Oil drilling damage, prior consultation and environmental conservation in Peru

Oil exploitation in the region of Loreto has affected the environment, the roles of the ecosystems, health, and the ways of life of indigenous communities. The Quechua, Achuar, Urarina, Kichwa, and Kukama peoples, together known as the Puinamudt organization, are fighting for their right to prior consultation to be respected in view of the forthcoming concession for an operator to exploit Lot 192.

By Puinamudt - August 1st, 2021

For 50 years, oil exploitation in Peru has left an indelible mark on the basins of the Pastaza, Corrientes, Tigre, and Marañón Rivers, located in the Loreto region. Damage to the environment can be seen in gorges, lakes, grounds, forests, and fauna, as well as in the roles played by the ecosystems. Moreover, destroying nature has impacted health and quality of life, which causes a constant threat to the peoples who depend on its resources.

In order to strengthen their agenda in unison and to demand the respect of their rights, in 2011, the federations of these affected peoples created the organization called the Amazonian Indigenous Peoples United in Defense of their Territory (in Spanish, Puinamudt).
The contradiction of resorting to consultation to protect the environment

The terms oil exploitation damage, prior consultation, and protection are complete opposites: you do not resort to consultation to accept damage since, if there is damage, protected territories where peoples can live with dignity will no longer exist. According to the reports of indigenous monitors and environmental authorities, over two thousand areas of woods have suffered environmental impact on their grounds and water systems. It is evidenced that oil exploitation damage in the basin areas is caused by irresponsible corporation practices, breaches to environmental regulations, and lack of respect of human and collective rights. Additionally, actions by the State to deal with pollution have not been enough, the environment has been deteriorating for decades and effective remedies have not been implemented.

At the same time, prior consultation in Peru (regulated by Law No. 29785 passed in 2011) does not accept “no” for an answer, nor does it truly include the concept of consent. The terms “oil exploitation damage” and “prior consultation” appear to be complete opposites since, being aware of the damage caused by oil exploitation, it would not be reasonable to expect the affected peoples to demand their right to be consulted before such an agreement is subscribed. However, the peoples also see an opportunity arising out of this process: “We are doomed, we have heavy metals in our bloodstream, and even then, we are still sitting here [negotiating during the consultation]. First, they have to abide by the promises they made regarding health, education, and our projects. That is how we will enter into agreements,” said the president of the Quechua Indigenous Federation of the Pastaza River (in Spanish, FEDIQUEP), Aurelio Chino Dahua, in a recent meeting of the consultation process.

Lastly, the terms “consultation” and “conservation” may also seem to be contradictory: the current free, prior and informed consultation aims at the acceptance of the conditions for
a new oil agreement (including the dangers it poses) in the same territories for 30 or 40 more years.

The prior consultation for the exploitation of Lot 192 located in the upper areas of the basins of Rivers Pastaza, Corrientes, and Tigre allows us to observe how the affected peoples face this complex process with the purpose of demanding higher environmental standards, such as the recovery and conservation of the forests. This view is not only focused on cherishing the hope of a brighter future for the children of this communities, but also on participating in the monitoring and control of their territories, and the articulation between indigenous institutions and public authorities.

**Prior consultation and conditions demands**

The area covered in Lot 192, previously known as 1AB, has been used for oil exploration and exploitation since the beginning of 1970. At first, the exploitation was conducted by the [American company Occidental Petroleum](https://www.occidental.com) and, since 2000, it was replaced by a [company owned by Dutch and Argentine investors, Pluspetrol](https://www.pluspetrol.com). Since 2015, the Canadian oil company Pacific Stratus Energy, renamed Frontera Energy, has begun the exploitation under a service agreement.

In 2015, when the agreement for the previously called Lot 1AB was about to reach the expiration date, the Quechua, Achuar, and Kichwa peoples, all of them part of Puinamudt, said “No consultation, no oil” in order to make the prior consultation process conditional to the fulfilment of the previous obligations concerning their right to access public services and environmental remediation. In this context, the State made new agreements that were included in the Lima Act on March 10, 2015: the creation of seed funding to repair the polluted areas, the execution of independent technical studies to guide the reparations, conducting toxicological and epidemiological studies, the implementation of a health plan, the installation of a water treatment plant, and investments to reduce the historical social debt.
When demanding the consultation process, the communities and its federations required exploitation conditions for Lot 192, affecting the agreement the State would enter into with the operator in the future. Taking into account that the State was used to implementing prior and informed consultation processes as a mere formality, Puinamudt was able to substantially increase the standards for consultation in Peru. However, in August 2015, the prior consultation for Lot 192 became distorted: the Ministry of Energy and Mines, with the approval of the Ministry of Culture, concluded the last stage of the process in a unilateral and arbitrary way, without caring for the demands of the communities.

The agreements signed in 2015 required continuous work to demand their fulfilment. One of the most important achievements has been the Contingency Fund for Environmental Remediation together with an Administration Board with indigenous members. For instance, polluted areas have been identified and they will go through environmental remediation processes. Additionally, plans have been prepared in order to rehabilitate affected regions. To date, an 800 million soles fund has been agreed to remedy polluted areas in the region.

