Contesting State Monologues: Indigenous Grassroots' Struggles with Prior Consultation Norms in the Peruvian Amazon

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Prior consultation (PC) has been an internationally enshrined norm for indigenous peoples' rights since the 1980s. Indigenous peoples have called for PC for decades, but when governments finally begin implementation, a paradox results: previous advocates increasingly turn away from consultation processes. I argue that only with the perspective that norms *are* and *should* be contested "on the ground," we are able to understand this contradiction. Therefore, the article presents a new conceptual and methodological interpretive framework for studying indigenous grassroots contestation. Drawing on ethnographic fieldwork in the Peruvian Amazon (2013–2016), I hone in on three layers of contestation—explicit contestation, attitudes and perceptions, and political implications—and demonstrate that (1) non-contestation confirms state monologues and is an alarming sign for silenced voices, not for norm support; (2) contested consultations reproduce asymmetries within indigenous groups replicating negotiations about extractive industry projects; and (3) opposition to consultation may be the most powerful tool for indigenous peoples to change narrow state interpretations and make use of veto rights. Scaling up these insights, the structure of PC accommodates two irreconcilable understandings: PC is either interpreted as an end in itself or as a means of indigenous self-determination.

La consulta previa es una norma aceptada internacionalmente para los derechos de los pueblos indígenas desde la década de 1980. Los pueblos indígenas demandaron el uso de la consulta previa durante décadas. Sin embargo, una vez implementada por parte de los Gobiernos surgió una paradoja: quienes habían defendido los procesos de consulta se han ido alejando progresivamente de estos. Argumentamos que sólo seremos capaces de entender esta contradicción mediante la perspectiva de que las normas *son* y *deben ser* impugnadas ≪sobre el terreno≫. Por consiguiente, el artículo presenta un nuevo marco conceptual y metodológico interpretativo para estudiar la impugnación fundamental por parte indígena. Nos basamos en el trabajo de campo etnográfico llevado a cabo en la Amazonía peruana (2013–2016), con el fin de concentrarnos en tres capas de la impugnación: la impugnación explícita, las actitudes y percepciones, y las implicaciones políticas. Con ello, demostramos que: (1) la no impugnación confirma los monólogos estatales y resulta una señal alarmante para aquellas voces silenciadas, pero no para el apoyo de las normas, (2) las consultas impugnadas reproducen asimetrías dentro de los grupos indígenas que replican las negociaciones sobre proyectos de industrias extractivas, y (3) la oposición a la consulta puede acabar siendo la herramienta más poderosa para que los pueblos indígenas cambien las interpretaciones estatales restrictivas y hagan uso de los derechos de veto. Si tomamos estas ideas de un modo más amplio, vemos la estructura de la consulta previa acomoda dos interpretaciones irreconciliables: la consulta previa se interpreta tanto como un fin en sí mismo como un medio de autodeterminación indígena.

La consultation préalable (CP) est une norme des droits des peuples indigènes garantie à l'international depuis les années 1980. Les peuples indigènes demandaient la CP depuis des décennies, mais, alors que les gouvernements finissent par l'appliquer, un paradoxe apparaît : les défenseurs historiques se détournent de plus en plus des processus de consultation. J'affirme que seule la perspective que les normes sont et doivent être contestées ≪ sur le terrain ≫ peut nous permettre de comprendre cette contradiction. Aussi, l'article présente un nouveau cadre conceptuel et méthodologique d'interprétation pour l'étude de la contestation profonde des indigènes. En m'appuyant sur un travail de terrain ethnographique en Amazonie péruvienne (2013–2016), je me concentre sur trois couches de contestation (contestation explicite, attitudes et perceptions, et implications politiques) avant de démontrer (1) que la non-contestation confirme les monologues étatiques et constitue un signe inquiétant d'atteinte à la liberté d'expression, et non un signe de soutien de la norme ; (2) que les consultations contestées reproduisent les asymétries systématiques au sein des groupes indigènes qui répliquent les négociations concernant les projets industriels d'extraction ; et (3) que l'opposition à la consultation pourrait bien être l'outil le plus puissant à la disposition des peuples indigènes pour modifier les interprétations étroites de l'État et utiliser leur droit de véto. Si nous prolongeons ces idées, la structure de la CP englobe deux raisonnements irréconciliables : elle est comprise soit comme une fin en elle-même, soit comme un moyen d'autodétermination indigène.

Introduction

> […] consultation for us is a collective right. But for the state it has been a formal process, a service to provide for the oil companies that are going to arrive. But they have seen a totally different process because we made suggestions, recommendations […]

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> because they [the communities] were completely dissatisfied with the way in which this process has been carried out. (Interview indigenous leader, Ucayali, December 2014)

Prior consultation (PC) and free, prior, and informed consent (FPIC) are promoted by international bodies and states as central legal innovations toward more substantial protections of indigenous peoples' rights and as mechanisms to resolve socioenvironmental conflicts.[1] Drawing on the International Labor Organization (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries (henceforth, C169) from 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007. This has given rise to a global "consultation approach" (Rodriguez-Garavito 2011) to indigenous peoples' participation in state decision-making. However, pioneering changes in international law do not automatically improve indigenous peoples' situations.

The article addresses what I call the "implementation paradox" of PC and FPIC: Indigenous organizations have been calling for PC for decades, but with governments finally beginning to implement it, indigenous peoples' increasingly turn away from these processes and fronts harden again. In Peru, this contrast is particularly striking. In 2011, the newly elected government of Ollanta Humala (in power until 2016) finally adopted the Peruvian consultation law in line with C169—celebrated by the ILO as a forerunner for the region (Schilling-Vacaflor and Flemmer 2015). Ironically, consultation standards and participatory processes are now being used by the state to weaken indigenous positions and legitimize oil projects. Thus, the right to PC becomes an instrument against the population it claims to protect. As a result, indigenous peoples could only strengthen their negotiating position if they blocked consultation procedures and prevented oil exploration if they opposed consultations, thus exercising their state-granted rights.

I argue that at the core of the implementation paradox stands an irreconcilable difference between two competing normative approaches orienting interpretations of PC as an end versus a means for indigenous peoples' rights (Rodríguez-Garavito 2011, 290).[2] The first is a state-led, top-down approach focused on *participation* as a normative reference and seeing PC as an end in itself. The second is an indigenous-led, bottom-up approach that sees consultation as a means of *self-determination*. These two conflicting understandings compete in each context over the definition of the scope of consultations. PC is not a solution to conflict but rather constitutes one in itself, namely, over normative meaning.

In contrast to the common diagnosis that the problem hindering substantial indigenous peoples' rights is an "implementation gap" (see Wright and Tomaselli 2019, 279) or evaluating formal compliance on the basis of national legal standards, I adopt an interpretivist methodology with a focus on contested normative meaning. The interdisciplinary conceptual framework brings together IR norms research with postcolonial studies and legal anthropology. Accordingly, I understand international norms as being inherently contested. Broadly speaking, contestation is defined as "as a social practice [that] entails objection to specific issues that matter to people" (Wiener 2014, 1). Grassroots' contestation of PC then concerns contestation by the rights-holders themselves, i.e., indigenous persons from communities or community-based organizations. Further, concrete sites of contestation are embedded in longstanding indigenous struggles for recognition and redistribution (Owen and Tully 2007). Grassroots contestation is therefore analyzed in three layers—explicitly expressed contestation, attitudes and perceptions, and political implications (see table 1 below). Political impact concerns the influence of grassroots' contestation of consultation processes and their outcomes with regard to their material implications for access to lands, resources, and socioeconomic justice.

