

Indigenous Agency and Self-Determination in Prior Consultation

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Introduction

On midnight of March 3, 2016, tragedy struck the town of La Esperanza, Honduras. A few gunmen stormed into the home of Berta Cáceres, an Indigenous leader who had spent years fighting against the construction of the Agua Zarca hydro-electric dam, and shot her dead.¹ Her death sparked international outrage and after months of protests, she became one of the few environmental defenders in Latin America who received justice in the courts. In the years following, even the head of the dam company was found guilty of their role in this heinous crime. The outrage over her death also prompted the suspension of the dam due to the combination of international and internal pressures on the Honduran government. However, this instance is an exception in Latin America, where most of these crimes often go without justice or even note. In fact, a recent report by the Global Witness survey found Latin America to be the most dangerous region for environmental defenders, as it ranked the highest in terms of risk for murder.² Apart from the general risk of being murdered or kidnapped, many Indigenous community members who take up protest against extractive projects are often at risk of violence from even local police forces. Despite such risk, Indigenous peoples have continued to speak out to protect their sacred lands and communities from environmental degradation throughout the region.

This Indigenous resistance, while underreported internationally, is at the crux of the global climate crisis. Indigenous people make up eight percent of the worldwide population but

¹ Jonathan Blitzer, “The Death of Berta Cáceres | The New Yorker,” The New Yorker, March 11, 2016, <https://www.newyorker.com/news/news-desk/the-death-of-berta-caceres>.

² Diego Oré, “Latin American Environmentalists Most at Risk of Murder, Report Finds | Reuters,” September 28, 2022, <https://www.reuters.com/world/americas/latin-american-environmentalists-most-risk-murder-report-finds-2022-09-29/>.

protect nearly 80% of all ecological biodiversity on this planet.³ These communities have diverse cultures, languages, and practices, but all share special relationships with the lands they have called home for centuries. Given their remarkable role in conservation efforts worldwide, their say over the management of resources within their territories is one of importance to all our futures on the planet we call home. Unfortunately, their voices are often purposefully silenced by more powerful corporations and state institutions in favor of capitalistic development as can be seen with the violence the communities who speak out endure.

In an effort to meet international considerations for protecting Indigenous rights, many countries in the region have also designed institutions that facilitate the necessary conversations between Indigenous community members and corporations seeking to implement extractive projects from mining to constructing dams. While each country has instituted different methods and processes, a common participatory mechanism employed in the region is one of free, informed prior consent. The prior consent process came to light following the recognition of special rights to Indigenous people to their territories in the late 1990s and early 2000s. Over the years, however, the process's initial designation and impact became watered down as the diction changed from "consent" to "consultation."⁴ This simple change in terminology presents drastic implications on the level of say this affords Indigenous participants in these negotiations turning it from a question of permission to a procedural necessity for corporations. Without an influential voice in these prior consultation proceedings, Indigenous people often have to turn to protests and other forms of social resistance to gain environmental justice. These alternatives can exact

³ Gleb Raygorodetsky, "Indigenous Peoples Defend Earth's Biodiversity—but They're in Danger," *Environment*, November 16, 2018, <https://www.nationalgeographic.com/environment/article/can-Indigenous-land-stewardship-protect-biodiversity->.

⁴ Thomas Rudolf Eimer and Tom Bartels, "From Consent to Consultation: Indigenous Rights and the New Environmental Constitutionalism," *Environmental Politics* 29, no. 2 (February 23, 2020): 235–56, <https://doi.org/10.1080/09644016.2019.1595884>.

numerous costs for all actors, ranging from economic losses to human lives. Thus, failures of this process not only generate consequences for environmental justice but also socioeconomic development of these communities and nations as a whole. Indigenous community members in countries where this mechanism is established certainly recognize the influence it holds. Hence, despite the shortcomings of this process it is one that Indigenous people continue to rely on to exercise their control over the natural resource commodities of their ancestral territories.

Given their continued reliance on prior consultation, I intend to utilize this investigation to identify factors to improve the process instead of reinforcing its ineffectiveness as much of the current academic literature does. In addition to improving prior consultation, I want to establish the possibility of such a process to produce positive development outcomes for its Indigenous participants by considering case studies from Peru and Bolivia. To do so, the central questions this investigation focuses on are: 1) does agency within prior consultation for Indigenous communities produce successful consultations and augment overall development; 2) what type of relationship does self-determination have to prior consultation, and can the process enhance Indigenous freedoms?

I primarily rely on three cases of prior consultation proceedings to answer the above questions due to limitations in finding. For Bolivia, I discuss the Guaraní people, who were the first in the country to truly exercise self-governance and also utilized it to shape a new consultation process during the San Isidro Block proceeding. For Peru, I analyze the case of *Lote 192* or Block 192, where the unification of indigenous federations enhanced their agency over the process and enabled its success; additionally, I use the Wampis community to show the establishment of self-governance for Indigenous people in the country. In addition to a combination of reports, prior literature, and interviews, these cases help inform my findings. The

analyzed data firstly shows that when Indigenous people can exercise and invoke their agency within the consultation process through mechanisms like independent monitoring, they significantly improve prior consultation within their states and generate positive socioeconomic outcomes for all actors. Secondly, autonomous governance and prior consultation share a symbiotic relationship where self-determination in prior consultation can strengthen its outcomes as with the Guaraní people; likewise, the implementation of prior consultation can also further self-determination for Indigenous communities like the Wampis. I want to emphasize that while prior consultation remains imperfect and ineffective in some instances, this research shows that when factors that grow Indigenous freedoms are present in prior consultation, it can enable Indigenous peoples to frame their own development in a way that can enhance national socioeconomic development as a whole. Hence, despite the criticism of prior consultation, the already established process still may be able to act as the solution the region needs to solve the crises of human development alongside natural resource conservation.

Background

Understanding Prior Consultation

While I briefly established the prior consultation process in Latin America above, it is vital to lay the necessary framework under which this paper will consider prior consultation proceedings, specifically in Bolivia and Peru. The implementation of these processes comes from the ratification of various documents at the international and national levels. Both countries ratified the United Nations Declaration on the Rights of Indigenous and Tribal Peoples in 2007, which recognized the special protection of the freedoms of Indigenous peoples under international law; in Bolivia, the declaration even holds the weight of statutory law.⁵ The International Labor Organization (ILO) Convention 169 further extended the Declaration, as it called for the requirement of consent from Indigenous groups ahead of using protected territory for the cultural and spiritual value that those areas represent to them.⁶ Thus, prior consultation is the name given to the process under which governments must consult with Indigenous populations regarding the environmental consequences before approving industrial projects. Following this, Bolivia and Peru passed legislation codifying the prior consultation process within their legal frameworks. Bolivia began by recognizing the rights of Indigenous peoples and setting forth consultation processes, particularly pertaining to the mining and hydrocarbon industry; it extended this with the ratification of a formal law mandating prior consultation in 2014.⁷ There is, however, no

⁵ Maria Clara Glavis, “The Right of Indigenous Peoples to Prior Consultation: The Situation in Bolivia, Colombia, Ecuador, and Peru,” trans. Greta K. Siebentritt (Debido Proceso Legal Fundacion), accessed December 8, 2022, <https://policy-practice.oxfam.org/resources/the-right-of-Indigenous-peoples-to-prior-consultation-the-situation-in-bolivia-620799/>.

⁶ Gisela Zaremborg and Marcela Torres Wong, “Participation on the Edge: Prior Consultation and Extractivism in Latin America,” *Journal of Politics in Latin America* 10, no. 3 (December 1, 2018): 29–58, <https://doi.org/10.1177/1866802X1801000302>.

⁷ “Implementacion de la Consulta y Consentimiento Previo, Libre e Informado” (Fundacion para el Debido Proceso, October 2018), https://www.dplf.org/sites/default/files/informe_sobre_consulta_y_cpli_mexico_final_web.pdf.

established governing body to enforce such proceedings outlined by the law, making it more of a formality than an actual process. On the other hand, Peru passed its law on the right to prior consultation for Indigenous communities in 2011. In addition to the legislation, Peru also set expectations that the process would be overseen and enforced by the Intercultural Vice-minister of the Cultural Ministry. This legislation has led to Peru standing out from its counterparts in the region in terms of its employment of state actors to implement and regulate the policies for prior consultation.⁸ Apart from the enforcement mechanisms, there are challenges when it comes to implementing the process. Specifically, given the larger populations of Indigenous people in Peru and Bolivia, it becomes difficult to define the limits of communal ownership and who qualifies for prior consultation.

In addition to these challenges, since the ratification of the Declaration on the Rights of Indigenous and Tribal Peoples, the initial concept of recognizing Indigenous rights over their territory has quite literally been polluted. This degradation can be seen in the simple syntax change over the years as mentioned before. The initial legislation centered around creating processes for “prior informed consent,” while more recent ones call for “prior consultation.”⁹ This small change in wording has transformed the inherent legal value of prior consultation to Indigenous communities as it turns these processes into mere formalities. Under legal interpretations, consent mandates an approval from the Indigenous participants for the project to proceed, while consultation acts as a socialization mechanism where they are involved in discussions without yielding true power.¹⁰ Despite these challenges, the prior consultation model

⁸Banco Mundial, “La Consulta Previa En El Perú: Aprendizajes y Desafíos” (Washington, D.C.: Banco Mundial, 2016), <https://documents1.worldbank.org/curated/en/164661472713448678/pdf/108118-SPANISH-WP-PUBLIC-SPANISH-ABSTRACT-EMAILED.pdf>.

⁹ Eimer and Bartels, “From Consent to Consultation.”

¹⁰ “*Consulta Previa: The Political Life of a Constitutional Right*,” in *Resource Radicals*, by Thea Riofrancos (Duke University Press, 2020), 77–114, <https://doi.org/10.1215/9781478012122-004>.

remains dominant within Latin America and dramatically influences the ways in which Indigenous communities interact with their governments and economies. Yet there remains little investigation on the actual impact of the implementation of this process on the Indigenous communities that participate beyond the effectiveness of it in limiting extractivism. It is for this reason that I chose to study the ability of this particular participatory mechanism to generate developmental outcomes when specific factors are present within this thesis.

