

Amazon Watch responds to Petroperú

On September 16, 2022, Amazon Watch received a [letter from Petroperú](#), with reference # GCRI-1242 -2022, in response to a [blog](#) written by Amazon Watch regarding Vanguard's investments in Petroperú bonds. Petroperú's letter attempts to rebut the blog's reference to Petroperú's previous violations of Indigenous community rights, contributions to environmental degradation, and the negative ramifications of future operations in an attempt to protect the company's reputation.

In what follows, Amazon Watch refutes the arguments made by Petroperú in the letter.

1. Consultation

In the letter, Petroperú claims that it sufficiently complied with requirements to carry out free, prior, and informed consultation with impacted Indigenous communities. In making this claim, Petroperú relies on a [legal argument](#) from Peru's Ministry of Energy and Mines (MINEM), despite the fact that this opinion contradicts rulings from Peru's Constitutional Court and findings from international legal bodies.

MINEM argues that [Convention N° 169 on Indigenous and Tribal Peoples](#), adopted by the International Labor Organization (ILO Convention N° 169), left each state to implement its own criteria to conduct free, prior, and informed consent (FPIC) processes. MINEM also notes that between 1995 (when the ILO Convention entered into force in Peru) and 2011 (date in which [Law N° 29785](#) implementing prior consultation was approved in Peru), there was no specific regulation guiding the implementation of Convention 169 criteria in Peru. Therefore, during this timeframe, companies conducted "various intercultural dialogue mechanisms," which, according to the MINEM, complied with the requirements of ILO Convention 169.

However, in 2011 the Peruvian Constitutional Court ruled against this argument. In [Judgment N° 00025-2009-PI/TC](#), the Court found that FPIC under international standards has been required in Peru since February 2, 1995, twelve months after the date Peru ratified Convention 169. In a 2010 ruling, [Judgment N° 0022-2009-PI/TC](#), the Court explained that "[a]lthough Convention N° 169 has been in force in our country since 1995, the State has not consistently implemented it."

Similarly, the ILO Committee of Experts on the Application of Conventions and Recommendations found in its [2009 Report](#) that "[t]he Committee notes that [...] efforts [of consultation and participation] appear to be isolated and sporadic and at times not in line with the Convention (for example, information meetings being held rather than consultations)." Furthermore, in its [2010 Report](#), the ILO Committee of Experts notes that "the Peruvian State construes consultation as 'processes whereby points of view are exchanged' and has held a series of socialization workshops. It also notes that the Government refers to Decree N° 012-2008-MEM (regulations on citizens' participation in hydrocarbon activities), according to

which the purpose of consultation is ‘to reach a better understanding of the scope of the project and its benefits,’ which is much narrower than what the Convention provides.”

Additionally, Petroperú’s letter claims that Perupetro (the Peruvian licensing agency), allegedly complies with the international standards for FPIC by [introducing Petroperú as the new operator of Block 64](#), arguing that it follows the procedures of citizen participation in oil activities outlined in Decree N° 002-2019-EM. However, what constituted this “introduction” was an attempt by Perupetro to hold a face-to-face meeting in February 2022 in the city of San Lorenzo, Loreto, with Achuar communities in order to introduce Petroperú as the new operator. However, the Achuar People from the Pastaza River opposed having this face-to-face meeting due to potential Covid-19 exposure amidst rising covid infections in the region at the time. Perupetro insisted on having this in-person meeting, so, in response, the Achuar People [filed a criminal lawsuit against Perupetro](#). As a consequence of the lawsuit, [Perupetro desisted](#) from having the face-to-face gathering, replacing it with mail correspondence facilitated by the installation of physical mailboxes in the municipalities, as well as emails.