Interpretivism's "sensibility" (Wedeen 2010, 260–1) for embedded meaning and the focus on norms contestation allow for a complex understanding of normative interpretations without taking sides with state law and formal legal texts being the only (normative) reference. Using an innovative combination of legal analysis and ethnographic insights from Peru, I will show in this article that the scope and substantive impact of consultation rights are decided on the microscale. PC processes were never "empty" procedures (Rodríguez-Garavito 2011); indigenous organizations perceived them either as a successful or a failed result of *their* fight for self-determination. Moreover, most of the participating indigenous persons as well as the state personnel involved in implementation took the processes seriously or at least had hopes for PC opening a "new way of state decision-making."

In the spirit of decolonizing International Relations (IR) and moving toward Global IR (Acharya 2016; Wiener 2017), this article should mark a further step toward showing the power and limitations of indigenous communities to decide over the scope of their rights and complement existing research on indigenous meaning-making, which has focused on elite activists traveling to international summits (Aponte Miranda 2010). With my fieldwork material, I will demonstrate that only with the perspective that norms *are* and *should* be contested "on the ground," we are able to understand that (1) noncontestation confirms state monologues and is an alarming sign for silenced voices and not necessarily a signal for norm support, (2) contestation in extractive industry's consultations is limited in its access for indigenous peoples, reproducing internal power imbalances within indigenous groups and taking the shape of negotiations about project conditions, and (3) opposition to consultation may be the most powerful tool for indigenous peoples' to change narrow state interpretations and make use of veto rights.

The article begins by outlining the conceptual framework. Next, I elaborate on the interpretative methodological approach to multilayered grassroots contestation developed for this analysis. Then, I present my results after briefly contextualizing the major contestations of PC in national and international politics. More specifically, I hone in on three different consultation processes regarding hydrocarbon extraction in the Peruvian Amazon (2013–2016), reconstructing the meaning and evaluating the impact of grassroots contestation. In closing, I scale-up the empirical insights to point out the ambiguous structural implications of PC and FPIC as international norms and conclude with an outlook for future research.

Layers of Indigenous Grassroots' Contestation

In IR norm research, the focus has been either on struggles *for* indigenous peoples' rights and mobilization strategies or on struggles *over* the meaning of indigenous

[1] PC and FPIC are practiced in resource governance worldwide (Greenspan et al. 2015).

[2] The threat that indigenous peoples' self-determination poses to state sovereignty makes it "perhaps the most controversial and contested term of the many controversial and contested terms in the vocabulary of international law" (Crawford 2001, 7).

Table 1. Approach to layers of indigenous grassroots contestation

Layer	*Conceptualization*	*Properties*	*Assessment*
I Explicit political contestation	Indigenous actors verbally expressed contestation during state-led consultation processes	Thematic dimensions: (1) Subject (2) Procedure (3) Substance (based on Cornwall and Coelho 2007; Rodríguez-Garavito 2011)	• **Focus**: Interactions between indigenous and state representatives in hydrocarbon consultations • **Approach**: Participant observation and documentation of contestation articulated during consultations • **Analysis**: QCA identifying main themes and issues based on field notes, audio recordings, and photos
II Attitudes and perceptions	Indigenous actors' understandings of and attitudes toward PC	(1) Concept of PC (2) Attitudes toward PC (3) Perceptions of PC processes	• **Focus**: Indigenous actors' interpretations and perceptions of "PC" • **Approach**: Semi-structured interviews with indigenous participants • **Analysis**: Interpretative reading of key passages of interview transcripts reconstructing subjective meaning by deductive-inductive category-building
III Political implications	Interpretations of grassroots contestations' success	(1) Content of indigenous claims (internal acts, interviews) (2) Content of final consultation agreements (3) Interpretations of and attitudes toward PC results	• **Focus**: Changes in planned projects, scope of consultation agreements • **Approach**: Semi-structured interviews about PC results, document analysis of consultation agreements, follow-up on implementation • **Analysis**: Comparative analysis of indigenous claims, consultation agreements, implementation of agreements, and statements by actors

Source: Author's own elaboration.

peoples' rights in analyzing public discourses and written legal standards. Both literatures share the assumption that states adopt norms and then the struggle ends. Grassroots contestation and the agency of rights-holders are seldom considered, and the meanings of implementation practices in concrete sites are commonly treated as a black box.

The meanings indigenous communities and their organizations attribute to PC and FPIC remain lacunae. The scholarship has long been dominated by legal analysis of international and domestic frameworks (Rodríguez-Piñero 2005; Urteaga-Crovetto 2018). Empirical research then analyzed the negotiation of institutional and legal frameworks between state governments and indigenous organizations (Schilling-Vacaflor and Flemmer 2015; Falleti and Riofrancos 2018) as well as the quality of the implemented processes (Burgos 2015; Fontana and Grugel 2016). Few scholars have looked into indigenous claims in relation to the projects consulted on (Leifsen et al. 2018; Zaremberg and Torres Wong 2018), and even fewer have focused on grassroots contestation regarding the meaning of these norms (Fulmer 2014).

Indigenous peoples' rights and agency have remained empirical and normative blind spots—often being seen as a mere "issue around which international and domestic norm activists mobilize rather than as significant actors in contests around norms" (O'Faircheallaigh 2014, 161). Yet indigenous people have become actors in global governance, now operating in international fora and bringing in their own ideas (Querejazu and Tickner 2022). Peez's (2022) systematic review of IR norms research between 1980 and 2018 confirms that interpretivist studies in the field are increasing but made-up less than a quarter of all the works, and Latin America is still one of the underrepresented areas of study (Peez 2022, 17). Further, none of the studies does focus on indigenous agency.

Grassroots' Contestation and Layers of Meaning

The framework understands sites of contestation as encounters between grassroots indigenous actors and global norms. Each site of the postcolonial struggle over norms is embedded in colonially rooted chains of indigenous–state relations, which influence—that is, confirm or contest—the current balance of power between these agents (Eckert et al. 2012, 11). Therefore, the normative and political impacts of grassroots contestation need to be evaluated beyond categories of (inter)national state law and a dichotomous logic of compliance versus noncompliance.

I use the term "grassroots contestation" synonymously with "contestation from below" (Santos and Rodríguez-Garavito 2005, 12).[3] "Grassroots" refers to indigenous community members or persons from "community-based organizations" (Feyter 2006, 14). "Contestation" is conceptualized "as a social practice [entailing] objection to specific issues that matter to people" (Wiener 2014, 1). In the spirit of decolonizing IR, all stakeholders *should* have access to

[3] Santos and Rodríguez-Garavito (2005, 2) call on scholars to "register the growing grassroots contestation of the spread of neoliberal institutions" and "interpret these embryonic experiences in a prospective spirit" (12).

norm contestation (Wiener 2017). In my work, I prioritize the perspective of indigenous peoples as a special subgroup of stakeholders, namely, as rights-holders.[4] This is important because, in contrast to state and corporate actors, indigenous peoples' fundamental rights, including their physical well-being, are what is really at stake in norm contestation regarding PC and FPIC.

Wiener emphasizes that "different modes of contestation indicate that as an interactive social practice contestation may be performed either explicitly (by contention, objection, questioning or deliberation) or implicitly (through neglect, negation or disregard)" (Wiener 2014, 2; underlining added for emphasis). Inspired by this conceptualization, I distinguish between two "layers" of grassroots meaning: The first relates to explicit contestation, as verbally expressed during consultations. The second layer concerns meanwhile what Wiener (2008)has called the "invisible constitution of politics" or the "hidden meaning" of norms. This second layer is and was not openly expressed during consultation, but refers to the implicit indigenous meanings attached to PC and the corresponding attitudes and perceptions. Further, I add a third layer to norm contestation, which I consider to be crucial when rights-holder themselves are in the focus of research: The political implications of contestation understood as the perceptions of PC results.