Defining the Indigenous people and the importance of development

Although there remains a struggle in classifying Indigenous peoples within prior consultation proceedings, Bolivia and Peru have made strides to formally recognize the Indigenous communities within their borders. Within Peru, the classification and identification of Indigenous people in the country lie with the same Ministry of Culture responsible for implementing prior consultation. The most recent figures from the Indigenous Working Group for Indigenous Affairs put the total population of Indigenous people in Peru at 4 million or nearly 26% of the overall national population. Most of them reside in the Andes, as an overwhelming percentage are Quechua.¹¹ While Bolivia does not hold the same infrastructure for accounting for its Indigenous population, the National Consensus found that nearly half of the country identifies as Indigenous in origin. The country recognizes 38 different Indigenous groups, which shows the expansiveness of indigeneity within Bolivia and the added complexity of its proceedings. The two countries have significant comparability for their shared geographic concentration of Indigenous people within the Andes and their vast populations within both countries.

¹¹ “Peru - IWGIA - International Work Group for Indigenous Affairs,” accessed September 16, 2022, <https://www.iwgia.org/en/peru.html>.

As there is a clearer picture of the scale of communities these processes serve, there is also a need to consider the developmental impacts of participatory mechanisms like prior consultation. Despite seeming like dominant populations, especially within Peru and Bolivia, as a whole, Indigenous communities remain largely excluded from social, political, and economic arenas. A recent World Bank study finds that despite Indigenous communities making up 8% of the overall population, they are “14 percent of the poor and 17 percent of the extremely poor in Latin America.”¹² For this reason, it is imperative to analyze how Indigenous communities are garnering access to development opportunities and what sort of development they aspire for.

¹² “Indigenous Latin America in the Twenty-First Century,” World Bank, accessed December 8, 2022, <https://www.worldbank.org/en/region/lac/brief/Indigenous-latin-america-in-the-twenty-first-century-brief-report-page>.

Literature Review

Indigenous communities, crucial in protecting global biodiversity, have been at the forefront of the ecological preservation discussion in recent years. Due to Latin America's diverse and complex Indigenous population, they are often studied within academic literature through a variety of themes. However, this paper's specific focus examines one of the lesser-discussed and equally relevant threats to Indigenous peoples in Latin America: the extractive industry. It seeks to further inform of the sociopolitical effectiveness of the implementation of *previa consulta* in the region to produce sustainable development as defined by the Indigenous communities it impacts.

Under the implementation of neoliberal policies under the Washington Consensus doctrine, much of Latin America saw an exponential increase in the role of extractive industries within their economies as fostered by foreign investment. Yet, the economic growth enabled by fossil fuel and hydrocarbon industries came at a severe cost to the environment and the rights of Indigenous people over their ancestral lands. This paper analyzes the relationship between the say afforded by prior consultation proceedings to manage resource extraction and the right to self-determination for Indigenous communities in Peru and Bolivia to dictate their own development freely.

It is important to note that while prior consultation is a widely implemented institution within Latin America, there is not a significant amount of scholarly literature on the subject. Of the sixteen countries with Indigenous populations, fourteen have ratified the ILO Convention 169 referendum, thus demonstrating the prevalence of the process in the region. What does exist covers a wide range of variables, from the process's effectiveness to assessing its impacts on the

community within contexts such as the mediation of extractive violence against community members.¹³ The authors of “Empowerment or Imposition? Extractive Violence, Indigenous Peoples, and the Paradox of Prior Consultation”, analyze 68 case studies to determine the extent of extractive violence (violence in the sense of consequences experienced by a specific actor) against Indigenous communities on three scales: 1) dispossession, 2) coercion, and 3) psychophysical harm. They conclude that despite the original design of prior consultation to protect Indigenous rights, it often fails to stop the dispossession of Indigenous lands and can thus worsen extractive violence.¹⁴

Apart from its outcomes in the conservationist and sociological sense, the prior consultation process is also analyzed through various theories within the development context. While most examine this process for its ability to produce effective outcomes in limiting extractive industry, some question who the process truly benefits. In her paper, Jimena Sierra-Carmago applied a colonial approach to analyzing the prior consultation process and the outcomes it generates. Carmago finds that due to the creation of prior consultation under colonial and liberal trade bias, it fails to recognize the Indigenous necessities and therefore, accomplish its intent.¹⁵ Apart from the inherent nature of the process and its implications, there needs to be more discussion of how prior consultation processes actually impact development within these communities. This conversation on developmental outcomes is vital to consider, as it is the same

¹³ Philippe Le Billon and Nicholas Middeldorp, “Empowerment or Imposition? Extractive Violence, Indigenous Peoples, and the Paradox of Prior Consultation,” *Our Extractive Age: Expressions of Violence and Resistance*, 2021, https://library.oapen.org/bitstream/handle/20.500.12657/48472/9781000391589.pdf?sequence=1&fbclid=IwAR1bwgX4SOkXKOO8WYabg6ISX15hxZjfkQHak_cgSvXZm2ZUgiyNkr93teY#page=86.

¹⁴ Philippe Le Billon and Nicholas Middeldorp.

¹⁵ Jimena Sierra-Camargo, “La importancia de decolonizar el derecho internacional de los derechos humanos: el caso de la consulta previa en Colombia,” *Revista Derecho del Estado*, no. 39 (December 2017): 137–86, <https://doi.org/10.18601/01229893.n39.07>.

argument for resource-led development which has fostered the growth of the extractive industries that threaten the Indigenous peoples.

There is a multitude of ways in which one can study development outcomes in the context of Indigenous communities. The emphasis on prior consultation proceedings within this paper is due to the findings of the study conducted by François-Michel Le Tourneau and his colleagues. In their paper, they utilize the “DURAMAZ” indicator system, a multidimensional approach to data collection and indicators analyzed, to study development outcomes in the Amazon region. They identify the degree of accessibility as an essential variable when considering the ability of policies to produce development outcomes within the region.¹⁶ Thus, it is critical when considering development within Indigenous communities to examine policies that impact them and their level of influence in implementing those policies.

It is of note to mention that there is substantial research that questions the effectiveness of prior consultation proceedings altogether. The reasons that these papers outline differ, but the common thread ties to the political involvement of Indigenous communities within this process. In their paper regarding the limitations of the prior consultation processes in Bolivia and Peru to prevent extractive practices, Riccarda Flemmer and Almut Schilling-Vacaflor utilize a participatory development approach to study state-led consultations in hydrocarbon projects in Bolivia and Peru. They define participatory in the sense that the actors have the ability and agency to take part in the consultations without being bound by power structures. Within this context, their study determines that prior consultation proceedings are not producing the

¹⁶ François-Michel Le Tourneau et al., “The DURAMAZ Indicator System: A Cross-Disciplinary Comparative Tool for Assessing Ecological and Social Changes in the Amazon,” *Philosophical Transactions of the Royal Society B: Biological Sciences* 368, no. 1619 (June 5, 2013): 20120475, <https://doi.org/10.1098/rstb.2012.0475>.

necessary outcomes because participation is limited and the lack of Indigenous ownership of the process. They indicate that this shortcoming is the lack of intercultural understanding between the governments and the Indigenous communities.¹⁷ Other work also demonstrates that international influence deters essential consultation mechanisms, which affects Indigenous agency of the process.¹⁸

Others in the field, such as Roger Merino, corroborate participatory elements as significant in explaining the limitations of prior consultation by studying the participatory mechanism in conjunction with more comprehensive environmental governance measures. In his investigation, Merino notes that the process fails as the governments employ weak participatory channels instead of installing viable means of institutional reform to enable the employment of self-determination for Indigenous communities. The author also mentions, however, that despite its shortcomings, many Indigenous and local communities continue to participate in the process. They utilize the process to voice historical concerns and create changes in environmental governance which speaks to the concerns of agency outlined by Flemming and Schilling-Vacaflor.¹⁹ Since the authors wrote these articles, new literature has been published that supports the employment of participatory mechanisms by Indigenous communities to generate autonomy for themselves. It is this process that Nancy Postero and Nicole Fabricant highlight in Bolivia. They provide an in-depth analysis of how the Guaraní people instead manipulated the ambiguities of political participation to fulfill their vision of garnering self-governance. By

¹⁷ Riccarda Flemmer and Almut Schilling-Vacaflor, “Unfulfilled Promises of the Consultation Approach: The Limits to Effective Indigenous Participation in Bolivia’s and Peru’s Extractive Industries,” *Third World Quarterly* 37, no. 1 (January 2, 2016): 172–88, <https://doi.org/10.1080/01436597.2015.1092867>.

¹⁸ Eimer and Bartels, “From Consent to Consultation.”

¹⁹ Merino, Roger, “Re-Politicizing Participation or Reframing Environmental Governance? Beyond Indigenous’ Prior Consultation and Citizen Participation,” *World Development* 111 (November 1, 2018): 75–83, <https://doi.org/10.1016/j.worlddev.2018.06.025>.

participating in the political process, they procured support from people in positions of power and ultimately earned Indigenous autonomy.²⁰ This research has also been a valuable resource in understanding the political process within Bolivia for Indigenous communities, which will designate the wider context for prior consultation procedures there. Similar instances exist of movements for autonomy that have been successful within Peru, like that of the Wampis community which this paper later discusses.²¹ This element of autonomous governance makes it a notable variable for comparison within the context of how Peru and Bolivia conduct prior consultation. Particularly, since autonomy considerably changes the dynamics of power within these discussions. The influence of self-governance as a participatory mechanism alongside prior consultation remains unstudied within development literature. The significance of this factor is what this paper seeks to examine through its primary research question.

