stage, there should be ample time for internal or inter-Indigenous community discussions that exclude the government. The Protocol underscores that prior consultations should not be limited to the leadership of a community but should be the result of a participatory assembly that includes the participation of women and youth and ideally take place within the affected communities and territories. Finally, the Protocol requires that any agreement achieved through a consultation must identify the parties responsible for carrying out specific tasks and within a determined timeframe and calls for establishing a participatory oversight mechanism to ensure that any agreement is faithfully implemented.

However, unlike the Wampis and Awajún Nations, the ORAU Protocol is not advocating for autonomy but underscores that the obligation to consult falls solely on the State and cannot be delegated to or financed by private companies, consultants, or non-governmental organizations. One reason for insisting that consultation remains an obligation of the government is that these processes, if carried out properly, can be expensive. Hence, the cost factor is seen as an impediment for the Wampis Nation to effectively carry out its own consultations that go beyond negotiating a mutual benefits agreement.¹³ This type of agreement can also generate conflicts within communities as the benefits (such as new jobs) are not evenly distributed among community members and negative socio-environmental impacts and remediation needs are ignored.

Although ORAU’s Protocol acknowledges that Peru’s current consultation legislation allows the government to move forward with any measure or project if an agreement cannot be reached, the hope is that the Peruvian government may desist if confronted by a well-prepared and united Indigenous community that refuses to provide its consent. This may not be that far-fetched as there is the precedent of the oil block concession for Lote 157 in the southern Peruvian Amazon being significantly reduced when two of the three Indigenous communities refused to participate in a consultation process because they would not have the right to veto the proposed project (Flemmer 2019: 110).

CONCLUSION

The failure of successive governments in Peru to adequately and effectively consult with Indigenous communities, including compliance with requirements found in Prior

¹² Peru’s agrarian reform led to the 1974 recognition of a *Comunidad Nativa* or Native Community defined as “collections of families linked by Indigenous language or culture and by common use of a single territory”. However, by 2021 about 810 of these communities still lacked a formal communal title due primarily to government delays (Blackman et al. 2024: 335).

¹³ M. Carhuavilca, Confederación de Nacionalidades Amazónicas del Perú (CONAP), Interview, September 12, 2025.

Consultation Law No. 29875 and its implementing regulations, has led to assertions of autonomy among Indigenous communities in the Amazonian region of Eastern Peru. Although ORAU's Protocol on Prior Consultation is designed as a complement, not an alternative, to Peru's current legislation, nonetheless it is also a response to decades of frustration with how the consultation process has been implemented. In many ways, ORAU's Protocol reiterates what are already requirements for the government in Peru but seeks to ensure compliance. One major difference, however, is that the Protocol spells out in clear terms that the objective of any consultation is to obtain the consent of an Indigenous community. If this consent is not forthcoming, the drafters of the Protocol appear to hope that the government may find it wiser to desist rather than pursue a proposed project. In that regard, ORAU's Protocol comes up against the same problem that has bedeviled the current international legal framework on consultation with Indigenous peoples for decades: Indigenous peoples do not have the right to veto a project. Various studies on prior consultation in countries such as Bolivia, Colombia, Ecuador, Mexico and Peru "define the failures of Indigenous participation as based on Indigenous groups' inability to veto consulted projects" (Torres- Wong 2023: 30).

Despite its limitations, ORAU's Protocol on Prior Consultation is an expression of self-determination that the Peruvian government would be wise to accept if it wants to avoid new assertions of territorial autonomy in the Peruvian Amazon. For too long, the governments in Peru and other Latin American nations have repeatedly put national economic development ahead of what is in the best interests of Indigenous peoples, generating violent upheavals and numerous deaths as well as contributing to environmental catastrophes. The growing international interest in the region's renewable energy resources makes it imperative that prior consultation become a tool for genuine dialogue on sustainable development that contributes to climate and environmental justice.

COMPETING INTERESTS

The author has no competing interests to declare.

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