Political Implications of Grassroots Contestation

Recognition and redistribution, especially in the highly asymmetric contexts of resource extraction projects, cannot be thought of separately. In the conceptual framework, I follow Owen and Tully (2007) political approach to recognition, legal or theoretical struggles for recognition cannot be conceptualized without acknowledging the empirical, political struggles over recognition. This means that recognition and redistribution are impossible to think or invoke separate from each other. More recently this has been reflected in Rodríguez-Garavito and Baquero Díaz (2015) renewed demand for recognition with redistribution in Latin America.

As a third layer of grassroots' contestation, the perceived political implications of PC outcomes concern both the symbolic recognition of indigenous claims by the state and the influence material implications of consultation outcomes for the access to lands, resources, and benefit-sharing. The interpretation of PC results being positive or negative can substantially differ between the actors involved. In general, the role of legal instruments for indigenous peoples' struggles has resulted in polarized discussions. On the one hand, critiques have lost hope that rights discourses can lead to real change. Goodale (2016) notes that "rights discourse" rather constrains indigenous peoples' struggles for self-determination because it "offers symbolic-political solutions to political-economic problems" (Goodale 2016, 443). On the other hand, scholars show that impacts on recognition and redistribution are not predetermined but depend on each context. Colombian human rights lawyer César Rodríguez-Garavito (2011, 290) argues that the same legal instruments are used by states, companies, and indigenous peoples, but "the hegemonic or counterhegemonic effects of those rules" depend on "the relative success of their competing interpretations in a specific dispute." The focus on rights "talk" and "on procedure postpones or mitigates, but does not eliminate, substantive disagreements, nor contrasting visions of participation and empowerment" (Rodríguez-Garavito 2011, 273).

Methodological Framework and Positioning

The methodological framework follows an interpretive research design (Schwartz-Shea and Yanow 2012) and combines actor-centered, ethnographic fieldwork with legal and textual analysis. Interpretivist research has slowly entered IR since the 1990s and has resulted in "a robust and diverse research program, consolidating across various subfields of the discipline" (Kurowska 2020, 93). The common characteristic distinguishing interpretive from positivist research is a monist ontology. This means that interpretivists do not assume that there are objective facts "out there" for researchers to be observed, but that knowledge is interactively constructed and shaped between the researcher and the world. Facts and values are therefore "symbiotic" (Lynch 2014, 15) in their relationship, and this requires transparency, contextualization, and reflexivity about the position from which a researcher is producing knowledge (Kurowska 2020, 94; Lynch 2014, 17; Schwartz-Shea and Yanow 2012, 99 ff.). Under these premises, the method section outlines the data generation and analysis, access to field sites, and reflections on my positioning.

Data Generation and Analysis

In total, I undertook four stays in Peru and a total of fourteen months of field research between 2013 and 2015 "following PC" via ethnographic "multi-sited fieldwork" (Marcus 1998). Participant observations were conducted by accompanying indigenous and state actors in official prior-consultation events as well as other related gatherings. I documented these observations in detailed protocols on the practices and contents of contestations as well as via photos, videos, and audio recordings. Additionally, I conducted and recorded sixty-eight semi-structured interviews with seventy-four interlocutors.[5]

In the spirit of the "abductive logic" inherent in interpretive research (Schwartz-Shea and Yanow 2012, 27), the research process was continuously going back and forth between literature and insights from fieldwork. Honing in on the first prior-consultation processes implemented in Peru, I observed the expression of explicit contestation. The documented interactions in the observation protocols, in-process memos, and audio recordings later served as the basis for qualitative content analysis (QCA) of themes and issues of grassroots contestation. Three general dimensions are identified to systematize the analysis[6]: (1) the definition of consultation subjects; (2) procedural matters, and (3) the substance of related processes. These three dimensions are interdependent, but simultaneously differentiated. During the data analysis, subdimensions and additional content were further specified. To scrutinize the second layer of contested meaning, I conducted in-depth and semi-structured interviews on the "hidden meaning" indigenous actors attach to PC. I exploratively asked for related underlying inter-

[4]Practitioners and NGOs have long criticized participatory multistakeholder initiatives for not prioritizing rights-holders vis-à-vis companies or state actors (Lovera 2016).

[5]Interviews were conducted with (1) state actors (9), (2) indigenous actors (39), and (3) "third parties"—advisers, translators, and German development cooperation (13). Further, I spoke with the ILO representative for Latin America, an official from the European Union's Council of Ministers, foreign hydrocarbon companies working in Peru (9), and academic experts (4).

[6]These dimensions help define the scope of PC and FPIC in normative-legal terms (Rodríguez-Garavito 2011) and as a participatory space (Cornwall and Coelho 2007, 8–10).

pretations and frames of meaning. The different ideas and perceptions of PC encountered are reconstructed based on dense passages of field notes and interview transcripts.

The ideas of PC and the perception of the processes were analyzed in the light of wording and evaluation (active/passive, e.g., "consultation is done to us"; emotional: "felt like being made fun of [*como una burla*]"). Finally, I analyze the political implications as a third layer of grassroots contestation. I focus here on PC results, and actors' perceptions of them.

Selection of and Access to Contestation Sites

Peru is the country with the most prominent, violent, and successful cases of protest—not litigation—regarding indigenous grassroots claims for the domestic implementation of PC and FPIC. The prior Amazonian protests between 2007 and 2009 against the Alan García government (2005–2011) showed the power of indigenous people to mobilize and paralyze the country's rainforest area, especially blocking oil infrastructure (Hughes 2010). On June 9, 2009, the Peruvian government sent police to Bagua to end the indigenous protests, resulting in thirty-three people losing their lives. As the violence continued to escalate, international institutions such as the UN Special Rapporteur and the ILO, as well as civil society organizations, publicly criticized the government's repressive approach and pressured for the implementation of consultation rights (Larsen 2016). The hydrocarbon sector was the first to begin implementing PC in the Amazon. Consultations, with the exception of Block 192 already in operation, concerned newly designated oil and gas concessions ("blocks") of 340–680 hectares, which overlapped with various indigenous communities in the rainforest. Perúpetro initiated thirteen consultation processes (Interview with Perúpetro, Lima, April 2014) under the Humala administration. Ten of these processes resulted in agreements between the state and the consulted communities. The government presented these as success stories, while grassroots activists contested them, and various processes were canceled or blocked because Amazonian communities opposed and forsook them. These processes received little to no media coverage.

Positioning

The starting point for the production of knowledge for this article is my position as a nonindigenous, white, female academic, and by no means I claim to speak for or in the name of indigenous peoples. As a researcher, I see myself as an academic intermediary or translator. Reflexivity as "the continual analysis of the meaning of the researcher's assumptions, role, and actions in the research process" (Lynch 2014, 17) and the feedback from research participants ("member-checking," Schwartz-Shea and Yanow 2012, 99 ff.) were central for this interpretive project.

During the trajectory of this study, the collaboration with indigenous organizations grew stronger and resulted in several workshops about consultation rights and the invitation of indigenous leaders to project workshops. Beyond academic publications, the knowledge produced has therefore served to advise state and Non-Governmental Organization (NGO) actors about capacity-building, institutional designs, and monitoring as well as to inform indigenous actors about how to navigate the ambiguities of PC and FPIC.