As the information cited above shows the relevance of the argument I intend to make, I can better explain the parameters of my investigation. Development literature is vast and possesses a plethora of mediums for study— most associate it with economic and societal growth; however, some also measure it in terms of human development. “The ability of community based natural resource management to contribute to development as freedom and the role of access,” for instance, analyzes resource management within Indigenous communities in alignment with traditional measures such as job creation and in terms of freedom. The authors define freedom as the ability of the aboriginals in Australia to engage and have control of their communal resources. This source acts as a significant foundation of this thesis, given its finding that it is more significant to analyze community resource management programs under the

²⁰ Nancy Postero and Nicole Fabricant, “Indigenous Sovereignty and the New Developmentalism in Plurinational Bolivia,” *Anthropological Theory* 19, no. 1 (March 1, 2019): 95–119, <https://doi.org/10.1177/1463499618779735>.

²¹ “Peru - IWGIA - International Work Group for Indigenous Affairs.”

development as freedom theory.²² Based on this investigation, there is support for expanding the discussion of freedoms held by Indigenous communities within Latin America, specifically, whether the prior consultation process helps augment them by increasing the overall access and control of Indigenous communities.

In this paper, I also wanted to consider the point of neocolonialist practices embedded within the prior consultation raised by Sierra-Carmago in her article. It is necessary to define development within the Indigenous context to truly consider whether the prior consultation serves its purpose of empowering Indigenous communities. In the book *Alternative Pathways to Sustainable Development: Lessons from Latin America*, the authors analyze development policy within Latin America, emphasizing the concept of “buen vivir,” or the good life originating from Indigenous philosophies as the contrarian approach to extractive resource-led development within Latin America. The “buen vivir” approach centers around deriving social progress through living in harmony with nature instead of living off its wealth.²³ This conceptualization of development from the Indigenous perspective fortifies the rationale to study human development outcomes to measure progress for Indigenous communities brought on by prior consultation.

The paper builds its second means of measurement off prior academic research on prior consultation. While there needs to be more substantial research on the subject, there have been studies regarding the overall structure of the process and the actors it involves. An investigation that has framed the data selection of this paper is an analysis of the process from three different countries by Gisela Zaremborg and Marcela Torres Wong. Their investigation analyzed case

²² Jane Addison et al., “The Ability of Community Based Natural Resource Management to Contribute to Development as Freedom and the Role of Access,” *World Development* 120 (August 1, 2019): 91–104, <https://doi.org/10.1016/j.worlddev.2019.04.004>; Amartya Sen, *Development as Freedom*, 1999.

²³ Gilles Carbonnier, Humberto Campodónico, and Sergio Tezanos Vázquez, eds., *Alternative Pathways to Sustainable Development: Lessons from Latin America* (Brill, 2017), <https://doi.org/10.1163/9789004351677>.

studies from Bolivia, Peru, and Mexico to determine where the prior consultation lay from high to low public order and whether they produced extractive outcomes. The scale of their data is quite valuable as they examined every case study to determine whether extractive practices were limited, whether the government employed repressive methods, and whether Indigenous communities received any benefits. Thus, their paper fortified the reasoning for utilizing Bolivia and Peru as the central cases for investigation within this essay; their analysis fundamentally informs the hypothesis of this paper, as their findings make evident that Peru and Bolivia share considerable similarities in the conduct of prior consultation. Yet, as the two countries vary in generic development measures and self-governance laws, the factors of agency within the process and autonomy can prove central to defining conditions in which prior consultation is successful.

Research Questions

Therefore, in providing a brief summation of the central questions of this investigation, the following:

First, the paper seeks to answer how the ability to exercise agency has shaped the success of prior consultation proceedings in Bolivia and Peru. To do so, it will rely on using two case studies, one from each country, to analyze the impact of agency within these proceedings for Indigenous communities on the overall success of the consultation. Understanding this impact can also be connected to whether success in these consultations can generate positive social development for Indigenous communities.

Second, the paper will examine the relationship that self-governance has with prior consultation and its ability to dictate the effectiveness of these proceedings. Although this will be a more theoretical examination of the historical background of autonomy within Bolivia and Peru, it will seek to use examples of Indigenous autonomy from both countries to determine if differences in the rollout of self-governance influences the overall extent of agency held by Indigenous communities during the prior consultation.

All of this pertains to the overall focus of this paper, which is to see if *previa consulta* is an effective means of generating sustainable development outcomes for Indigenous communities within Bolivia, Peru, and the wider region.

Theory

I intend to utilize a participatory development theoretical approach to assess the questions outlined above. This approach, as utilized by Flemmer and Schilling-Vacaflor, draws on assessing participatory mechanisms, like prior consultation proceedings, in their ability to enable those involved to have a more significant say over their own development.²⁴ This theory aligns with the rationale of development as freedom. Access to participatory mechanisms enables participants to hold and enhance their freedom to shape how they lead their lives. Furthermore, the participatory development model extends to the importance of self-determination for Indigenous people, as being able to govern their territories allows them to control the management and distribution of resources to fit their traditional ways of living.

For the factors assessed, I could not quantify the impact of agency and self-governance as available did not offer information at the local scale. Hence, I take a more qualitative and theoretical approach by analyzing case studies from Bolivia and Peru that act as prominent examples of the presence of both factors. After providing the necessary background and defining the case studies, I can establish the role these factors played in the success of the proceedings. Furthermore, data on human development backs up these findings, such as local health outcomes, showing how increased agency in a proceeding can allow participants to further their developmental needs. While such specificity in examining four Indigenous groups (the Guaraní, Wampis, Kichwa, Quechua, and Achuar) may hinder drawing broader conclusions, it is particularly important when considering matters involving the often-homogenized Indigenous groups. Each of these groups holds remarkably different traditions and needs, which came

²⁴ Flemmer and Schilling-Vacaflor, “Unfulfilled Promises of the Consultation Approach.”

through in the practices they employ, yet the focus of this paper is the factors they share, agency and self-determination, which are defined by the communities they are institutionalized in. Although I rely primarily on case studies to define the relationship between self-determination and prior consultation, due to my current limitations in available statistical data, they can be overcome in the future. Further research that collects survey information on outcomes in communities with these factors and those without at national scales can enable better comparisons in implementation practices of the studied factors between Peru and Bolivia. The essence of this investigation's theoretical approach is to explain how Indigenous communities in Bolivia and Peru can realize and define their own development through their ability to exercise their freedoms within institutional frameworks such as prior consultation.

Methodology

Case Selection

This investigation, as mentioned before, centers on utilizing cases from Bolivia and Peru to understand the relationship between self-determination and agency within prior consultation proceedings and their ability to generate development outcomes. However, the selection of the two countries is not arbitrary. Peru and Bolivia share significant characteristics in terms of their Indigenous populations, geography, and legislative practices. Both countries have ratified and enacted similar legislation upholding the rights of Indigenous people. Yet, they share an important distinction in how both have enforced the prior consultation process, as aforementioned in this paper. Their shared vast Indigenous populations and similar geographic location also enable the elimination of other variables which may influence differences in outcomes, such as sample size or climate.

Another distinction crucial to comparing prior consultation processes lies in the role of state government within these discussions. Both countries have enacted models for Indigenous self-governance within their legislation, but the extent to which they are genuinely exercised differs. Bolivia rolled out a mass decentralization and enabled nine departments to be autonomous; Peru, however, only recently granted autonomy to its Indigenous communities and has done it on a case-by-case basis. Implementing self-governance in the Bolivian government has yet to translate to authentic autonomy for all of its Indigenous communities. It remains just local administration, apart from a few instances where communities have fought for independent governance, such as the Guaraní, which this paper analyzes in depth. This instance is comparable to specific communities, like the Wampis in Peru, who earned their autonomy and have complete

jurisdiction over their territory.²⁵ Thus, it becomes of note to compare the quality of self-governance within both countries and whether it honestly generates the agency necessary for Indigenous communities to dictate their own development.

Data

While the participatory development approach can be studied with both qualitative and quantitative means, this investigation will primarily rely on a qualitative approach by assessing official documents, government releases, and prior research to construct the two case studies within the first part of this investigation. These case studies pertain to conflicts over the use of Indigenous lands that are divided up as “blocks” for the hydrocarbon industry and occurred roughly five years from one another. Specifically, a block is the name for the territory within a contractual agreement for a corporation on the exploration and extraction of resources, be it oil or gas, many of which encroach on protected territories. Expressly, these blocks overlap 57 Indigenous lands in Bolivia and over 1,001 in Peru.²⁶ It will also rely on various readings and even interviews of officials to support the theoretical framework the investigation suggests about self-governance within the second part.

Specifically, the case study information for Block 192 in Peru draws on a report by an independent organization called “All Eyes on the Amazon,” which consolidated academic literature and official documents released by the Peruvian government on this prior consultation proceeding. In addition to the information provided by these resources, this investigation will

²⁵ “Peru - IWGIA - International Work Group for Indigenous Affairs”; Postero and Fabricant, “Indigenous Sovereignty and the New Developmentalism in Plurinational Bolivia.”

²⁶ Yvette Sierra Praeli, “In the Western Amazon, Oil Blocks Eat Away at Indigenous Lands, Protected Areas,” Mongabay Environmental News, October 24, 2022, <https://news.mongabay.com/2022/10/in-the-western-amazon-oil-blocks-eat-away-at-Indigenous-lands-protected-areas/>.

also draw on data released by the Peruvian government about the current levels of health and overall social development in that area to uphold the validity of the participatory development approach.

The second case study on the San Isidro Block in Bolivia utilizes a similar blend of official documents and academic research. It will draw on an official report from Oxfam, an international non-profit, and a research document produced by the International Work Group for Indigenous Affairs or IWGIA. There will also be averages of social development in Bolivia following the implementation of this proceeding to determine if the region experienced favorable development in the social context.

Finally, the second section of this investigation will draw heavily on past academic research on the construction of plurinationality within Peru and Bolivia. It will connect it to the instances of specific Indigenous communities in both countries, the Wampis and Guaraní, respectively. In addition, to establish the theoretical framework this investigation recommends for further research, it will rely on testimonies provided by directors representing both countries at a meeting on standardizing the prior consultation in the region by the “Defensorias del Pueblo.”

