

**Oxfam America**  
Research Backgrounders

# **From Controversy to Consensus?**

Lessons learned from  
government and company  
consultations with indigenous  
organizations in Peru and  
Bolivia

Edited by Emily Greenspan

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# Oxfam America's Research Backgrounders

Series editor: Kimberly Pfeifer

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## Acknowledgments

Oxfam America would like to thank Carlos Ching Castañeda, Wuille Ruiz Figueroa, and Areli Soto Tejada of Paz y Esperanza, Gerardo Castillo and Laura Sorias of Societas Consultora de Análisis Social, and Iván Bascope Sanjinés of the Centro de Estudios Jurídicos e Investigación Social for conducting the field research in Peru and Bolivia that provides the basis for the case study summaries included in this report.

Thanks are due to the many reviewers who provided valuable input, including Oxfam colleagues Santiago Alfaro, Rocio Ávila, Frank Boeren, Louise Clark, Christian Ferreyra, Ian Gary, Noemie Hailu, Ariel Pérez, Kimberly Pfeifer, and Keith Slack.

## Citations of this paper

Please use the following format when citing this paper. For permission to publish a larger excerpt, please email your request to [permissions@oxfamamerica.org](mailto:permissions@oxfamamerica.org).

Emily Greenspan, "From Controversy to Consensus? Lessons learned from government and company consultations with indigenous peoples in Peru and Bolivia," Oxfam America Research Backgrounder series (2012): <http://www.oxfamamerica.org/publications/from-controversy-to-consensus>.

# Introduction

With the growing global demand for natural resources such as oil and minerals, governments and companies implementing large-scale development projects must extend their reach to increasingly remote and sensitive areas. Within this context, they must work even harder to mitigate the social and environmental risks associated with their projects. Indigenous peoples may be particularly vulnerable to these risks given that they often have close cultural and spiritual attachments to their lands and in many instances depend on their natural resources for subsistence.

When development projects entail potential risks for indigenous peoples or local communities, governments and companies must invest time and resources in ensuring the early and ongoing participation of these communities in project design and implementation. The principle of free, prior, and informed consent (FPIC) creates an opportunity for project sponsors to identify potential risks and opportunities among affected communities early in the project development process, and to adjust project planning accordingly.

In its extractive industries program, Oxfam defines FPIC as the principle that indigenous peoples and local communities must be adequately informed about oil, gas, and mining projects in a timely manner and given the opportunity to approve (or reject) these projects prior to the commencement of operations. FPIC includes participation in setting the terms and conditions that address the economic, social, and environmental impacts of all phases of extraction and post-extraction operations. Engagement with communities must be conducted in local languages, and information must be provided in a manner accessible to communities.

The concept of FPIC, while still evolving, is gaining momentum. For indigenous peoples, FPIC is established as a right under international law. Indigenous peoples' special status and rights under international law reflect their standing as distinct, self-determining peoples with collective rights. Any conflict between indigenous and non-indigenous communities regarding participation in decision making must be resolved with particular regard to this special status. However, FPIC is emerging more broadly as a principle of best practice for sustainable development, as a means to reduce conflict as well as increase the legitimacy of the project in the eyes of stakeholders. All local communities that face potentially significant adverse impacts from development projects should have the

opportunity to access full information, participate meaningfully in negotiations, and give or withhold their consent to project development.

The United Nations Declaration on the Rights of Indigenous Peoples, adopted September 2007, includes several references to the right to FPIC for indigenous peoples. With regard to development projects in particular, the declaration calls on states to consult with indigenous peoples through their representative institutions in order to secure their FPIC, “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>1</sup> The International Labour Organization’s Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries also requires FPIC in cases of resettlement, and calls on governments to consult with indigenous peoples prior to allowing exploration or exploitation of mineral or subsurface resources.<sup>2</sup> The Inter-American Court of Human Rights has interpreted FPIC to apply more broadly to development projects with significant impacts, and it has, in several instances, ruled that states failed to meet their FPIC obligations.<sup>3</sup>

Several extractive industry companies and multilateral development banks have incorporated elements of FPIC into their policies. Oxfam America’s 2012 Community Consent Index reviews the public commitments made by a number of extractive industry companies on the issue of community consent. The report found that five companies have made explicit public commitments to FPIC<sup>4</sup> (up from just two in the first iteration of the report in 2009), and many others have publicly incorporated general concepts of community support or social license in their positions regarding development activities.<sup>5</sup>

The International Finance Corporation’s (IFC’s) recently revised “Sustainability Framework,”<sup>6</sup> which came into effect in January 2012, also includes a new FPIC

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<sup>1</sup> United Nations Declaration on the Rights of Indigenous Peoples, resolution adopted by the General Assembly, September 2007, Article 32.