Establishing trust was central to work with state actors and indigenous organizations. The access to consultation meetings was only possible with a formal invitation by an indigenous organization, and the conditions for these formal invitation letters became the basis for our collaboration. Mainly, my part consisted in the documentation of the meetings, providing support in formulating and writing requests to the state entities on my laptop, and intermediating in conversations with state entities and advisers. Being white (and comparatively tall) clearly characterized me as an outsider. The role of a researcher was important to establish in order not to be confused with a representative of the German development cooperation, an oil company, or the Peruvian state. Sometimes this difference resulted in disappointment among indigenous leaders. However, having a German "friend" with a university degree or an "international observer" was also something leaders highlighted to the state.

Language differences played a key role in the research and the writing of this article. Quotes are translated from Spanish to English myself, but the Spanish material is often already the result of a translation from indigenous languages. During fieldwork, I learned that switching to indigenous languages was a way to exclude me from conversations. Only after I had worked some time as a kind of secretary, leaders included me in substantial exchanges over political strategies with the state, such as the change to the indigenous tongue during consultation meetings. However, not being native Spanish speakers was also a connecting element. Indigenous persons accepted that I had to frequently ask whether I had understood them correctly and for them to comment on my protocols. In contrast, when I used abstract language to learn about indigenous interviewees' understandings of PC, they usually requested that I explain the legal definition to them because "I would know better." Therefore, I changed the phrasing of my questions to experience-based ones and asked, for example, "How do you feel about your involvement in consultation meeting X?"

Being female was ambiguous for building relationships. In the context of indigenous leadership, I turned from being an exotic outsider into a secretary and slowly into a trustworthy ally. However, the leaders I worked with were mostly male, and I was never invited to male-only informal group activities, e.g., dinner or drinking, where important coordination took place. In the communities, women were less forward when talking with me than men. Partly this was due to language barriers, but I also learned that they were more open to speaking with me when I was accompanied by female interpreters.

Indigenous Grassroots Contesting State Monologues

From the perspective of international law, C169 is still the only binding instrument for indigenous peoples' rights. Latin America is the region most advanced in formally recognizing consultation rights: Of the total twenty-four ratifying countries of C169, fifteen are situated in this world region. While many countries signed the Convention as early as the 1990s, with few exceptions, consultations have only recently been further institutionalized and implemented. Peru ratified C169 in 1994 under the Alberto Fujimori administration (1990–2000), at a time still marked by internal armed conflict with leftist guerrillas. Finally, in 2011, the Peruvian consultation law (the Law of the Right to PC of Indigenous and Tribal Peoples, recognized in C169, Law No. 29,785/LPC) was promulgated, and in 2012, its regulatory norm (Regulating Decree of Law 29,785, No. 001-2012-MC/RLPC). The legal framework stipulates that only agreements are binding, which means that in the case of

disagreement—that is, if communities oppose a measure—the state can still implement the projects (for a detailed account see Schilling-Vacaflor and Flemmer 2015).

After the adoption of the legal framework, PC remained a central issue of controversy in public discourse as well as within the executive branch, especially with regard to resource extraction. Peru's economy is highly dependent on the extraction of natural resources. Legally, the state owns all subsoil resources. The national government, via the Ministry of Energy and Mines (MEM), is the central entity that defines areas for mining and hydrocarbon (oil and gas) concessions, organizes international auctions, and signs contracts with the highest bidders. These formal concessions are leased for thirty to forty years and managed by foreign companies, while only subcontractors—for infrastructure and similar—are Peruvian (Orihuela 2012). Heads of the powerful ministries of Economy and Finance and the MEM qualified PC polemically as an "investment obstacle" (La Primera 2013). Together with corporate actors, they framed indigenous demands for FPIC as a minority claiming a "right to veto" over the country's economic growth. The Vice-Ministry of Intercultural Affairs (VMI), as the national entity providing "technical assistance for the implementation of PC" to all sectors, was set under enormous political pressure, resulting in various heads of the VMI being replaced or leaving office (Gálvez and Sosa Villagarcia 2013).

State Monologues: Uncontested Consultations

The first category, "uncontested consultations," comprises a total of six cases: two processes conducted about hydrocarbon concessions in the Ucayali River Basin (PC164 and 169), three cases in the Marañón River Basin (PC165, 197, and 198), and one case in the Madre de Dios River Basin (PC190). The first consultation conducted in the hydrocarbon sector concerned planned oil concession number 169 and took place in a remote area of the Ucayali region close to the Brazilian border and should serve to illustrate this category. The process included seventeen communities and adjacent settlements of Amahuaca, Asháninka, Ashénika, and Yaminahua peoples. The participatory part of the process began in October 2013 and concluded in December of the same year.

As a subentity of the MEM, Perúpetro led the implementation of PCs in the hydrocarbon sector. Perúpetro is a state agency registered under private law that is responsible for licensing hydrocarbon concessions and has the mission to "promote investment" in the industry (Law No. 26,221, Organic Law for Hydrocarbons, Art. 6). Experienced Perúpetro engineers from the head office in Lima led the implementation teams and were clear about their task to prepare the grounds for future projects. The VMI was represented by a young lawyer and an anthropologist, both recently finished university in Lima. They were truly committed to improve indigenous participation and "really make a change" (e.g., Interview VMI, Lima, April 2014).

The majority of communities consulted held formal land titles but were in scarce contact with the state. Bilingual community presidents, for example, for the Amahuaca people, served also as interpreters between community members and the state. Further, the presence of people from uncontacted tribes was not recorded. Perúpetro had no interest in problematizing this issue. Neither did community leaders. The president of one community explained to me in an interview that "these nudes" (*estos calatos*) were stealing from his community, and he would hope that they would soon disappear with the oil company arriving (Interview indigenous leader, Pucallpa, December 2013).

First Layer: Explicit Political Contestation

Contestation in PC169 did not concern the norm of PC but foremost questions of representation. Communities were not affiliated with the two national indigenous Amazonian organizations. Community leaders harshly doubted the interests of the national indigenous representatives and insisted on representing the communities themselves. A dominant idea was that the process was a negotiation with an oil company. Even after the consultation concluded, indigenous participants stated their hopes that Perúpetro is coming soon to extract oil and pay them compensations (Interviews and conversations, Pucallpa, December 2013). Moreover, indigenous leaders' strongly articulated claims for basic state infrastructure, such as electricity, sanitation, schools, and local health care centers, with the hope that "the company Perúpetro" will attend their demands (Interviews indigenous leader, Pucallpa, December 2013).

The final consultation agreement of PC169 is rather general. Also, the documents on the internal agreements of the participating indigenous communities show that neither the consultation procedure nor the implications of the planned project were clear. The Peruvian Human Rights Ombudsperson (Defensoría del Pueblo [DP]), who has the status of an observer in consultations, later articulated concerns about the haste with which the process was concluded. Criticizing that information was mainly given in "technical language" and written format, with poor or even no translation and interpretation, despite the fact that some community members were illiterate and/or did not necessarily speak Spanish.