Process:

The following explains the breakdown of this investigation. The analysis of the research questions posed by this investigation will be broken into two parts. The first question about the role of agency within prior consultation will be analyzed by an in-depth look at the two case studies, the first being that of Block 192, the second being the San Isidro Block. It will provide background and assess the specifics of both case studies to determine whether the success of the

two prior consultation proceedings can be attributed to the level of involvement and agency that Indigenous actors had. In identifying these factors, it will be possible to determine why agency can be a significant variable for assessing the success of prior consultation and overall development outcomes for these participants.

The second section will elaborate on the factor of agency and how that is exercised legally by Indigenous peoples in Bolivia and Peru. As there is no statistical data or currently available research, it will be a theoretical approach that will utilize prior information regarding the legalization of Indigenous autonomy in both countries to hypothesize why differences in institutional autonomy have produced differing prior consultation processes within Peru and Bolivia. Specifically, it will show how these differences have altered the overall quality of prior consultation and the possible development outcomes it can produce in both countries.

Analysis

PART 1: CASE STUDIES FROM PERU AND BOLIVIA

The Peruvian Challenge: Block 192

Since the first official prior consultation proceeding took place in May of 2013 in Peru over establishing a regional conservation area for the Kichwa and Maijuna people, the country has only seen a rapid increase in such consultations.²⁷ Specifically, the country implemented seventy-one of the eighty-three proceedings it underwent.²⁸ While this statistic may demonstrate that the country has experienced great success, many of these proceedings resulted in agreements that were only agreed upon but never implemented in practicality. It is for this reason that many of the tribes needed to return to engage in more prior consultation proceedings with local government officials over a variety of problems ranging from conservation areas to mining. However, that is not to say that there have not been examples of success within Peru's last decade of conducting *previa consulta* processes. One of these successes is that of the Achuar, Kichwa, and Quechuas in their negotiations over *Lote 192* for hydrocarbon exploitation. At the heart of their success is their ability to extend agency over the consultation proceeding, which has furthered the quality of life and freedoms of the Indigenous actors.

Ahead of examining how this case upholds the argument of this thesis, it is vital to provide a historical background for the consultation proceeding. Oil exploration first started in the Four Basins at the Block 8 and Block 1AB sites, which would go on to be Block 192. A combination of actors controlled these sites, such as oil companies, including Petroperú, the

²⁷ Cynthia A. Sanborn, Verónica Hurtado, and Tania Ramírez, *La consulta previa en el Perú: avances y retos*, First edition (Universidad del Pacífico, 2016), <https://doi.org/10.21678/978-9972-57-366-8-2016>.

²⁸ "Procesos | Consulta Previa," accessed September 16, 2022, <https://consultaprevia.cultura.gob.pe/proceso>.

national company, and foreign corporations, such as Pluspetrol Resources and Occidental Petroleum Company (OXY). These operations occurred on the ancestral lands of many Indigenous communities who decided to organize against exploitation and environmental degradation by forming Indigenous federations into the early 2000s.²⁹ As mentioned before, the ILO Convention 169 was ratified during this time, which affirmed Indigenous special claims to their territories, so the Indigenous communities gained institutional strength. The ratification translated to the creation of Indigenous environmental monitoring groups whose reports raised alarm over the contamination of waters due to oil spills and adverse health consequences on primarily young children, ultimately leading to Indigenous mobilizations that turned violent in 2008.

Finally, in June of 2011 the various Indigenous federations unified under the banner of the “Amazonian Indigenous peoples United in Defense of the Territories” or PUINAMUDT.³⁰ The organizations came together to coordinate their efforts and engage in joint action with the state over the pollution of the 300,000 hectares surrounding the sites due to oil extraction by Pluspetrol and the other corporations. This union proved highly important as those sites were responsible for 17% of the total oil production in the country.³¹ The same year, the government of Peru signed into law the mandate for prior consultation proceedings. Following the enactment of this law, the Indigenous coalition decided to engage in the process following the creation of a

²⁹ K Melo, “Dialogue with the State and Territorial Strengthening of the PUINAMUDT – AEA Learning Platform,” *Paths of Resistance – Case Studies Series* (blog), July 20, 2021, <https://toamazonia.org/case-study/dialogo-con-el-estado-y-el-fortalecimiento-territorial-de-los-puinamudt/>.

³⁰ Melo.

³¹ Sanborn, Hurtado, and Ramírez, *La consulta previa en el Perú*.

Multi-sectoral Committee in 2012 that involved a variety of ministries so that the dialogue facilitated between the federations and the government was holistic.³²

While the prior consultation proceeding ended through corruptive practices in 2015 due to the profitability of the oil production sites, there were still significant advances made in the years prior to its end. The first was the approval of a proposal by the government on August 13, 2015, for a social fund that would be equivalent to 0.75% of the overall revenue generated by the oil production sites. Still, there was some dissent between the federations about the validity of such a fund. This agreement should have amounted to a promised payout of around \$42 million by Pluspetrol, which, while a monetary success for Indigenous communities, did not result in the environmental remediations by the company they were seeking.³³ The other was a thorough environmental diagnosis of the area after 40 years as a result of demands by PUINAMUDT, which was actualized by reporting from independent Indigenous monitoring sources. Additionally, the ratification of the Lima Act promoted further diagnoses through increased Indigenous participation. More diagnoses of extractive impact also meant considering wider health consequences on the local Indigenous populations, especially raising the alarm over the significant levels of children impacted.

All of this allowed for increased reporting through 2018, which enabled the Indigenous federations to have a strong case which they plead at the international level by filing complaints to the United Nations and the Dutch National Focal Point of the Organization for the Economic

³² Melo, “Dialogue with the State and Territorial Strengthening of the PUINAMUDT – AEA Learning Platform.”

³³ Sanborn, Hurtado, and Ramírez, *La consulta previa en el Perú*.

Co-operation and Development on Pluspetrol breaking their regulations.³⁴ Through internal and external pressures, they reopened the prior consultation proceeding in 2019.

Ahead of this proceeding, the Indigenous federations had already mobilized to garner local support through media communications to generate pressure on the government and the corporation to hold a fair process. Essentially, they circulated the campaign, “Consulta Previa #SinTrampas” or prior consultation without cheating, across radio programs and leaflets throughout local communities to generate unity on the subject.³⁵ Following this circulation, the work of the Indigenous people successfully prompted the government to open a new prior consultation process under a new Consultation Plan. In 2020, PUINAMUDT also called for an addendum to the plan that incorporated other government sectors, from health to housing, when consulting with a corporation.³⁶ However, this process did not conclude due to the COVID-19 outbreak in Peru. Additionally, at this time, Pluspetrol announced its liquidation and pulled out of the country. However, their lack of promised remediations generated a \$4.8 million fine for the company when the Environmental Assessment and Enforcement agency (OEFA) found it to be in the wrong. The fine by OEFA contributed to the Contingency Fund for Environmental Remediation which became the previously mentioned fund agreed upon in 2015. In addition, the Indigenous participation on its Board of Directors allowed for environmental remediation procedures to begin with the state in 2021.³⁷ As it is a communal fund, the Indigenous peoples could direct the funds toward funding their own social and economic programs.

³⁴ Melo, “Dialogue with the State and Territorial Strengthening of the PUINAMUDT – AEA Learning Platform.”

³⁵ Melo.

³⁶ Melo.

³⁷ Melo.

With the details of the case established, this case study is a pertinent example of demonstrating the importance of agency toward the effectiveness of the prior consultation process. This entire case study is not without fault as it highlights the numerous issues the Indigenous communities must face before engaging in a dialogue at an institutional level. These barriers include confronting physical violence in protests to corruption within the government, limiting their constitutional rights. For this reason, this case study is so interesting as often the claims made by Indigenous peoples during the meetings extended beyond oil exploitation to include health, infrastructure, and intercultural understanding, as seen in the demands of the addendum that PUINAMUDT asked for.³⁸ The prior consultation proceeding acted as essential platforms for the Indigenous communities to voice their more eminent needs and concerns about things from health to infrastructure in addition to protecting their territories. This expansion of developmental demands is central to the participatory development approach consideration of the role of agency. Even if the process presented many challenges and flaws, most Indigenous federations found it a crucial means of exercising their agency over their territories and holding influence over the outcome despite stacked odds. This very belief in their ability to hold sway over their territories and lives that prior consultation propagates, prompted the Indigenous peoples to bind together.

In considering the outcomes of this case study it is vital to comprehend the scale of the feat accomplished by these Indigenous communities in Peru. For the success they earned, it needed the consolidation of efforts from a hundred different communities of diverse backgrounds

³⁸ Roger Merino and Carlos Quispe, “Consulta Previa y Participación Ciudadana En Proyectos Extractivos. Los Límites de la Gobernanza Ambiental,” *Pacífico Escuela de Gestión Pública*, no. No. 5 (October 2018), <https://www.up.edu.pe/egp/Documentos/Policy-Brief-05.pdf>.

and needs to come together under PUINAMUDT to raise their voices as a whole.³⁹ This union by no means is a small feat, but it also showed how the merging of Indigenous federations was able to translate to wider unification in support of Indigenous rights over their territory by their employment of radio messaging and flyers throughout communities in the Loreto region where these sites are based. It shows how the ability to have institutional agency through processes such as prior consultation can provide vulnerable communities like the Indigenous tribes in Peru to amplify their agency and extend it towards a communal goal. This unification enabled the Indigenous federations to actualize economic compensation for their damages and have their claims gain recognition at the national and international scale. They could exercise power over the advantaged corporations within the proceedings as a result of being able to voice their needs in a unified manner over decisions pertaining to their territories through multiple institutional channels. Ultimately, the unification augmented the overall say Indigenous groups had and demonstrated how increased agency for participants within prior consultation is vital towards its success.