<sup>2</sup> International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, Articles 15 and 16, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

<sup>3</sup> Due Process of Law Foundation and Oxfam America, “The Right of Indigenous People to Prior Consultation: The Situation in Bolivia, Colombia, Ecuador, and Peru” (2011), 3, <http://www.dplf.org/uploads/1302034794.pdf>.

<sup>4</sup> The five companies are Inmet, Newmont, Rio Tinto, Talisman, and Xstrata.

<sup>5</sup> Oxfam America, “Community Consent Index: Company Public Positions Regarding Free and Prior Informed Consent for Oil, Gas, and Mining Projects,” Oxfam America Research Backgrounder series (2012).

<sup>6</sup> International Finance Corporation (IFC), “IFC Sustainability Framework: Policy and Performance Standards on Environmental and Social Sustainability” (effective January 1, 2012), [http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_site/IFC+Sustainability/Sustainability+Framework](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/IFC+Sustainability/Sustainability+Framework).

requirement for projects impacting indigenous peoples.<sup>7</sup> The IFC also reviews its clients' community engagement processes to verify the existence of "broad community support" for projects that are likely to generate potential significant adverse impacts on communities – regardless of whether these communities are made up of indigenous peoples.<sup>8</sup> IFC has stated: "There is emerging consensus among development institutions that adopting the term [FPIC] is necessary. Increasingly, other IFIs [international finance institutions] (European Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, International Fund for Agricultural Development), industry associations (e.g., the Hydropower Association), and roundtables have adopted or are considering adopting FPIC."<sup>9</sup> Discussion of the FPIC principle among international institutions has moved beyond questions of whether it should be implemented to discussions of how it should be implemented. Development agencies mandated to abide by economic principles hinging on the concept of "willing seller, willing buyer" should only finance projects when project proponents have secured the consent of local communities.

Effective FPIC implementation should start with governments, but companies also have an important role to play. Although states have the duty to protect against human rights abuses by third parties (including businesses) through appropriate policies, regulation, and adjudication, companies have the responsibility to respect human rights, to act with due diligence to avoid infringing on the rights of others, and to address adverse impacts. The Guiding Principles for Business and Human Rights – endorsed in 2011 by the United Nations Human Rights Council – highlight the corporate responsibility to protect human rights and provide companies with guidance on how to fulfill this responsibility. Companies that fail to exercise due diligence in preventing rights violations also compromise their responsibilities under domestic laws.

When effectively implemented, FPIC processes safeguard against the emergence of social conflict by ensuring that projects that diverge with community land use priorities do not proceed. Governments and companies that fail to adequately implement FPIC miss opportunities for improving project design in mutually beneficial ways and risk finding their projects mired in protests and conflict. This

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<sup>7</sup> IFC clients will be required to secure FPIC for projects that affect indigenous peoples, specifically when these projects (1) affect lands and natural resources subject to traditional ownership or under customary use, (2) entail relocation, or (3) affect critical cultural heritage.

<sup>8</sup> IFC, "IFC Sustainability Framework."

<sup>9</sup> IFC, "Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Access to Information Policy: Review and Update Process" (December 1, 2010), 15, [http://www1.ifc.org/wps/wcm/connect/8bf90f8049800aa2ab7afb336b93d75f/Phase3\\_FINAL\\_CODE%2BPACKAGE.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/8bf90f8049800aa2ab7afb336b93d75f/Phase3_FINAL_CODE%2BPACKAGE.pdf?MOD=AJPERES).

is explicitly demonstrated in recent violent protests in Peru and Bolivia, where government and/or companies ineffectively implemented FPIC in its entirety.