Second Layer: Attitudes and Perceptions

Perúpetro engineers repeatedly emphasized during the events that "prior consultation is a new way of state-decision making"; however, their internal coordination usually focused on how to convince participants to conclude the consultation. The consultation procedure was designed by Perúpetro without a joint planning phase. Dates, places, and the formats of consultation meetings vis-à-vis PC169 were unilaterally defined by Perúpetro. Further, for newly designated blocks, the MEM decided to insert PCs before the usual public participation at an early point in the licensing process. This means Perúpetro had already defined the geographic area of the future concession, despite neither concrete projects having yet been designed nor an appropriate extractive company having been chosen. During the meetings, Perúpetro staff was deciding on the time schedule, speaking order, and structure of seating arrangements, as well as controlling the entrance with attendance lists. The VMI did not interfered in the events when Perúpetro was presenting, nor did representatives of the DP. As a VMI representative explained to me in an interview, the strategy was to advance implementation by "accumulating experiences" and derive "from the systematization and the lessons learned, the modifications that have to be made" (Interview VMI, Lima, April 2014). In a similar vein, the DP elaborated on detailed documentation about the PCs, including recommendations for improvement, but did not intervene during PC processes.

The way Perúpetro and the VMI presented the purpose of consultation is illustrative: the state oil agency noted that the consultation would concern the "possible impacts on

indigenous peoples' collective rights" of the "painting of a hydrocarbon block [*propuesta o dibujo del lote*]."[7] This indicated "painting on a map" the area of the future petroleum block in red lines, something not presented as being open for discussion. Further, the implications of a future project were discussed based on a standardized "Table on collective rights and possible impacts" naming the different steps of a hydrocarbon project and their potential impacts on collective rights.[8] For the exploitation phase, the table states, for example, that drilling activities and the installation of production facilities could affect the use of the territory and cause the disappearance of wildlife. The interaction of indigenous peoples with foreign personnel with different identities and/or racist or discriminatory attitudes can produce changes in language use and even in the ethnic identity of the local population. Further, indigenous peoples' right to decide on their own development priorities could be limited due to "having installed extractive activities in their territories that introduce nontraditional elements of market economy and nutrition." Additionally, at no point does the table mention that hydrocarbon concessions are based on contracts running for thirty to forty years at a time. The table indicates that any impacts are only temporary. Clearly, this is not the case as changes in the practices and customs of indigenous communities are long-term and irreversible.

During a break in the final meeting, an indigenous leader stated that he himself was not completely sure what the process was about but that he had tried to inform his community the best he could (Interview indigenous leader, Pucallpa, December 2013). In contrast, Perúpetro engineers wanted to conclude the PC to receive the "social license" for the upcoming project. A high-ranking Perúpetro representative highlighted in an interview,

> I believe that the work we are doing here is clear, transparent, honest, in excess. Why? Because I believe that the indigenous peoples deserve this implementation of prior consultation under this methodology, because we also want that tomorrow, when a contractor comes, […], he will be able to work in peace. (Interview Perúpetro, Lima, April 2014)

In his opinion, PC was an exaggeration of indigenous peoples' rights with an excess of time and financial resources. While indigenous peoples saw PC as a means to have a say in state decisions affecting them, for the state engineer, the consultation was the maximum version of indigenous rights and an end in itself.

Third Layer: Political Implications

PC169 had the character of a state monologue. Perúpetro unilaterally established a procedural design with a one-way communication format. First, the MEM's internal "administrative decision" to only consult at one very early point in the licensing process, when no project had yet been defined, substantially enhanced the abstractness of impacts discussed in the consultation arenas. Further, Perúpetro personnel from Lima brought with them their already-fixed design and drew on their previous experiences with strategies to depoliticize citizen participation, i.e., silence opposition, deal with disturbances, etc. (Schilling-Vacaflor, Flemmer, and Hujber 2018). Second, alliances between indigenous organizations at the different sites of consultation did not emerge. Neither did indigenous participants establish stronger ties with the VMI or the DP. These actors inside the state are supporting indigenous peoples' rights (Falleti and Riofrancos 2018; Paredes 2023). However, the VMI was under political pressure, and personnel strongly adhered to their role of being "technical support" with the task of clarifying procedural matters. The DP only acts when citizens call for action and should not interfere in state processes by itself. Therefore, even the state personnel committed to indigenous rights did not proactively contest the rigid consultation model. Third, the uncontested consultation did go as planned by Perúpetro without challenging the fundamental asymmetries underlying resource extraction projects. This means that PC was adapted to the "project logic" of hydrocarbon licensing, instead of changing the sector's modus operandi.

The contestation literature as well as researchers working on consultation rights and development projects sited on indigenous peoples' territories alert us to how external norms or projects must cause contestation. As Masaki rightly formulates, "external interventions cannot be neutral" (2009, 82–83); conflicts of interest and negotiations over meaning have to be expected. As shown with PC169, uncontested consultations in the hydrocarbon sector turned out to be constrained participatory events—thus remaining isolated processes that did not give genuine decision-making power to the indigenous peoples consulted. Instead of indicating norm compliance, these state monologues give reason for concern and should alert observers.

Negotiations about Oil Projects: Contested Consultations

The second category is "contested consultations" and concerns three processes conducted in the Ucayali River Basin (PC175, 189, 195). The consultation about planned oil concession PC195 in the central Amazon region of Ucayali serves to illustrate the nature of these contested consultations. In PC195, all communities accepted to participate in the consultation; both the state and indigenous representatives celebrated the process as a "good example" (Interview with regional indigenous leader, Ucayali, December 2014; Perúpetro 2014). PC195 was initiated in December 2013, concluding "as planned" in April of the following year.

Five Kakataibo communities and one Shipibo-Konibo community were consulted. Local leaders invited representatives of the two competing national Amazonian organizations, who later played an important role in articulating grassroots claims. The older Interethnic Association for the Development of the Peruvian Rainforest (Asociación Interétnica de Desarrollo de la Selva Peruana [AIDESEP]) is more critical of extractive industries, while the Confederation of the Amazonian Nationalities of Peru (Confederación de Nacionalidades Amazónicas del Perú [CONAP]) is more open to them. On the one hand, the Shipibo-Konibo leaders together with CONAP-Ucayali had high expectations regarding the economic benefits and labor opportunities the new project would bring. On the other hand, the Kakataibo leaders and the regional branch of AIDESEP were more critical given the negative social and environmental impacts. No community was strictly against the project.

Power imbalances were clear during the organization of the meetings. Other state personnel, indigenous representatives, and I depended on Perúpetro's transports with boats and jeeps to communities in the rainforest. For me, the time spent traveling together was a rich source for

[7] The administrative measure consulted was even more abstract: a standard Supreme Decree being used to approve the signing of the contract between Perúpetro and the winning company.

[8] Collective rights were considered to be those to: (1) land and territory; (2) use of natural resources; (3) preserve customs; (4) intercultural healthcare; (5) cultural identity; and (6) establish own development priorities.

understanding the relations between the different actors and also for building trust. I could listen to informal conversations but also share more personal information about my family, life in Germany, and experiences in Peru. My travel companions later presented me to participants as a researcher from Germany, and this helped to establish further connections with community leaders.

First Layer: Explicit Political Contestation

Indigenous leaders began meetings by celebrating the state's obligation to consult as a result of indigenous protests. The president of the Kakataibo organization proudly emphasized, "We fought for this in Bagua." and presented the event as an "historic moment" after the long fight for PC (Aguaytía, February 2014, PC195). He highlighted that he would not consider the "conflict with the government to be over." The Shipibo-Konibo leaders and CONAP had not been involved in the previous mobilizations. They emphasized that the fight would be over now and "it will be very good from here on, we don't want to see the state in conflict with indigenous peoples again" (Interview with regional indigenous leader, Santa Rosa, March 2014).