Given the employment of agency by these Indigenous communities to raise concerns over health and other social issues, it is also possible to uphold the validity of the participatory development approach by analyzing data on social indicators for development. For this, the investigation draws on information collected by the Peruvian government on the health, education, and economic situation of its Indigenous people based on the National Household Survey (ENAHU) and the Demographic and Family Health Survey (ENDES). This data shows that the total percentage of Indigenous people with health insurance in the Loreto region is actually higher by 2% than non-Indigenous residents. Furthermore, compared to the national

³⁹ Melo, "Dialogue with the State and Territorial Strengthening of the PUINAMUDT – AEA Learning Platform."

average of 75.4%, 86.9% of Indigenous people in Loreto have access to health insurance.⁴⁰

These statistical differences show that the involvement of the Ministry of Health during the prior consultation proceedings and demands raised over health concerns are actually being realized in the Loreto region. Therefore, it supports the notion that added agency facilitates improvements in actual social conditions for Indigenous communities employing prior consultation to voice their social needs alongside protecting their territories.

To summarize, despite the hardships faced by those comprising PUINAMUDT, their consolidation of voices and ability to exercise their agency was a defining factor in redeeming a prior consultation proceeding plagued by corruption and violent practices to generate the necessary outcomes to drive their own social development.

The Bolivian Success: The San Isidro Block

Another notable case is that of the San Isidro Block in Bolivia, which came into play in 2010 after the amendment of the Bolivian constitution to include Indigenous rights to free and informed, prior consultation under Supreme Decree No. 29033 in 2007 and also the promulgation of Law No. 4021, which allowed for municipalities to turn autonomous in 2009.⁴¹

The San Isidro Block was one of the first to go through prior consultation, but since then, Bolivia has undergone seventy prior consultation proceedings for the hydrocarbon industry alone.⁴²

⁴⁰ “Indicadores Sociales | BDPI,” accessed October 27, 2022, <https://bdpi.cultura.gob.pe/indicadores-sociales>.

⁴¹ Leonardo Alvarado et al., “Protocolos Autonmicos de Consulta Previa Indígena en América Latina: ESTUDIOS DE CASOS EN BOLIVIA, BRASIL, CHILE, COLOMBIA, HONDURAS, MÉXICO Y PERÚ,” IWGIA, October 2020, https://www.iwgia.org/images/documentos/Protocolos_Autonmicos_de_Consulta_Previa_Indgena_en_Amrica_Latina.pdf.

⁴² Merino and Quispe, “CONSULTA PREVIA Y PARTICIPACIÓN CIUDADANA EN PROYECTOS EXTRACTIVOS. LOS LÍMITES DE LA GOBERNANZA AMBIENTAL.”

While many of the other cases resulted in the repetition of proceedings for the same conflict and actors, the case of the San Isidro Block stands out as an example of success worth analyzing.

The consultation proceeding in actuality began in 2007 following the passing of the Supreme Decree, making Charagua the second territory in the country to undergo this process.⁴³ Much like the previously discussed case study, this consultation also involves the Pluspetrol corporation alongside Yacimientos Petroliferos Fiscales Bolivianos (YPFB), the national company.⁴⁴ However, the first round was largely unsuccessful as it was just a normative regulatory process that only generated a series of observations about places where there needed to be improvements. The failed round led to another series of consultation proceedings from 2009 to 2019 for project Caraguaycho, which involved the Tajibo and Tacobo oil exploration sites in the San Isidro Block. That ultimately resulted in the authorities in Charagua taking over the prior consultation proceedings following the series of failures of processes conducted by the national government.⁴⁵ It is important to note that as the Indigenous people held autonomy in Charagua Iyambae, they had more direction over the conduction of these proceedings than other proceedings held within Bolivia.

This autonomy enabled the local government to develop its own process with the participation of the Charagua North and Parapitiguasu municipalities and external communities too. As they possessed control over the process, they shifted away from guidelines set by the Supreme Decree and even international standards on prior consultation to promote greater

⁴³ Alvarado et al., “Protocolos Autonmicos de Consulta Previa Indígena en América Latina: ESTUDIOS DE CASOS EN BOLIVIA, BRASIL, CHILE, COLOMBIA, HONDURAS, MÉXICO Y PERÚ.”

⁴⁴ Iván Bascopé Sanjines, “Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso” (La Paz: OXFAM and Centro de Estudios Jurídicos e Investigación Social (CEJIS), November 15, 2010), <https://s3.amazonaws.com/oxfam-us/www/static/media/files/oxfam-bolivia-consultation-process-nov-2010-final.pdf>.

⁴⁵ Alvarado et al., “Protocolos Autonmicos de Consulta Previa Indígena en América Latina: ESTUDIOS DE CASOS EN BOLIVIA, BRASIL, CHILE, COLOMBIA, HONDURAS, MÉXICO Y PERÚ.”

Indigenous involvement and reduce deadlines for more efficient outcomes.⁴⁶ This shift crucially altered the conduct of the prior consultation as it called for a finite timeline which often gets ignored in other prior consultations. The longer these proceedings drag on, the higher the opportunity for corporations or the government to corrupt or interrupt the proceedings to enable the continued unchecked exploitation of resources. Additionally, without an established timetable by the Ministry of Hydrocarbons and Energy (MHE), it produced problems with the actual facilitation of the process, from inadequate provision of information to consulting insufficient amounts of communities within the first rounds of the consultation process, even in 2010.⁴⁷ Hence, at the request of Indigenous leaders of the Guaraní Peoples Assembly of Charagua Norte, also known as the community captains for the Captaincies of the Charagua Norte APG and the Upper and Lower Isoso APG, the MHE proceeded to change the timetable to allow for increased coordination and planning between communities while still staying true to the deadlines to conduct the proceedings.⁴⁸

The creation of this timeline also involved a thorough process with heavy involvement by Indigenous participants. They broke the process into three Indigenous assemblies from April to June 2010. The first meeting defined the parameters and expectations of the consultation process. Most notably, this meant consensus on the need for the consultation process to respect self-determination for the Guaraní people, facilitate inter-cultural dialogue, and be changed to include activities and a budget that respects Indigenous functionings. The second assembly identified the specific areas of socio-environmental impacts from the extractive activities so far by Pluspetrol ahead of the *previa consulta*. At this meeting, they presented information collected by the

⁴⁶ Alvarado et al.

⁴⁷ Iván Bascopé Sanjines, “Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso.”

⁴⁸ Iván Bascopé Sanjines.

Monitoring Network of Charagua Norte. This independent Indigenous monitoring agency had determined areas that would be more vulnerable or negatively impacted. In the final assembly meeting they signed the actual written agreement on the consent of the Guaraní people for the deemed process to be used for deciding how their land and resources may be used by the Bolivian government as long as their rights were respected.

Finally, with an improved and revised prior consultation process, the APG came up with a proposal that the government and corporation government and corporation agreed on, even if they were reluctant about the changes to the original. The proposal also included “the translocation of seismic lines to protect water resources, the restriction of water use by the corporation to one specific well, and the implementation of more rigorous monitoring programs such as a transparent early-warning system.”⁴⁹ Nevertheless, there remained discrepancies on monetary compensation as the APG had demanded \$580,000 US dollars which the corporations refused to pay. They ultimately agreed on a settlement in which the company paid \$100,000 US dollars into a communal fund that the APG would control.⁵⁰ This case is a pertinent example of a prior consultation proceeding in which the Indigenous peoples had extensive participation and played an intrinsic role in shaping the process to fit their needs. This factor of not just having a say in the process but the agency to shape it made this the chosen case study for success in Bolivia.

Based on the above information regarding this case study, the significance of agency within the prior consultation process in producing successful outcomes becomes apparent, which upholds the primary thesis of this investigation. In the San Isidro Block case, the *Asamblea del*

⁴⁹ Almut Schilling-Vacaflor, “Democratizing Resource Governance Through Prior Consultations? Lessons from Bolivia’s Hydrocarbon Sector,” *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.1984033>.

⁵⁰ Schilling-Vacaflor.

Pueblo Guarani's role was a defining factor in the outcome of this prior consultation as it prevented this case from becoming another inadequate lip service. Schilling-Vacaflor also credits the leadership position taken on by the Indigenous peoples in this case to be the main factor behind the creation of the needed revised process, ultimately bringing the consultation process to fruition.⁵¹ Their extensive leadership adds relevance to the importance of agency for Indigenous participants within the prior consultation process to garner real results. Within this case study, had the Indigenous peoples not acted on correcting the deficiencies, this prior consultation process would have remained incomplete as it would have created an uninformed and underrepresented dialogue for the Indigenous people with the corporations exploiting their lands.

This case study also went beyond the scope of normal agency in which Indigenous people find themselves heard to the actual exercising of their freedoms by showing how self-determination enabled the community to redefine national processes to their own traditional ways. As discussed previously, the APG took control of the process as a result of the autonomy granted to them over their territories by national institutions. Through this action, they molded the process to fit their traditional systems of operation by utilizing their general assemblies to facilitate a democratic discussion on the essential factors necessary for a successful process for all members.⁵² With the employment of their agency to create a new process, the Guarani became the first autonomous government in Bolivia to pass its own law on the regulation of the prior consultation process in September 2015.⁵³

⁵¹ Schilling-Vacaflor.

⁵² Iván Bascopé Sanjines, "Case Study: Bolivian Government Consultation with the Guarani Indigenous Peoples of Charagua Norte and Isoso."

⁵³ Alvarado et al., "Protocolos Autonomicos de Consulta Previa Indígena en América Latina: ESTUDIOS DE CASOS EN BOLIVIA, BRASIL, CHILE, COLOMBIA, HONDURAS, MÉXICO Y PERÚ."

The ability of the Guaraní to exercise not only agency within the process but also agency over it by transforming future legislation shows the power of having a say in producing positive development outcomes. By holding sway over the actual process of consultation, the APG implemented various environmental and health considerations into the agreement instead of being limited to voicing them at meetings. The ability to influence actual legislation shows the essence of having functionings turned into capabilities, as theorized by Amartya Sen, which is the crux of the participatory development approach. This case study is an excellent means of understanding why having a say within prior consultation proceedings can produce long-term benefits to the development of Indigenous communities. While initially designed to protect the community's resources and ensure economic compensation, the leadership of the APG in the prior consultation process also utilized it for social and political strengthening. In conducting and enforcing a new prior consultation process, the Indigenous communities in the Charagua territory could affirm their autonomy to their own people. By exercising their freedom and independence, they empowered themselves as a community to dictate the future of their resources, which is the essence of participatory development. Although they may not have earned the monetary compensation they sought, perhaps deemed a loss in the standard context of economic development, the establishment of a process agreed upon by the government and corporations that also recognized the importance of inter-cultural dialogue shows immense advancement for social development in a diverse country like Bolivia. Therefore, this case study affirms the hypothesis of this investigation that when Indigenous peoples, like the APG, are provided agency within prior consultation, they can augment it through extensive participation within processes and even construct positive development outcomes.