#### **Consultations should aim to achieve consent**

The obligation to seek the consent of the affected communities often triggers heated controversy. For indigenous peoples, obtaining free, prior, and informed consent is an indispensable part of the consultation process and an expression of their right to self-determination, applicable to all projects that affect them. In their view, the right to consultation is the right to consent or withhold their consent for the project. States, on the other hand, wish to ensure that norms governing the right to consultation explicitly provide that communities have no right to overrule decisions made by the authorities.

Under existing international law, the consent of the affected communities should be the ultimate goal of any consultation that is respectful of indigenous peoples and of the applicable international standards. It follows then, that consultation processes would not be valid unless their real objective is to obtain consent.

*Due Process of Law Foundation and Oxfam America, "The Right of Indigenous Peoples to Prior Consultation: The Situation in Bolivia, Colombia, Ecuador, and Peru" (2011):*

<http://www.dplf.org/uploads/1302034794.pdf>.

## **Consultation and conflict in Peru and Bolivia**

Peru and Bolivia, the two countries from which the case studies summarized in this report have been drawn, have instituted national-level legal protections for the right of indigenous peoples to prior consultation. In September 2011, Peru's Congress unanimously approved a law that requires the government to consult with indigenous peoples prior to implementing legal or administrative measures that would affect them directly, including development projects like oil drilling and mining. The law specifies that consultations should aim to secure indigenous peoples' agreement or consent.<sup>10</sup> Bolivia legally recognized the right to prior consultation in its Political Constitution of 2009, by incorporating international law into domestic law, and in the context of regulations for hydrocarbon exploration and exploitation.<sup>11</sup>

In both Peru and Bolivia, examples of the potential for local protests to delay or obstruct development projects abound. Last year, Peru's Human Rights

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<sup>10</sup> Law on the Right to Prior Consultation for Peoples of Indigenous or Native Origin Recognized in Convention 169 of the International Labour Organization, No. 29785 (September 2011), <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29785.pdf>.

<sup>11</sup> Due Process of Law Foundation and Oxfam America, "The Right of Indigenous Peoples to Prior Consultation," 7.

Ombudsman's Office documented more than 200 social conflicts across the country, the majority of which relate to socio-environmental issues, such as those that emerge around mining and oil projects.<sup>12</sup> In Bolivia, approximately 1,300 cases of conflict were reported in 2011, of which 11 percent involved issues related to land and natural resources.<sup>13</sup> In light of their breadth and complexity, these conflicts are of particular political relevance in Bolivia.

A few higher-profile cases in recent years include the following:

- **Mina Conga mining project, Peru.** In November 2011, protests in Cajamarca ground to a halt development of the massive Mina Conga mining project operated by the US-based company Newmont Mining Corporation. To date, five deaths have resulted from the Peruvian government's violent response to the conflict. In July 2012, police officers attempting to end the protests allegedly detained and beat Marco Arana, a former priest and leader of the Tierra y Libertad political party.<sup>14</sup> Newmont claims to have lost approximately \$2 million per day in the first few days alone after local protests paralyzed its operations;<sup>15</sup> the project remains paralyzed to date.
- **Bagua conflict in the Amazon region, Peru.** In 2009, police clashed with indigenous protesters in the town of Bagua in northern Peru, leaving 34 dead and numerous injuries among police officers and indigenous peoples. The conflict erupted over a set of legislative decrees put in place by the government of President Alan Garcia that indigenous federations and civil society organizations claimed would infringe on indigenous land rights. The government passed the decrees without genuine consultation with indigenous communities.<sup>16</sup>
- **TIPNIS road project, Bolivia.** This controversial project involved construction of a road through the National Park and Indigenous Territory Isiboro Sécure (TIPNIS). The project sparked marches and protests by indigenous communities; consequently, President Evo Morales' government revoked the initial contract issued for construction

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<sup>12</sup> Defensoría del Pueblo del Perú, "Social Conflict Report No. 89" (July 2011), <http://www.defensoria.gob.pe/modules/Downloads/conflictos/2011/Reporte-89.pdf>.

<sup>13</sup> Fundación UNIR, "Informe de seguimiento y análisis de la conflictividad en Bolivia" (December 2011), [http://www.unirbolivia.org/nueva3/index.php?option=com\\_content&view=category&layout=blog&id=86&Itemid=60](http://www.unirbolivia.org/nueva3/index.php?option=com_content&view=category&layout=blog&id=86&Itemid=60).