Perúpetro personnel employed formal language stating that they comply with prior consultation as "an obligation of the state derived from international law." Their slides, printed information material, and T-shirts worn by the engineers showed the agency's logo and slogans, such as "Prior Consultation in oil activities. A clear, respectful, and transparent dialogue" Perúpetro engineers repeatedly insisted that indigenous participants should take the process seriously. VMI representatives combined both indigenous leaders' references to the Bagua conflict, emphasizing that "This law has been fought for by their brothers," and Perúpetro's reference to PC being an "international legal obligation" of the state. The VMI's presentations about the national legal framework showed parts of the legal text and graphics, e.g., the phrasing "The objective of consultations is to reach an agreement to the state's proposal" was illustrated with a handshake but did not mention its contested character.

In line with their opening statements, Kakataibo leaders were outspoken in their critique of the process, but also the Shipibo participants raised concerns. However, in the first meetings, the consultation procedure was questioned only timidly, because they were "unsure whether the steps taken were already predetermined by law" (Interview indigenous leader, Pulcallpa, March 2014). Later, leaders demanded additional information through workshops and meetings in the communities, but without success. Indigenous participants from both peoples repeatedly asked about the "real impacts" of oil extraction, criticized the abstract technical or legal language, the quality of translated materials, and complained that information was too heavily based on written material. Kakataibo leaders, supported by an NGO adviser, also insisted that the material was too superficial and unspecific and asked for additional documents, such as an exemplary contract between the state and oil companies or the details of the exploratory study conducted in the area. These requests were either ignored entirely by Perúpetro or the documents were handed over at the last minute, shortly before the final consultation meeting.

Perúpetro established a highly asymmetric participation structure with ground rules about who can speak, when, and how—but only for participants, not for the agency's own personnel. These restrictive rules were especially manifest in the final consultation meeting. The physical ordering of the room literally excluded indigenous peoples' advisers from the negotiation table set up in the center of the room. Indigenous leaders could only consult with their advisers by asking for a break or leaving the table, but by the time they came back, the negotiations had moved on already. Despite the criticism from indigenous leaders, the state entity did not waver (Flemmer and Schilling-Vacaflor 2016, 181). Perúpetro also controlled the access to the meeting. The Kakataibo had voted that the experienced AIDESEP leader should be one of their representatives, but Perúpetro rejected his participation based on the argument that he would not be from the same ethnic group. Only after the Kakataibo threatened to abandon the process, the agency finally accepted him, but only as an adviser sitting in the back—impeding indigenous communities from deciding their representatives on their own terms. Further, Perúpetro agreed to incorporate a list of "agreements not related to the measure" with demands for basic state services and land titles into the final consultation document. Especially for the Kakataibo communities, these demands were the preconditions for accepting a future hydrocarbon project. Perúpetro did not acknowledge that canceling the project would even be an option. When indigenous participants kept asking what would happen if a community did not agree to the future oil project, state personnel simply responded that "there is no right to veto."

Second Layer: Attitudes and Perceptions

Kakataibo leaders and community members stated that they found it difficult "to understand what the consultation was about." This was usually complemented with references to "not knowing enough" or "not understanding the technicalities." During the interviews and conversations, I learned that consultation without having the possibility to say no to a project did not make any sense to them. They valued the community's own internal decision-making, and the result was then communicated to the state. A participant explained, "we have to reach one single conclusion, if we accept the state or not. This would be the logical thing, that we can demand our rights." (Kakataibo community member, Santa Martha, March 2014) Several Kakataibo leaders emphasized that they would not trust the state and had "only joined the process to know what was going on" (Interviews, Ucayali, March–April 2014). Though they would accept a future company under certain conditions. The representative of AIDESP and their adviser from an environmental NGO were against extractive projects but had to accept this position and support the Kakataibo in manifesting their claims. However, the Kakataibo had a general mistrust in the state's compliance with the agreements and the monitoring of the future company.

The Shipibo-Konibo leaders were in favor of a new oil project, hoping for job opportunities and benefits. Some had even abandoned the process when they learned that Perúpetro and the consultation "was only the state" and not a company with whom to negotiate employment opportunities. The remaining spokespersons were keen to conclude the consultation to proceed apace. This was supported by the CONAP leader, who advertised that the consultation would include a real decision-making power. In our interview, she stated, "[PC] will be very useful, because one cannot enter without permission into a house and thus, the state has to ask indigenous peoples for their permission to be allowed to enter their territories" (Interview with regional indigenous leader, Santa Rosa, March 2014). I believe that she did not say this to me or others in a strategic manner. However, I also noticed that she was relieved that the

Shipibos did not put this to the test. However, during my visit to the community, especially women and elderly community members, were deeply concerned about contamination as well as the future of the communal life "when men will leave to work for the company" (Focus group, Santa Rosa, March 2014). However, all interviewees shared hopes that the project will bring income opportunities as well as education, health care, and infrastructure. The search for these new opportunities was coined by the main leaders as urgent in the face of a current draught, which had dried up the river and made fishing, cultivation of fruits and vegetables, and navigation hard or even impossible (Interview indigenous leader, Santa Rosa, March 2014).

Perúpetro personnel did not consider indigenous peoples to have a real say in the decisions of the MEM. The agreements of the final meeting were nothing to seriously worry about. A high ranking Perúpetro official explained to me: "We are about to start the intercultural dialogue in PC195 […], which is already stage 6 of 7. Practically, with this dialogue […], this process of PC195 will end" (Interview Perúpetro, Lima, April 2014). Communities' signatures on the final consultation document in order for the formal obligation to be fulfilled, and decision-making remained in the hands of the MEM. The VMI personnel echoed the slogan "there is not right to veto" during the meetings; however, their reasons were different. VMI staff stated that they wanted to show that PCs do not paralyze the sector, but bring results "all parties involved can work with in the future" (Informal conversation, Ucayali, December 2014). However, several indigenous leaders stated their disappointment with the VMI's and the DP's roles in the consultation. One leader brought this to the point of criticizing that they did not profit from "the technical experience" of the VMI and "never received any report or analysis of the processes, nor did the DP question the events' design while observing" (Interview regional indigenous leader, Ucayali, December 2014).

Third Layer: Political Implications

Indigenous leaders, the VMI as well as Perúpetro celebrated PC195 as a "good example," and the regional AIDESEP leader quoted in the beginning of this article was proud of the results (Conversations and interviews, Ucayali, April and December 2014; Perúpetro 2014). A closer look at the agreements reached in PC195 shows that these were more substantial compared to those resulting from "uncontested consultations." The most substantial outcome of the processes was Perúpetro's revision of Clause 13 of the standard licensing contract to put emphasis on the obligation of the company to respect the collective rights of the communities and the agreements reached in the consultation. Kakataibo and Shipibo leaders were disappointed that no contract was signed for Block 195 (December 2014) and still is not in December 2022. However, introducing the implementation of agreements "not related to the measure," the VMI complied with commitments taken toward the communities. An indirect effect of hydrocarbon consultations, not only in PC195, was a push toward intercultural policies in health care and education, inventories of basic necessities, and most importantly, the recognition of indigenous people and communal land titles. For PC195, the consultation engaged the VMI to support the Kakataibo organization's claim (first articulated in the 1990s) to protect an uncontacted tribe, they considered "their ancestors," and finally led to the establishment of a reserve (Reservas Indígenas Kakataibo Norte y Sur) in July 2021.

