

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

≡ Navigation



PRIOR CONSULTATION IN LATIN AMERICA SYMPOSIUM

Prior Informed Consent – the Case of Peru

The Wrong Kind of Right? Prior Consultation
between Contestation and Meaninglessness in the
Peruvian Amazon

RICCARDA FLEMMER — 4 February, 2016



0



In 2011 Peru has adopted a contested legislation on prior consultation that is based on Convention 169 of the International Labor Organization (ILO C 169). In this contribution, I look at the first state-led prior consultations which were implemented in the Peruvian Amazon. The central questions is, how these processes can be interpreted in terms of norm legitimacy and human rights' compliance. In contrast to other studies this will not be analyzed in terms of formal standards but at the level of concrete practices.

The fact that local populations join consultation processes cannot be understood as agreement to or support for the Peruvian consultation law or ILO C169. Thus, the mere “conduction” of prior consultation can neither be interpreted as compliance with human right standards. Local populations in the Amazon area did not oppose or contest prior consultations for two reasons: First, contestation may not be truly absent but stay “invisible” to observers. Analogous to James Scott’s famous “Weapons of the Weak” (1985), contestation and opposition maybe expressed in other ways than verbally formulated critique and open protest. For example, in some consultations indigenous participants and local leaders did not sign the final agreements or the acts of official meetings. Second, prior consultations implemented by the state may be “meaninglessness” to local population. “Meaninglessness” in this regard can result from a combination of power asymmetries, in which the state unilaterally decides the meaning, scope and practices of a norm, and the missing intercultural adequacy of the processes. Accordingly, consulted communities may not understand the meaning of the consultation processes or they understand them, but feel powerless to influence the states’ norm interpretation or its behavior in general.

The presented insights stem from ethnographic fieldwork carried out by the author on first state-led prior consultations about hydrocarbon projects in the Peruvian Amazon (2013-2015).

The Contested Law of Prior Consultation

The Peruvian “Law on the right to prior consultation of indigenous and original people” was adopted in 2011. The legal framework should set the first step to finally put ILO C169 into practice in Peru after 15 years of repeated claims from indigenous peoples and the ILO.

Despite the participatory elaboration of the legal framework, the state’s proposals prevailed and indigenous organizations criticize the resulting norms vehemently. Like the global indigenous movement, Peruvian organizations demand for a broader recognition not only of their right to prior consultation but to free, prior and informed consent or a “right to veto”. In general terms the legislation defines:

The objective of the consultation is to reach an agreement or consent between the state and the indigenous or original peoples in respect to the legislative or administrative measure that affects them directly through an intercultural dialogue that guarantees their inclusion in processes of state-decision making and the adoption of measures respectful of their collective rights.” (Article 3, Peruvian Consultation Law)

The Peruvian state shortened this into the slogan “prior consultation is an intercultural dialogue”. The idea of prior consultation as an intercultural dialogue is broadly accepted but challenges the Peruvian state as well as indigenous representatives.

Obstacles for Prior Consultation in Practice

Until October 2015 ten of all 15 concluded consultation processes in Peru took place in the important hydrocarbon sector. These consultations concerned oil and gas blocks in

remote or semi-remote Amazon areas that overlap with various indigenous territories. There are two main obstacles for the implementation of prior consultation into meaningful practices in the Amazon area:

Power asymmetries

Consultations take place in the context of grave asymmetries in power. These asymmetries manifest in difference of material resources and knowledge. On the indigenous peoples' side, the ability to understand technical details of the measures proposed by the state is limited, and so is the knowledge about their rights and the process of consultation itself. During the consultations, for example, an initial event was held in order to conjointly elaborate the Consultation Plan, a document establishing the timetable of the process. Indigenous participants frequently heard for the first time of the term "prior consultation" in this meeting. Accordingly, indigenous representatives were not able to influence the procedure and only could modify in a very limited way proposed places and dates of the process.

Cultural differences and intercultural inadequacy

Prior consultations in the Amazon bring together persons from different cultural backgrounds that are not used to communicate with each other. Important cultural differences between state representatives and Amazonian indigenous people lie in language, ways of communication and decision-making as well as the perception of time. In many Amazonian areas state structures are almost non-existent or even absent and often community members consulted are not familiar with the concepts of law and the state. On the state's side, encounters with Amazonian

indigenous people are also something new, information is scarce and state representatives are not educated in intercultural communication. This holds even true for the Vice-Ministry for Intercultural Affairs, the state entity responsible for technical advice in prior consultations. An illustrative example is “The Quipu of prior consultation” designed by the Vice-Ministry as central didactic tool to explain the general seven steps proceeding of prior consultation. Quipu means knot in quechua and was a system used by the Incas to document and collect data. Supposedly “intercultural”, the tool is based on only one cultural system and even worse, on the Inca culture which in its times aimed at dominating the Amazonian tribes.

Conclusion: The Wrong Kind of Right?

Practices matter for human rights compliance. These findings are not only valid for prior consultation in Peru, but put into question prior consultation as a norm itself and the legitimacy of international legal practices. Literature on international norms focuses on “visible” norm contestation and recognizes the importance of intermediaries for the localization of human rights. Until now studies have not focused on the implementation of international norm in the context of power asymmetries between cultures. There is a need to implement not only language terms, but also rights and procedures. If indigenous people are recognized in international law and politics they accordingly have to be taken seriously in processes of norm contestation. This requires mutual understanding and respect for indigenous peoples’ ways of decision-making. Not only in national arenas but also within law-making processes at the international level intercultural adequacy needs to be implemented. This is a tremendous task for state and

indigenous representatives, as well as their advisors, which may not be resolved by capacity building but brings us to the limits of translation and epistemological differences.

Riccarda Flemmer (MA) is a political scientist, a PhD candidate at the University of Hamburg and a research fellow at the GIGA Institute of Latin American Studies. Her main areas of study are resource conflicts, the rights of indigenous peoples and prior consultations in the Amazon region.

ISSN 2510-2567

Tags: *Anthropology of International Law*



Related

Symposium: Prior consultation in Latin America – The Case of Brazil
25 November, 2015
In "Prior consultation in Latin America"

Symposium: Prior consultation in Latin America - The Case of Bolivia
5 October, 2015
In "Prior consultation in Latin America"

Symposium: Prior consultation in Latin America – The Case of Colombia
4 January, 2016
In "Prior consultation in Latin America"

PREVIOUS POST



Part 2: Simple international rights, global constitutionalism, and scholarly methods

NEXT POST

Law as a site of politics (Part I)



No Comment

Leave a reply

Logged in as ajv2016. Log out?

SUBMIT COMMENT

Notify me of follow-up comments by email.

Notify me of new posts by email.