Lessons from the Case Studies.

Both case studies demonstrate the power that providing a say for Indigenous people within participatory institutions can have for the overall success of the proceedings and development as a whole. However, in both instances, certain factors, from the actual negotiation process to the afforded legislative power of the Indigenous people, created drastically different demands and outcomes for the participants involved. Yet, two essential lessons came to light from the commonalities in the factors that made these two cases of prior consultation successful.

The first is that having agency in the process is only as valuable as the credibility of one's voice and, therefore, their ability to enforce the actions proposed within the process. A prominent example is the employment of independent Indigenous monitoring agencies in the Peruvian and Bolivian cases alike. In Peru, the information collected by Indigenous monitoring services helped formulate the reports on violations by Pluspetrol, which were essential in reopening the prior consultation proceeding shut down under false pretenses. In the San Isidro Block case, the Guaraní also utilized the "Socio-environmental Monitoring Network of Charagua Norte" to inform the community members of the actual vulnerable areas for environmental impact based on the oil exploration practices of the company in the region⁵⁴. It is vital to recognize that by doing so, Indigenous people extended their agency over the process to go beyond being simple participants to being actively involved in informing and enforcing the final proposal set forth by the prior consultation proceeding. Therefore, agency over monitoring mechanisms is essential to combat the primarily identified flaws of *previa consulta* as it produces an informed participant group and enforcement mechanisms.

⁵⁴ Iván Bascope Sanjines, "Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso."

That said, while the independent monitoring did add to the information made available to the Indigenous people, there remain apparent limitations to the extent of knowledge provided by governments or corporations about the specificities of the proposed plans.⁵⁵ In both events, the proceedings' success depended on whether the Indigenous participants and the wider community had adequate information about the impacts of the extractive processes in their localities. And while they made great strides in employing their agency, be it through collecting their own information like in Bolivia or how they spread it to the wider community as was done with the media campaign in Peru, there are still chances for improvements to this factor of prior consultation. It is hard to provide definitive agency to Indigenous participants within a mechanism like prior consultation if they remain uninformed about what they are being consulted upon. That is not to say that neither country has made improvements since conducting these prior consultation proceedings. In Bolivia, while it is harder to judge, the information provided through the videos published by the government about each proceeding for accountability shows that the government provides extensive materials and chances to ask questions to Indigenous participants.⁵⁶ In Peru, there is a strict deadline of 60 days from initiating a prior consultation to provide Indigenous members with a series of interdisciplinary data sources that are also intercultural to facilitate better comprehension.⁵⁷

In considering both of these lessons, it is necessary to note that at the heart of both is the ability of Indigenous peoples to invoke and exercise their agency within the prior consultation proceeding. When these proceedings are successful, they are beneficial in conserving the time

⁵⁵ Alvarado et al., "Protocolos Autonmicos de Consulta Previa Indígena en América Latina: ESTUDIOS DE CASOS EN BOLIVIA, BRASIL, CHILE, COLOMBIA, HONDURAS, MÉXICO Y PERÚ."

⁵⁶ "Potosí – Procesos de Consulta Previa 2021," Órgano Electoral Plurinacional, July 1, 2021, <https://www.oep.org.bo/consulta-previa/potosi-2021/>.

⁵⁷ "Stage 4: Information | Prior Consultation," 4, accessed March 1, 2023, <https://consultaprevia.cultura.gob.pe/etapas/etapa-4-informacion>.

and resources of the Indigenous communities and those of the governments and corporations who do not have to drag the process on for years only for a higher payout. As discussed before, both case studies generated positive outcomes beyond the actual demands of the prior consultation process to include the overall social and political development of the communities that chose to participate. Thus, although this is an unconventional standard of measuring development, it reaffirms the need to consider participatory mechanisms like prior consultation as a means of fostering successful development outcomes when it permits Indigenous people the ability to effectively exercise their agency.

The next section of this investigation focuses on the primary difference between these case studies, which is the role of self-governance within the prior consultation process and the impact this can pose on its overall ability to be successful and its development outcomes.

PART 2: A THEORETICAL CONSIDERATION OF THE ROLE OF AUTONOMY

When considering the success of the previously mentioned case studies, it is important to note that the essential factors that produced agency in both cases are often absent in other instances of prior consultation within Bolivia and Peru. In Peru, this was the agency generated by the unification of Indigenous federations on their own accord. In contrast, in Bolivia, it was the unified agency granted to the Guaraní under institutional rights for self-determination. However, the ability for Indigenous communities to have autonomy is not limited to one instance in Bolivia and even extends into Peru. Both countries have implemented legislation that allows Indigenous communities to maintain their autonomy within federal frameworks. Nonetheless, there have been major differences in how both countries have implemented such autonomy and the extent to which Indigenous communities possess the right to self-determination within their states. Before

exploring these differences and their impacts on how prior consultation proceedings are conducted, the background of their implementation must be considered.

The Path to Plurinationality in Bolivia

Since Bolivia gained its independence under the leadership of Simon Bolivar, from whom it derives its name, the constitutional framework that has governed the country has witnessed numerous changes. The ones central to the discussion presented in this investigation are those made to the ownership of land and the rights afforded to Indigenous communities. At the start of the nineteenth century, the newly independent country saw a reversal of the old colonial systems to incorporate more liberalization and privatization. This new economic strategy did not dramatically change Indigenous people's lifestyle as it just acted as a continuation of the tributary system with a change from colonial powers to the land-owning elite. Most were accepting of such a change as they felt this would act as a means of protecting their communal properties.⁵⁸ However, total privatization in 1900 meant the landowning elite in Bolivia saw much of the communal territory transferred to their name. This dispossession did not stop Indigenous community leaders from continuing to fight for their territories. These individuals, known as *caciques apoderados*, compiled legal documents from even before the colonial period to demonstrate ownership.⁵⁹ Although most of these efforts were unsuccessful, actions like this that are formative to the methods that the Indigenous communities would later take on to exercise their right to self-determination and agency within prior consultations. By the 1930s, however, the elite in Bolivia also had turned against the capitalistic models of land ownership

⁵⁸ Carmen Soliz, "Indians and the State: Negotiating Progress, Modernity, and Development in Bolivia," in *The Routledge Handbook of Indigenous Development*, 1st ed. (London: Routledge, 2022), <https://doi.org/10.4324/9781003153085>.

⁵⁹ Soliz.

and began to discuss the rights of Indigenous communities. This political shift led to the propagation of a new constitution in 1938 under the military leadership of Germán Busch, which finally recognized Indigenous ownership of their ancestral lands, even if it was mostly in principle.⁶⁰ This constitution was the first instance of recognizing Indigenous special ownership in Bolivia and would provide the essential legal basis for the prior consultation proceedings and autonomous governance for Indigenous communities. The most influential change came under the leadership of the Revolutionary Nationalist Movement (MNR) in 1952. Their whole doctrine had been on nationalizing the country which translated to rolling out comprehensive agrarian reform in mass to the country. This doctrine meant within two years of the passing of the agrarian reform decree, any Indigenous community that could demonstrate ownership of their *comunarios*, or colonial territories, before 1900 had ownership restored.⁶¹

In 2009 after Evo Morales and his Movement Towards Socialism (MAS) party came to power and instituted the subsequent major legislation. He was the one to reframe the constitution per MAS values that put Indigenous practices and rights at the forefront. Despite this, there was still a maintenance of capitalistic development models, which often ran counter to the demands for self-determination put forth by Indigenous communities. For this reason, despite the initial push to place self-determination in the 2009 constitution, the final constitution presented a plurinational legal framework in which state law held priority over Indigenous autonomy or communal ownership.⁶² Even within such a complex system, most Indigenous people stuck to finding solutions within the provided legal framework as opposed to going beyond it which

⁶⁰ Soliz.

⁶¹ Soliz.

⁶² Magalí Vianca Copa Pabón, Amy Kennemore, and Elizabeth López Canela, “Negotiating Legal Pluralism and Indigenous Development: Lessons from Bolivia,” in *The Routledge Handbook of Indigenous Development*, by Nancy Postero, 1st ed. (London: Routledge, 2022), <https://doi.org/10.4324/9781003153085>.

suggests why they continue to rely upon participatory mechanisms like prior consultation to push change. Much like in the past with the *caciques apoderados*, Indigenous communities set up organizations like the Indigenous Native Peasant Justice Tribunal which helped Indigenous communities find alternative pathways through legal reform.⁶³ Through the establishment of both new Indigenous institutions and the plurinational legal framework many Indigenous communities could assert their rights to self-determination and gain a semblance of autonomous governments as long as they did not challenge the central government's jurisdiction.⁶⁴ The plurinational framework established in the 2009 constitution allowed all Indigenous communities the ability to create alternative Indigenous legal systems and break from political party control.⁶⁵ Despite its rollout to all Indigenous communities, only a few successfully implemented a plurinational system of governance that allowed them the type of autonomy they sought within the legal system created for all of Bolivia. A pertinent example is the Guaraní, whose specific characteristics brought them the most success in navigating this and becoming the first truly "autonomous" community in Bolivia which others have struggled to replicate.

The implementation of a "hybrid" system of governance by the APG in Charagua owes its success to the numerous factors that enabled the Guaraní to optimize their self-determination in the limited agency afforded to them by the 2009 constitution. The first characteristic is that over the centuries, the APG had learned how to maintain a collective territory and maintain local governance within the various groups, which translated to the institutions of governance they implemented in the first *autonomía indígena originaria campesina* (AIOC) or an Indigenous

⁶³ Magalí Vianca Copa Pabón, Kennemore, and Elizabeth López Canela.