For indigenous participants, PC was clearly an external norm, and they put higher value on their own decisions and decision-making processes. Indigenous leaders were well aware that consultations were derived from international standards and the state did not follow them voluntarily, but indigenous mobilizations had obliged the state to recognize these rules. While they were proud of this success and some of them were even hopeful, most were alert that the state entities only listen to communities in order to convince them of the hydrocarbon project. This seems paradigmatic in Amazonian communities, because "they usually say, 'the state only reaches us when it wants to exploit our territory'" (Merino Acuña 2015, 16). However, this meant that if communities—or at least local indigenous elites—generally agree with hydrocarbon projects, consultations can serve to include expectations and fears symbolically but also to negotiate (pre-)conditions for the extractive project and use consultations as a stage for other claims (Jaskoski 2022).

Effective Veto Rights: Opposed Consultations

The third category, "opposed consultations," comprises four cases. These are the partially opposed consultations in Madre de Dios about Blocks 157 and 191, the partially opposed and conflictive Block 192 (formerly 1AB) in the Marañón River Basin in Loreto,[9] and the paralyzed process concerning Block 181 in San Martín.[10] The consultation about the planned oil concession PC157 in the southern rainforest region of Madre de Dios is an example of an opposed consultation. Two of the three communities rejected the consultation process and formulated their opposition with the support of legal advisers from the NGO International Law and Society Institute (Instituto Internacional de Derecho y Sociedad [IIDS]). Initiated by the state in December 2014, the process was canceled due to indigenous opposition to participation in the consultation.

PC157 concerned three communities of Ese'Eja, Matsigenka, and Shipibo-Konibo peoples. All three communities are affiliated with COINBAMAD (Consejo Indígena de la Zona Baja del Madre de Dios), which is part of the regional AIDESEP organization, the Native Federation of the Madre de Dios River and its Tributaries (Federación Nativa del Río Madre de Dios y Afluentes [FENAMAD]). COINBAMAD was in favor of new hydrocarbon projects with high expectations regarding benefits and opportunities, while FENAMAD publicly stated that the organization rejected any further hydrocarbon projects in the region and opposed consultation processes because they did not include the right to veto (FENAMAD 2014; Interview FENAMAD, Puerto Maldonado, October 2014). However, the majority of communities in the region agreed to being consulted (PC190, 191). In PC157, the multiethnic community of Tres Islas led an opposition and was joined by the neighboring Shipibo-Konibo community of San Jacinto. In the aftermath, hydrocarbon concession 157 was reduced to avoid overlap with communities, and the consultation process was canceled.

First Layer: Explicit Political Contestation

In the first planning meeting with Perúpetro in November 2014, indigenous leaders were concerned that "the state required too many participants," and they were preoccupied with not being able to comply with Perúpetro's

[9] PC about Block 192 was the first process announced, but was canceled several times (Lévano 2017).

[10] PC about Block 181 remained paralyzed because local organizations criticized the limited identification of affected communities and demanded revision of the consultation legislation (Clave Verde 2015).

"obligation to participate." This stands in sharp contrast to the PC195 process, wherein all indigenous organizations perceived consultation as an obligation of the state and participation as an indigenous right. A further point of controversy in PC157 was that state legislation as well as officials used the term "representatives" for indigenous persons selected by their communities to participate. Indigenous participants, including indigenous leaders, remarked that the term "delegates" would be more appropriate because they would not have the competencies to decide freely; they were mere "messengers" for their communities, and agreements would be taken in communal assemblies alone.

Regarding PC157, Perúpetro had already learned from other consultation processes that meetings may clash with communal activities, such as collective work (*minga*). A heated discussion arose between indigenous participants and the agency because the dates proposed by Perúpetro ran counter to community priorities. When a leader firmly insisted on more time and more participants for the information period, officials invoked the principle that consultations should be carried out in a flexible way—appealing to the indigenous representative to thus accept the state's terms, whereupon he gave in.

As with PC195, leaders demanded information workshops in the communities. However, the process was canceled before they ever came about. Nevertheless, in the first meeting, reason for contestation was the quality of information distributed by the state and indigenous participants requesting a field visit by officials to indigenous communities. This request was accepted by Perúpetro when Tres Islas' opposition crystallized. For the visit, the head of the Lima office flew in only to conduct this meeting personally in December 2014. On the way to the meeting, the atmosphere in the jeep was tense. Perúpetro staff were anxious about how the community would receive them, and they feared being attacked verbally or even thrown at with things. The meeting was held in the community assembly hall. During the opening statements, it became clear that community members had participated in Perúpetro's planning event for Tres Islas to become better informed and with the explicit order to "not sign anything." However, the document resulting from the meeting showed some of their signatures, and now they had to publicly take responsibility for declaring their signatures to be invalid. The leading Perúpetro official calmed down the community's fears that they had already "agreed to join the consultation" or even given license to a future company. In his presentation, he clarified that this had "only been a planning meeting" and that the signatures would not mean the acceptance of a future oil project. The community was partly relieved, and after a Perúpetro-sponsored lunch, the visit ended. In the jeep, Perúpetro personnel showed their preoccupation about Tres Islas not accepting the consultation, not to speak of a future project, and discussed further steps. Their agreement was to wait for an official reaction of the community.

In January 2015, Tres Islas, with the support of their lawyers, publicly stated that they had never been authorized to participate in the consultation (SERVINDI 2015). A few weeks later, they sent a formal letter to the Perúpetro, repeating the rejection already expressed. They noted that their assembly had decided not to accept hydrocarbon activities in their territory and that they would not participate in the consultation. Further, they requested the revision of the consultation legislation, proceedings that include *consentimiento,* and consultation processes in the definition of areas (lotización) for new hydrocarbon concession (Carta N°02_2015/P.C.N TRES ISLAS, 17.03.15; Viceministerio de Interculturalidad 2015).

Second Layer: Attitudes and Perceptions

Tres Islas official statements were formulated as a critique of national law and state proceedings. However, in interviews, it became clear that they would not have participated in any kind of process with the state or extractive companies because of their negative experiences with (illegal) small-scale gold mining in the region. The IIDS had advised Tres Islas for several years and had helped the community file a case against the invasion of its territory by illegal miners. After the IACHR intervened, this led to a decision in favor of the community by the Peruvian Constitutional Court in September 2012 (STC Exp. N° 1126-2011-PHC/TC) that recognized the community's territorial autonomy and right to self-determination (CIDH 2017). Adding this struggle, a long history of violence against indigenous peoples during the rubber boom as well as struggles against hydrocarbon extraction and infrastructure projects were further reasons. Tres Islas did not want to enter state consultations to avoid invasion and abuse under the guise of another "legal" agreement. A leader explained that the signing of papers had legally legitimized mining projects without the community having a say, how these activities are conducted and that he would not again want "anyone to put a string around our necks" (Interview Tres Islas leader, Puerto Maldonado, December 2014). A repeat of the past was to be avoided, as they sought continuous influence and control over the project.

Three communities were involved in PC157, and only one (San Jacinto) had joined Tres Islas in their opposition to the project. The third community, El Pilar, did not appreciate Tres Islas to "oppose PC, and they have even rejected Perúpetro which, with good intentions, starts to apply it […]. I don't know what the problem of some communities is" (Interview community leader EL Pilar, Puerto Maldonado, February 2015). When PC157 was canceled, El Pilar leaders were glad that the consultation about a second concession overlapping with their territory was ongoing. The internal agreement of El Pilar for PC191 shows the community's high hopes for a future project to bring job and income opportunities as well as infrastructure. The document also illustrates that the role of the state in consultations was not clear and reads that the community approves that Perúpetro is coming soon to exploit hydrocarbons (Act Internal Evaluation CN El Pilar, April 21, 2015, PC191).

