
Honduras and the Consultation Law: A trap that seeks to advance capitalism onto indigenous territories

Since ILO Convention 169 was ratified in 1995, indigenous peoples in Honduras have demanded the creation of a consultation mechanism to obtain Free, Prior Informed Consent (FPIC). This is in light of the avalanche of "development" projects and programs that endanger the survival of our peoples as differentiated cultures.

With the approval of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, indigenous peoples' claims on the continent have received a greater push, given that UNDRIP is more precise than Convention 169 on consultation, and it also recognizes the self-determination of peoples.

Since 2010, Latin American nation states have resumed implementation of Convention 169. However, they distort its spirit by turning prior consultation into a mere formality for companies and projects. Meanwhile, the state's obligation to review administrative measures that could affect indigenous peoples has been diluted. Peru and its version of a consultation law have become the model to follow, according to international financiers. For a decade, they have applauded what indigenous peoples of Peru have defined as a huge fiasco.

It wasn't until 2012 that the Honduran State took the first steps toward passing a consultation law. This action was instigated by the REDD Programme (Reducing Emissions from Deforestation and Degradation) and the Voluntary Partnership Agreement (VPA) between Honduras and the European Union, which is part of the European Union's FLEGT Action Plan (Forest Law Enforcement, Governance and Trade). This was seen as a step toward creating REDD safeguards and thus being able to proceed with implementing REDD in Honduras.

Something similar happened in the rest of Latin America regarding Convention 169. In spite of the amazement and euphoria that its approval caused in many countries, enormous contradictions in nation states' recognition of the right to prior consultation have surfaced, from the beginning of the new millennium until recent years, when the Convention began to be implemented.

Why is prior consultation important?

Given the increasing plunder and dispossession of the 21st century, having a consultation mechanism is a tool of survival for indigenous peoples.

In Honduras in 2014, governmental bodies such as the Confederation of Autochthonous Peoples of Honduras (CONPAH, by its Spanish acronym) and the Directorate of Indigenous and Afro-Honduran Peoples (DINAFROH, by its Spanish acronym) made their own versions of the Consultation Law. This was in addition to the one drawn up by the Observatory of Human Rights of Indigenous Peoples of Honduras (ODHPINH, by its Spanish acronym), which comprises COPINH, OFRANEH and other organizations.

By 2015, CONPAH's and DINAFROH's versions of the consultation law on FPIC were replaced by a new draft of the consultation law drawn up by the United Nations Development Programme in Honduras (UNDP). For this task, the UNDP contracted a group of Peruvian lawyers, including Ivan Lanegra. Lanegra's version deliberately omitted mention of the term "consent," resulting in the distortion of consultation into mere procedure.

The questionable role that the UNDP played leads us to believe that its positioning is directly related to the intentions of the UN REDD Programme, which has had devastating consequences worldwide, such as the displacement of indigenous groups in Africa—especially in Kenya, Uganda and Tanzania.

Consent and the self-determination of peoples

For indigenous peoples in Honduras, consultation to obtain consent is essential. However, not only does the State intend to distort it, but the ILO itself has repeatedly stated that consultation does not grant the right to veto. In meetings held over the course of the year between the ILO Central America and the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF, by its Spanish acronym), and the Honduran Council of Private Enterprise (COHEP, by its Spanish acronym), ILO officials have garnered applause from the most recalcitrant business associations on the continent, by reaffirming that article 6 of Convention 169 does not mention the possibility of a veto.

OFRANEH is emphatic in stressing that we do not demand a veto, but simply respect for self-determination, which is included in the International Covenant on Civil and Political Rights, and in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). We also point out how the Honduran state has, on several occasions, stated before the Inter-American Court of Human Rights that UNDRIP is not binding.

Honduras after the coup: A setback in rights issues

In 2009 Honduras became a political-economic laboratory. With the coup d'état, it took a huge step back in terms of human rights. The United States' counteroffensive to the so-called "socialism of the 21st century," led by the so-called progressive governments of Latin America, took shape through military intervention and the legislative branch's coup, which ended up removing then president Manuel Zelaya. After installing the "democratic" façade in 2010 through the call for general elections, common goods began to be handed over at an accelerated rate. This is how 50 river basins were handed over to the political elite to build hydroelectric dams. Some of these dams are even part of the Clean Development Mechanism of the United Nations Carbon Fund, which helps generate more profit for those who set up and trade these projects. The legislative branch subsequently approved the "model cities"—a governance experiment driven by US ultra right-wing libertarians (1).

Affected indigenous peoples were not consulted about the "model cities," or the hydroelectric dams, or the handing over of the offshore oil platform. The disregard of prior consultation reached an extreme, when the UN REDD Programme and UNDP promoted a distortion in the draft consultation law they tried to impose in 2015. This draft law was temporarily suspended due to severe criticism from Mrs. Victoria Tauli-Corpuz, United Nations Special Rapporteur on the Rights of Indigenous Peoples. Mrs. Tauli-Corpuz visited Honduras exclusively to review the State and UNDP's actions.

The current version of the consultation law is the one drafted by Peruvian lawyer, Lanegra, after having been "doctored up" in response to issues that several indigenous organizations and Mrs. Victoria Tauli-Corpuz pointed out. OFRANEH believes that the State's rush to pass Lanegra's

consultation law is supported by the FLEGT Facility and VPA of the European Union, the UN REDD Programme and the World Bank—institutions which boast their respect for human rights and indigenous peoples, but which have been implicated in the forced displacement of people. (2)

The Honduran National Congress recently passed a Tourism Incentive Law, prepared by international consulting firm, McKinsey, which is also involved in the REDD Programme. In addition to granting tax exemptions to investors, this law precisely details what will be expropriated. The Garífuna people were never consulted about this Law; however, they will be one of the groups most affected by the auction of their ancestral territory for tourism projects that this law will entail. The law is thus a threat to the indigenous peoples that inhabit areas considered to have tourism potential. (3)

This is how Honduras has become a failed state, where the last two administrations have conspired with organized crime, leading to the collapse of the judicial system and security agencies. In spite of this and the strong social repression in the country, popular and indigenous resistance continues to fight the advance of capitalism onto our territories.

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(1) See more information about this in the article from the September-October 2016 WRM newsletter, <http://wrn.org.uy/articles-from-the-wrm-bulletin/neocolonialism-and-plantations-on-the-garifuna-coast-of-central-america/>

(2) OFRANEH, Honduras: Consulta previa y la urgencia del Estado en la aprobación de una Ley Espuria, Septiembre 2017, <https://ofraneh.wordpress.com/2017/09/07/honduras-consulta-previa-y-la-urgencia-del-estado-en-la-aprobacion-de-una-ley-espuria/> OFRANEH,

(3) OFRANEH, Honduras 2020, La inconsulta Ley y la consultora McKinsey, Agosto 2017, <https://ofraneh.wordpress.com/2017/08/03/honduras2020-la-inconsulta-ley-de-turismo-y-la-consultora-mckinsey/> OFRANEH, Honduras 2020