⁶⁴ Nancy Postero and Jason Tockman, "Self-Governance in Bolivia's First Indigenous Autonomy: Charagua," *Latin American Research Review* 55, no. 1 (March 19, 2020): 1–15, <https://doi.org/10.25222/larr.213>.

⁶⁵ Magalí Vianca Copa Pabón, Kennemore, and Elizabeth López Canela, "Negotiating Legal Pluralism and Indigenous Development: Lessons from Bolivia."

autonomous municipality. Secondly, under this concept of centralized ownership, the Guaraní leadership was able to politically unify the otherwise traditionally separated and highly diverse groups.⁶⁶ In formulating a traditionally defined autonomy but legally bound to state law the Guaraní had to engage in various tactics to ease internal and external conflicts. In terms of external negotiations, they complied with Bolivia's legal and political institutions to produce a favorable legislative body to their traditional needs. Unlike the implication that Indigenous people reside beyond central control, the APG allied with political parties, both MAS and even the conservative Verde party, as filling positions with people who would act in their favor fit their immediate interests.⁶⁷ This presence of favorable individuals was crucial for augmenting autonomy while continuing to act in a constitutional hierarchy with the central government.⁶⁸ Not only did they expand their autonomy through external means, but they also increased it through internal unification. There had been tensions between competing factions, the Avas and Izoceños, over exercising control within the APG and whether the power should be concentrated to an executive at the local level too. Ultimately, they came to a consensus on splitting the power of the executive between the coordinator (TRI) and the six local executives, and major decision capabilities would be with the deliberative assembly.⁶⁹ In this manner, they would ensure that the new government did not bend to the demands of the central state for a strong executive and were instead true to the more democratic, traditional values of the Indigenous community this institution would be designed for. With this combination of factors being present, the Guaraní people could navigate the creation of an AIOC, which could truly increase their autonomy within the legal contexts of the central state. Operating on these principles enabled the Guaraní to

⁶⁶ Postero and Tockman, "Self-Governance in Bolivia's First Indigenous Autonomy."

⁶⁷ Postero and Tockman.

⁶⁸ Postero and Tockman.

⁶⁹ Postero and Tockman.

translate that autonomy towards their prior consultation proceedings and produced more effective outcomes than other Indigenous communities. As this case shows, while Bolivia has a mandate for self-determination, there are many restrictions that limit how many communities can follow in creating an AIOC like the APG. Thus, while there was a mass rollout of “autonomy,” which is its central point of differentiation from self-determination in Peru, in practice Bolivia also has major limitations to its implementation.

The Struggle for Autonomy in Peru

Peru, much like Bolivia, had a profoundly entrenched colonial history to combat following its independence before arriving at its current recognition of Indigenous rights. In their paper, Roger Merino Acuna breaks down the three stages of legal indigenism in Peru, which have shaped ownership and Indigenous rights in the country. The first was the formal recognition of Indigenous communities within the Constitution of 1920. However, this constitution largely propagated racist ideas that the Indigenous peoples needed to be "civilized" and incorporated into the broader society under the conservative reforms of then-President Leguia.⁷⁰ This need for incorporating Indigenous communities within Peruvian society has remained the focus of legal indigenism into the modern day. This goal has largely been realized as most Indigenous peoples in Peru are accounted for through an identification system. The second wave of such legal frameworks came with the Agrarian Reform Law and Law 20653 in the late 1960s and early 1970s. The agrarian reform created peasant communities while Law 20653 established "native communities." Both laws ensured the protection of these communities and their lands, yet the aims were never to secure the rights of such communities but instead to garner mass support for

⁷⁰ Roger Merino Acuña, “Coloniality and Indigenous Territorial Rights in the Peruvian Amazon: A Critique of the Prior Consultation Law,” *The Centre for Development Studies, University of Bath*, 2015.

the central government.⁷¹ In this manner, the laws designed to strengthen Indigenous ownership allowed the central government to exercise more control over these marginalized communities. Also, under the guise of titling land for these communities, the government claimed huge chunks of inhabited Indigenous territory to pass onto others, and in this manner, they "institutionalized dispossession." Hence, for many Indigenous community members, the laws passed with the intent to secure their freedoms become a means of restricting them.

In realizing the threat of growing extraction-led development to their way of life and territory through the 1990s, Indigenous communities resorted to other tactics to garner autonomy beyond legal means. So, while the Guaraní could employ counter-hegemonic practices and operate within their frameworks, Indigenous communities in Peru, like the Awajun and Wampis people, chose their own path to counter the state's actions. They created a joint council in the early 2000s to manage discussions with the state ahead of approving mining projects; however, the decrees allowing such concessions in 2008 under the newly implemented Free Trade Agreement with the United States only betrayed the council's agreements. This betrayal led to massive protests that year to ask that Peru follow through on ILO Convention 169. When the government attempted to delegitimize those efforts in the Bagua municipality, it quickly escalated from a blockade to violence, resulting in 34 casualties. This incident became known as the "Baguazo," and despite its violence, was vital in getting the government to repeal neoliberal decrees and brought for the implementation of Law 29785 or the consultation law under President Humala in 2011.⁷² This law culminated in the final stage of legal frameworks enacted in favor of Indigenous freedoms and ownership. However, there remains criticism that without

⁷¹ Acuña.

⁷² Roger Merino, "Rethinking Indigenous Politics: The Unnoticed Struggle for Self-Determination in Peru," *Bulletin of Latin American Research* 39, no. 4 (2020): 513–28, <https://doi.org/10.1111/blar.13022>.

true autonomy for most Indigenous people, this is simply a choice to be included within the society under conditions that require to some extent, the dispossession of their lands or exclusion from the liberal economy.⁷³ In trying to escape this paradox, the Wampis took on a process of self-determination and became the first territory in Peru to declare themselves autonomous.

The Wampis people are located in the north-west of the Amazonian region of Peru and extend over 65 settlements. The areas they protect are home to some of the region's highest biodiversity, making their conservation efforts of vital importance to the wider planet. Upon deciding that the current legal frameworks of the constitution and economic development models were not meeting their needs, they decided to take up the struggle to become an autonomous territory. This struggle for autonomy started as early as the 1970s when they began to collect community land titles from the national to the local level. However, in 1996 they truly made the shift to be considered one unified territory instead of a series of settlements each with individual land rights.⁷⁴ To prove their claims, they took up both an anthropological and legal approach. This combined approach produced a report which showed the historical existence of their ancestral lands and demonstrated how within present legal frameworks, such territory and their rights to it as the Wampis nation must be recognized. The final aspect of garnering autonomy as a territory was following the unification of the people and lands, a creation of the Statute which would govern the nation. While that process started in 2014, the Statute was only affirmed on November 28, 2015, in their first assembly as a united Wampis nation.⁷⁵ The Statute establishes

⁷³ Acuña, "Coloniality and Indigenous Territorial Rights in the Peruvian Amazon: A Critique of the Prior Consultation Law."

⁷⁴ Shapiom Noningo, "Routes to Indigenous Autonomy: The Case of the Wampis Nation and Its Autonomous Territorial Government (GTANW)" (Government of the Wampis Nation, United Nations, 2018), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/01/shapiom5_Foro_exposi_expertos_01_18-final_eng.docx.

⁷⁵ Noningo.

three central aspects of autonomy for the Wampis. The first is their unity and ability to determine the future of their territory and people, which is the essence of development or *buen vivir* that they seek.⁷⁶ The second is the governance structures within the Wampis territory, specifically splitting power between a General Assembly of the Irunin and the Central Executive Government, which sector directors control. In this design, each director will be responsible for various things from intercultural education to trade and tourism. The general assembly, on the other hand, can be used for more widespread decisions like prior consultation proceedings that impact the whole of the nation, as all must have representation according to their Indigenous doctrine.⁷⁷ The Wampis endured a long process to become autonomous as they acted outside a legal framework that guaranteed self-determination, hence they had to rely on other means to uphold this agency.

In their case, the ability to successfully hold onto their autonomy came from implementing prior consultation and the associated laws. The Peruvian courts were the first source of legitimacy for their self-governing territory. In the case of approving oil mining concessions, the Wampis nation claimed inadequate consultation as per federal law rendering the present activity illegal. Furthermore, they claimed that this consultation must reach beyond the state directives and meet their internal process for free, prior informed consent (FPIC as they find the state has "grossly deficient" processes that often discriminate against Indigenous communities. The creation of their own process acts as the essential demonstration of agency, whose validity both international law and Peruvian court proceedings in a landmark case in 2017

⁷⁶ Cathal Doyle et al., "Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement" (The Institute for Ecology and Action Anthropology (INFOE e.V.) and ENIP), accessed March 5, 2023, <https://enip.eu/FPIC/FPIC.pdf>.

⁷⁷ Noningo, "Routes to Indigenous Autonomy: The Case of the Wampis Nation and Its Autonomous Territorial Government (GTANW)."

upheld.⁷⁸ For the Wampis, developing their own prior consultation process, while an exercise of agency, is also the means through which they achieve self-determination. As Peru has signed onto ILO Convention 169, the state is required to cooperate with the Wampis in the creation of alternative processes for systematic action that protects the rights of these individuals and their communities.⁷⁹ Utilizing the framework present for prior consultation, the Wampis have exerted their autonomy and put forth claims that extend beyond negotiations with the extractive industry. They claim that to meet FPIC protocol, there need to be alternative development options and until a unified community cannot agree to a solution that represents their rights, there cannot be a genuine consultation process. Therefore, through the agency afforded by prior consultation, the Wampis have acted as models for other Indigenous communities to find a path towards self-governance that may lie beyond current legal indigenism.