All this does not complete the remediation agenda; it has only just begun. Only in Lot 192, the Environmental Assessment and Control Body has identified 1199 places polluted as a consequence of oil activities carried out until 2015. Most of this would not have been achieved if it had not been for the work of environmental monitors from indigenous communities of the area. During the Covid-19 pandemic alone, they have identified almost 20 oil spills and leaks in such Lot.

**New consultation regarding Lot 192**

Being aware of the obligation to conduct a consultation before entering into a new agreement, the State has repeated that it would abide by the law. However, since 2019, the process has been extremely difficult. On the one hand, exploitation activities by
Frontera Energy have been extended for three more years due to “force majeure” reasons, a concept that was included in the agreement without being properly defined. On the other hand, it was feared that Perupetro, the state agency responsible for the agreements, would sign the oil agreement with the state company Petroperú and its partner even before finishing the prior consultation process. In fact, in 2015, Petroperú became a future operator without any consultation whatsoever.

But that was not all. There were constant delays when calling for the consultation and when initiating such process, which concluded in May 2019. However, after signing the Consultation Plan with the indigenous communities, there were continuous breaches and bad faith during the implementation of its stages as well as long suspensions that made it possible to believe the State would avoid the commitments reached during the process.

Having said the above, the agenda that included rights, dialogue, influence and unity within the communities and federations was not weakened. In between the prior consultations of 2015 and 2019, concrete steps were taken towards the protection of forests and indigenous lands in the form of environmental and oil legal frameworks: the modification of the Regulation for the Environmental Protection in Hydrocarbon Activities, the incorporation of environmental management tools once the lots are abandoned, the implementation of an ecosystemic approach when assessing environmental impact, indigenous participation during environmental monitoring, and the acknowledgement of environmental monitoring programs by indigenous federations.

In this sense, proposals by Puinamudt aim at regarding the forests and lands not as merely administrative isolated areas, but as one sole territory where ecosystems converge and social relationships with nature are established. From this perspective, health, memory and knowledge of the peoples are united with nature.

After a number of bumpy informative meetings regarding prior consultation in the basins of the Rivers Pastaza, Corrientes and Tigre, and following a long suspension period, the
FEDIQUEP, FECONACOR and OPIKAFPE federations resorted to internal dialogue to unify demands and proposals during the consultation process. The document was handed to the Ministry of Energy and Mines on June 13 and was divided into 6 topics that affect collective rights: protection of the territory and the environment; intercultural participation and information; benefits and conservation of customs; identity; institutionality; and health.

A strategy for the conservation of territories

In an informative session with the communities of the Corrientes River basin, the communities’ delegates rejected the false narrative that reduce their demands to a participation for economic profit. The representatives of the Achuar people pointed out the following to the authorities: “Vice Minister, you are always thinking about oil, we are thinking about our lives and our territory.”

In the intercultural dialogue sessions with the State that began on June 16, the proposals aimed at creating conditions to preserve forests and water sources: establishing terms for replacing pipelines, which causes most of the spills; increasing the Remediation Fund with a regulation that assigns a percentage of the amounts collected from companies as a consequence of environmental fines; ensuring environmental monitoring, strengthening monitoring programs of the indigenous federations and improving those standards that determine health and environmental risks; developing comprehensive management tools that include all the operations; and enabling adequate supervision.

Additionally, Aurelio Chino Dahua explains that the consultation process should work towards environmental conservation and recovery: “We participate in the consultation process to keep caring for our forests, animals and water. The forest, as we always say, is our market and we are obliged to pass it on to future generations. We are here to protect our forests and territories; this is how we do it. We want to make sure that the way in which the oil exploitation continues does not pollute any more”.

Moreover, July Chuje, indigenous mother of the Pampa Hermosa Achuar community in the Corrientes River basin, before the State representatives gathered in Iquitos, strongly and loudly emphasized: “For you it is very easy to say we should forget what has happened. Pollution has been present for such a long time. I do not want my children and grandchildren to not be able to enjoy fish and the forest. We will make sure of that”.

What is at stake for the peoples and communities is the future. As many indigenous authorities repeat: “Environmental damage has no cure”. By means of improvements in the regulations, the oil agreements, and the conditions of effective participation and damage remediation, some of the serious environmental impacts may be avoided, contained or even reverted. For the families of the indigenous communities, the determination and continuity of their fight will enable them to keep enjoying their territories.

Puinamudt is an organization formed by the Quechua Indigenous Federation of the Pastaza River (in Spanish, Fediquep), the Federation of Native Communities of the Corrientes Basin (in Spanish, Feconacor), the Kichwas Indigenous Peoples Organization, Amazonian Peoples at the Border between Peru and Ecuador (in Spanish, Opikafpe), and the Cocama Association of Development and Conservation San Pablo de Tipishca (in Spanish, Acodecospat).