Third Layer: Political Implications

Tres Islas was proud of their successful opposition and leaders refocused on their resistance against gold miners. On indigenous news platforms, they were celebrated for their resistance to extractive projects and critique to PC (SERVINDI 2015). In Peru, PC157 was the first case in which a community was able to use the state's formal obligation to conduct PC to avoid a new hydrocarbon project. Further, this was the first time that a community politically decided not to enter a PC.

In contrast, Perúpetro feared that PC157 would become an "example case" for other communities to follow (Informal conversation Perúpetro, Madre de Dios, December 2014). To my knowledge, there were no other communities copying this strategy for prior consultation in Peru's hydrocarbon sector. However, blocking participatory processes to pressure the state to respond to indigenous demands or to avoid projects is already part of protest repertoires in Peru

(Schilling-Vacaflor, Flemmer, and Hujber 2018) and elsewhere (Schilling-Vacaflor and Flemmer 2020).

However, Tres Islas opposition did not lead to structural changes. The claims for "permanent participation" did not enter into the national legal framework or even Perúpetro's proceedings. Further, the reduction of the oil concession may mean that installations will not be sited on community territory, but this does not avoid impacts from infrastructure, social change, and contamination of watersheds. In an interview, a lawyer pointed out that being close to an oil concession but not within the official area can be worse. It would mean "contamination without the access to mitigation measures and compensation payments." (Interview lawyer, Lima, April 2014) However, no company applied for the concession areas in Madre de Dios.

Conclusions

The article provided nuanced insights on three layers of indigenous grassroots contestation of PC—explicit contestation, attitudes and perceptions, and political implications—to help understand when and how international norms fail or succeed to protect indigenous rights in context. The empirical material demonstrated that PC processes take the shape of state monologues if indigenous communities do not contest them. However, contestation requires that communities and their organizations have a defined position and capacity to negotiate with the state. In places where communities are not organized to articulate claims or to have a unified opposition, CP further cements their exclusion. Yet, the status of PC "being law" and the formal obligation of states to consult—based on C169—did give indigenous communities in Peru an instrument to oppose unwanted projects by not joining consultations.

The findings in Peru illustrate the "dark side" of top-down norm translation. A legal "downward harmonization" (Foblets 2009) takes place in the national implementation of international standards. On the one hand, this consists of international standards getting restricted in scope in the process of further regulation. On the other hand, decisions are depoliticized by being framed as "technical" instead—therewith implementing standards without providing for public participation or transparency. These state practices reducing PC and excluding FPIC have similarly been described for the Peruvian mining sector (Guevara Gil and Cabanillas Linares 2020) and in resource extraction across the region (Leifsen et al. 2018), as well as with regard to the "duty to consult" in Australia and Canada (O'Faircheallaigh 2014; Papillon and Rodon 2019). This means consultation rights symbolically favor indigenous rights but prioritizes extractive industry projects.

The structure of PC as an international norm attributes states to be the active part and indigenous peoples to be the reactive one. If reaching the consent of communities, FPIC, is not considered to be the obligation of the state, consultations even get coercive. Once communities agree to join in a consultation, the state's obligation to consult is formally fulfilled, and there is no legal way to say no to a resource extraction project. The state decides if and how indigenous demands are taken into account, and if no agreement can be reached, the consultation has no binding outcomes. Accordingly, communities disagreeing with the project, or its terms, leave the process empty-handed. Researchers, including myself, have little hope for international organizations to interfere (Larsen 2016). The latest ILO guidance book (ILO 2013) further certified: "consultations do not imply a right to veto nor is the result of the consultations necessarily the reaching of agreement or consent" (ILO 2013, 13).

The normative dimension of grassroots contestation of PC can be pinned down to a normative "means versus ends" conflict. Bottom-up approaches to C169 understand PC as a means oriented toward indigenous self-determination, while top-down approaches usually understand PC as a participatory process with no binding consent rule and an end in itself. PC as a norm can accommodate these mutually exclusive understandings because it has a twin nature to it: It is a procedural right, but it is also a precondition for gaining access to other rights. PC is only "activated" when other, more fundamental indigenous rights are at stake. This illustrates the potential of PC, but at the same time shows how it entails immense risk too. Consequently, the extent to which other rights are obtained depends on how relevant parties can make effective usage of consultation.

The material dimension of struggles over PC speaks to broader questions of justice embedded in the colonial trajectory of long-standing claims for territorial rights. As "rights-holders," in contrast to other stakeholders—states, donors, or companies—the scope of prior consultation may symbolically be negotiated and legally defined but directly relates to the access to resources. Legal solutions, such as the introduction of the FPIC principle alone, would not solve this because one single moment of consent cannot guarantee control over the implementation of projects and their impacts. However, indigenous peoples also appropriate PC and organize their own consultations (community consultations or *autoconsultas*; Fulmer 2014) to certify their opposition against external projects. While some scholars recommend refraining from legal instruments and adhere to protest activities only (Lindroth 2014), I see both strategies to be complementary, and I hope to contribute insights that help navigate the ambiguities of consultation rights because using a legal tool requires—as with any weapon—skills and caution in order to avoid it to backfire (Fulmer 2014, 66).

For a future research agenda on alternative and decolonial IR, I want to stress three issues to further shift the discussion from state- or international institution-centered approaches to "bottom-up" perspectives under the premise of indigenous empowerment (Wright and Tomaselli 2019, 280). First, "uncontested" PCs are not a sign of norm support. Being uncontested rather points to legal instruments being used against marginalized populations. Indigenous peoples have long been silenced in (inter)national politics, and colonially rooted barriers to participation—language, economic hardship, and discrimination—are strong. Researchers need to go beyond the "state story" of legal implementation and be aware that opposition may be expressed in other ways than just verbally formulated critique, because the rules of the game may lead to people silencing themselves or keep them from entering consultation arenas at all.

Second, indigenous peoples' contestations of PC in the Amazon are part of complex global struggles for recognition and redistribution. Indigenous peoples are the rights-holders of PC and are directly affected by extractive industry projects. Their right to self-determination does challenge national economic priorities (Burchardt and Dietz 2014), but also a globally dominant development path based on fossil fuels (Shapiro and McNeish 2021). Deconstructing the static colonizercolonized interface underlying PC is mandatory because this binary is not only inadequate but also hinders transformation. Neither the state nor indigenous peoples are monolithic blocks or hold unified positions. Indigenous peoples do usually not want to separate completely from states, and certain sectors inside the state administra-

tion may contain allies for indigenous peoples' claims, such as national human rights ombudspersons (Paredes 2023). Alliances of agents for change may therefore form within and beyond national borders.

Third, I cannot claim to speak from a colonized position; however, as a Latin Americanist, the insights from my work should contribute to the growing literature highlighting Latin America as an important site for decolonizing IR (Taylor 2012; Acharya, Deciancio, and Tussie 2022). Scholars have begun to rethink the discipline from alternative perspectives of indigenous relational ontologies of human-nonhuman life, including the Rights of Mother Earth or Rights of Nature (Querejazu and Tickner 2022). Interpretivist methodology can be particularly apt for these endeavors because it explicitly invites to do research *with* instead of *on* people. However, indigenous understandings of coexistences—discussed under the umbrella terms of the "full life" (*vida plena*) in Amazonia, "good life" (*buen vivir*) in the Andes, and respect for indigenous peoples' worlds (*cosmovisiones*)—require a deep engagement with indigenous ontologies and alternative ways of knowing. Future critical research can help identify more sustainable alternatives to extractive projects by mapping and comparing the insights gained from these initiatives, working together with Indigenous coresearchers (Tuhiwai Smith [1999] 2008), and facilitating a dialogue of knowledges.

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