In Peru and Bolivia, self-governance and prior consultation have been intrinsically linked concerning their role in producing the agency at the core of Indigenous development. And while the way to self-governance differs, both countries share the significance of that factor in allowing Indigenous communities to correct many of the limitations within prior consultation proceedings led by the state. This rectification is evident when comparing comments from government representatives about regional standards for prior consultation to actions taken by Indigenous communities empowered by self-governance within the process. The following limitations were brought forth by government representatives, or *defensores*, from various South American countries at a “Defensores del Pueblo” regional meeting in 2017. The first was a critique by the Peruvian representative, Alicia Abanto, of the standard that representatives lead consultation.

⁷⁸ Cathal Doyle et al., “Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement.”

⁷⁹ Cathal Doyle et al.

She remarked that it is important to note that the right to consultation should be for the people as a whole, not individual organizations.⁸⁰ However, for most Indigenous people it is very difficult to even get adequate representation, let alone holistic representation within these processes. Hence, when they can organize and exercise self-governance like the Guaraní or the Wampis, who have electoral representation within their general assemblies, their representatives can successfully voice the needs of the whole people. Even where there was not total autonomy, the creation of federations like PUINAMUDT in Peru helped concentrate Indigenous voices to ensure effective representation within processes trying to limit their agency. For this reason, Abanto asserted that Convention 169 calls for representative institutions within this process. The most viable means of having this is enabling Indigenous people to dictate their own governance and representation.⁸¹

Another issue commonly raised by the *defensores* was the access to information for Indigenous people within these consultation proceedings. As discussed previously, the autonomy offered to these communities goes a long way in enabling them to create institutions that can monitor and inform them of environmental impacts through which they can form a holistic understanding of the consultation without needing to rely on skewed information presented by corporations. Luciano Maia raised the final limitation for consideration, the human rights representative for Brazil, who, in commenting on the standard for having everyone involved in the process have sufficient information, made clear that the process needs to be run by those who are aware of the realities faced by those consulted.⁸² The lack of comprehension on the part of

⁸⁰ Nelly Herminia Aedo Rueda and Maite Bustamante de Almenara, “Estándares Regionales de Actuación Defensorial en Procesos de Consulta Previa de Bolivia, Ecuador, Colombia y Perú.” (Lima, Peru: Defensoría del Pueblo, 2017), <https://www.defensoria.gob.pe/wp-content/uploads/2018/05/Estandares-regionales-en-Consulta-Previa-2017.pdf>.

⁸¹ Nelly Herminia Aedo Rueda and Maite Bustamante de Almenara.

⁸² Nelly Herminia Aedo Rueda and Maite Bustamante de Almenara.

the state in Bolivia and Peru drove the Guaraní and Wampis to develop their own protocols for prior consultation. Due to their autonomy, they could create processes that reflected their traditional institutions and garner legal support through plurinational frameworks or court rulings. Thus, the links between prior consultation and self-governance strengthen one another and produce a sort of symbiotic relationship that acts for the benefit of Indigenous self-development.

While this investigation needs more resources to elaborate on such a theory, given the need for more extensive data and interviews at the local level to affirm the nature of this relationship, two theories have come to light from the assessed data so far. The first is that for effective prior consultation proceedings within Indigenous communities, under the discourse of self-determination, those consulted must have agency over the process. The success of the Guaraní in designing a process that the country has now upheld shows that when the people directly impacted can control the consultation, the outcomes will be more sustainable and economically beneficial to all parties as it reduces continued conflict over the same resource. The ability to study the actual outcomes produced by communities with self-determination requires further investigation at the local level to understand if the communities truly feel represented in these proceedings and if they have found that the consultation outcome has actually produced social and economic benefits for that community.

The second theory plays into the briefly mentioned idea of a symbiotic relationship which comes to light when assessing the role of self-governance in the cases studied from Bolivia and Peru. While in Bolivia, prior consultation proceedings improved through the autonomy afforded to the Guaraní, in Peru, the prior consultation legal framework enabled the Wampis community to make changes to the protocol and exert their autonomy from the Peruvian government. Thus,

it is evident that prior consultation and self-governance add to one another when producing beneficial outcomes for Indigenous communities. However, it remains to be seen whether the outcomes produced by prior consultations in which Indigenous participants have greater autonomy due to the proceeding are more sustainable than those in which self-governance pre-exists. In making this distinction, one can determine whether freedom generated through participatory mechanisms holds greater weight to Indigenous communities or the freedom brought about by increased participation. Upon determining this distinction, one can say with greater certainty if the Bolivian process of prior consultation, due to widespread autonomy, produces more sustainable development outcomes than the autonomy resulting from processes in Peru. Although these are theoretical considerations at the moment, they can certainly be expanded on with further academic investigation and are important to grasping development as a whole for Indigenous communities and beyond.

Significance

At the start of this investigation, the most prevalent work on prior consultation focused on highlighting its deficiencies and how they fail to prevent extractive industries from encroaching on protected land. Despite this pessimistic outlook, the question that kept sticking out was why Indigenous peoples would continue to rely on institutional participatory mechanisms not only in these two countries but in the region as a whole. Although this investigation does not dismiss the grave deficiencies in current state-led prior consultation proceedings, it takes a more optimistic lens to the possibilities such a deep-rooted process has for Indigenous communities in Peru and Bolivia, and beyond. Given its prevalence within the region, it may be more helpful to incentivize the improvement of the process by identifying factors such as self-governance and agency that strengthen these consultations so that states can enact meaningful policy changes to pre-existing institutions. There is much to critique from outside about the varying rights offered to Indigenous people within the process or whether it actually serves their interests. Still, for the Indigenous people, it is a chance to not only exercise autonomy but also garner it. When they have control over their territory's natural resources, they can exercise agency over other decisions in which they interact with government institutions, as the analyzed case studies have shown. This agency can produce the necessary changes these communities require by giving them an enforceable avenue to voice their needs. When the interests of Indigenous peoples are protected, it presents significant positive outcomes for the nation-state and the world as a whole. The ability to protect its resources while continuing to meet the social needs of its people, even if contrary to liberal notions of economic development, allows for those states to grow sustainably and elevate the quality of life of their citizens. Globally, when Indigenous rights are protected, so are environmental interests, given the crucial

role these communities play in guarding ecological biodiversity and their in-depth knowledge of sustainable practices. Thus, in a time of climate pessimism, it is vital to reconsider the value pre-existing institutions such as prior consultation can possess in combatting this crisis when they can be accessed and employed by those who need it most. Lastly, to reiterate the goals of this investigation, further studies may reveal more factors that augment the efficiency of these proceedings or the positive Indigenous development outcomes such processes can yield. These can become essential tools in incentivizing states to take on the necessary policy changes which can help protect broader Indigenous and environmental interests in the region and beyond.

Conclusion

This investigation began with the aim of understanding the role of agency and self-determination within prior consultation proceedings and its ability to produce positive development outcomes for Indigenous communities. This paper considered Peru and Bolivia case studies highlighting its two primary findings. The cases of *Lote 192* in Peru and the San Isidro Block in Bolivia first showed that when Indigenous communities have agency in the process, they can realize their needs beyond the consultation and even augment their overall institutional autonomy, which is at the core of participatory development. Additionally, the case of *Lote 192* showed exercising free will within and over the process can enable Indigenous communities to correct some crucial failings identified in prior research conducted by Flemming and Schilling-Vacaflor, such as monitoring, use of international influence and adequately informing Indigenous participants. For example, in that case study, the agency provided by the unification of PUINAMUDT allowed them to use media to generate internal and international pressure to reopen the proceeding and created their independent monitoring mechanism, which the Guraní also employed in the San Isidro Block case to better inform their prior consultation process. In addition to the improvements brought by this influence, the agency within the prior consultation process also produced beneficial socioeconomic outcomes like remediating environmental degradation and improving healthcare for the indigenous people in the Loreto region of Peru.

The second was the symbiotic relationship between prior consultation and self-determination for Indigenous communities. From the case studies observed about how Bolivia and Peru developed autonomous Indigenous governments or AIOCs, it is clear that self-

governance is not only a significant means to strengthen prior consultation and its outcomes, as seen with the APG, but the use of prior consultation processes could also propagate Indigenous aspirations for self-determination as it did for the Wampis people. For the Wampis people, recognizing the independent prior consultation proceeding, they ran under their claim of self-governance when upheld in the courts granted them the autonomy they sought from the state. Hence, the two are inherently important factors in predicting one another's access to producing positive outcomes for Indigenous communities. While it is complicated, given the nature of the data available, to affirm whether consultation proceedings in one country are superior to another in the development context, this investigation's findings do uphold the relevance of prior consultation despite its initial shortcomings in producing positive outcomes for the Indigenous communities who continue to trust in the institutional process.

Thus, this investigation hopes to inspire further research to survey Indigenous communities within and across countries to isolate factors such as agency and self-determination to more extensively quantify the outcomes of processes conducted there. Research on definitively identifying what factors produce success can help frame policy prescriptions for countries in the region that have adopted ILO Convention 169 and rely heavily on prior consultation to regulate industries. Ultimately, when Indigenous people actualize self-determination and augment agency, they fulfill the central principle of the "buen vivir" philosophy, which is at the heart of this investigation. The conceptualization of development in alternate means may require changes in the institutions and policies designed to foster development in regions like Latin America, like prior consultation. However, as this paper touched on, beyond basic economic development, alternative forms of development may procure far more societal advancements than just monetary gains. When Indigenous peoples, like the

Wampis and the APG, stand on their own accord and hold control over their territories, they can dictate the sustainable allocation of resources to internal and external actors. They, therefore, strengthen national economies and support the needs of their local communities, from health to education. That measure on its own is a crucial step to solving the development-conservation paradox much of the world faces. The consultation problems regarding resource extraction in ancestral lands extend beyond Latin America to Indigenous communities globally, even to more local communities like those fighting to protect the Colorado River, its surrounding areas, and their water rights in a time of rapid industrialization of the states it passes through. Hence, when considering the many solutions to addressing the climate crisis, the underestimated tool that is prior consultation may be the key to advancing the systems that help augment and protect Indigenous voices, like Berta Cáceres, for she and other defenders remain Mother Nature's closest representation in these matters.

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