Furthermore, “citizen participation” mechanisms are not equivalent to compliance with FPIC under international standards. The Inter-American Commission has indicated in its report, [Rights of Indigenous and Tribal Peoples regarding its ancestral lands and natural resources](#), that the process of FPIC “is not a singular act, but a process of dialogue and negotiation that implies good faith.” Therefore, Petroperú can not accurately claim that a single meeting to introduce the new operator to some communities would comply with the international standards of FPIC, even if it had actually taken place. Adequate FPIC implementation requires a comprehensive plan, covering everything from the design to the implementation of the project, and fully consulting with the array of impacted communities. As such, an adequate FPIC process cannot be completed in just one brief gathering.

In conclusion, the obligation to comply with the international standards of FPIC was mandatory for Peru from February 1995. Block 64 was created in 1995 and the first operating lease was auctioned in December of that year. Therefore, under international standards, the impacted communities should have been consulted for the creation of Block 64 as well as all the leasing contracts of this Block, which did not happen. As such, the “intercultural dialogue mechanisms”, mentioned by the MINEM cannot be considered as complying with the international standards of FPIC.

2. Oil spills

Petroperú places blame for “a vast number” of oil spills on the North-Peruvian Pipeline on third parties to avoid responsibility for the consequences of its old, corroded, and deteriorated pipeline. However, according to the [Oxfam report *The Shadow of Oil*](#), “[t]he actual percentage of spills caused by pipe corrosion and operational failures in Amazonian oil blocks and the North-Peruvian Pipeline is 65.4%. Third parties are responsible for 28.8% of spills. This ratio has held steady since the turn of the century and any annual increase in oil spills can be mostly

attributed to operational failures or corrosion, while third-party intervention has caused only intermittent increases over the same period.”

Furthermore, in November 2017, the [Peruvian Congress carried out an investigation](#) to look into the increasing oil spills. The report found that in 28 cases, Petroperú spuriously categorized instances of theft of oil from the pipeline as oil spills. This intentional mischaracterization reinforced the false narrative that most oil spills were caused by third parties. The congressional investigation highlighted the potential danger of this characterization as a tactic to cover up possible mistakes or compliance failures, which in reality were the result of piping corrosion and preventable natural phenomena. Indeed, Petroperú’s repeated justification of spills caused by the North Peruvian Pipeline is that such spills are caused by third-party attacks.

Using this argument, Petroperú transfers the primary responsibility for the spills to others. As a result, the company intentionally avoids responsibility for maintaining safe infrastructure and remediating any harm to people and the environment arising from its infrastructure. There is ample evidence, including [findings](#) by Peru’s Human Rights Ombudsman, that Petroperú has not sufficiently maintained the pipeline to prevent spills, nor has it fully remediated all of the socioeconomic and environmental harms of spills. As such, there is ample reason for concern that new Petroperú operations will reproduce the harms of past operations.

3. “Green fossils”

Petroperú also claims that its modernized refinery in Talara will “produce fuels friendly to the environment.” However, as per the latest Intergovernmental Panel on Climate Change (IPCC) [report](#), expansion of fossil fuel infrastructure is incompatible with limiting global warming to 1.5 degrees Celsius. In the [words](#) of United Nations Secretary General António Guterres, “investing in new fossil fuel infrastructure is, morally and economically, folly.” The effects of climate change, such as [flooding](#) and the destabilization of ecosystems in the [Amazon](#), are already threatening the lives and livelihoods of the people of Peru. Despite this, it is likely that Petroperú will seek to increase oil drilling in order to recoup the substantial investment—around \$5.3 billion—for the modernization of the Talara refinery, further contributing to the harms of climate change.

Additionally, fossil fuel extraction [frequently damages the environment](#) at sites of extraction through contamination of local water supplies, improper disposal of toxic waste, air pollution due to methane flaring, and oil spills. These environmental harms can affect both biodiversity and the health of communities living in neighboring areas. In light of the threats to both the climate and rainforest ecosystems posed by fossil fuel extraction, it is simply irresponsible to claim that any fossil fuel expansion is “environmentally friendly.”