<sup>14</sup> "Detienen a ex religioso Marco Arana a golpes," *Voces*, July 5, 2012, <http://www.diariovoces.com.pe/?p=76651>.

<sup>15</sup> Reuters, "Newmont Mining Re-evaluating Conga Mine," *International Business Times*, March 14, 2012, <http://www.ibtimes.com/articles/314189/20120314/conga-newmont-peru.htm>.

<sup>16</sup> Oxfam America, "Oxfam Calls for an End to Violence in the Peruvian Amazon," press release, June 15, 2009, <http://www.oxfamamerica.org/press/pressreleases/oxfam-calls-for-an-end-to-violence-in-the-peruvian-amazon/>.

of the road and put into place a new law requiring the government to consult with indigenous communities affected by this project. The law went into effect in February 2012, with consultations scheduled for July–September 2012.<sup>17</sup> Some indigenous organizations rejected these planned consultations, perceiving that the government intended to use them as a mere formality rather than as a genuine means to dialogue to obtain the consent of affected peoples.<sup>18</sup>

- **Mallku Qota mining project, Bolivia.** The Bolivian government awarded Canadian mining company South American Silver the concession for the Mallku Qota project. The concession overlaps with indigenous territories, and some communities opposed the project because of concerns about potential impacts on their water resources. In June 2012, protests heightened and led to the kidnapping of several company representatives and police intervention, which resulted in the death of an indigenous community member. Following the conflict, the government nationalized the concession and the hostages were freed.<sup>19</sup>

Project stoppages like these force governments and companies to recognize the importance of ensuring and maintaining the FPIC of affected communities.

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<sup>17</sup> "Consulta por construcción de carretera en Bolivia iniciará en julio," *Púlsar*, June 1, 2012, <http://www.agenciapulsar.org/nota.php?id=20567>.

<sup>18</sup> Plataforma Energética, "1X Marcha: Evo burla la consulta para profundizar el extractivismo en Bolivia," July 11, 2012, <http://plataformaenergetica.org/content/3515>.

<sup>19</sup> "Bolivia: Comuneros liberan rehenes," *El Diario Internacional*, July 9, 2012, <http://www.eldiariointernacional.com/spip.php/dist/IMG/spip.php?article3414>.

### **Oxfam's Indigenous Peoples Rights program in South America**

For more than 20 years, Oxfam has been a leader in the support and development of indigenous peoples' organizations in South America. Oxfam currently works with several partner organizations, many of which are focused on strengthening the social and economic positions of indigenous peoples in the region. Oxfam's South America regional work focuses on Peru, Ecuador, and Bolivia. In these countries, indigenous people are victims of social and racial discrimination and are routinely denied access to government services. Most live on ancestral lands that are biologically diverse and fragile – yet these communities are not compensated for their stewardship of resources or respected for their invaluable knowledge.

Oxfam established the Indigenous Peoples Rights program to promote recognition of the right to land, territory, and access to natural resources via processes of advocacy and effective participation of indigenous peoples so that they can voice their opinion and influence decision making on projects and programs on the territories that affect their lives. The long-term goals are that indigenous men and women from Bolivia, Ecuador, and Peru exercise their right to land, territory, and access to natural resources via free, prior, and informed consent and that they participate in decision-making arenas.

## **About this report**

In light of the urgent need to reduce conflict around extractive industry and other large-scale development projects with potentially significant impacts on indigenous peoples and local communities, Oxfam America compiled the case studies in this report highlighting lessons learned from two community consultation experiences in Peru and one in Bolivia. Specifically, the case studies describe (1) a consultation managed by the subnational government of San Martin around a proposed ordinance on consultation, (2) a mining company-led processes of consultation and dialogue with local communities around the Tintaya mining project in Espinar, Peru, and (3) a consultation around a hydrocarbons project in Charagua Norte and Isoso managed by Bolivia's Ministry of Hydrocarbons and Energy.

Each of these consultation processes involved indigenous peoples, civil society, and government and/or company representatives. All three cases demonstrate how stakeholders managed to move from a place of tension and controversy to one of constructive dialogue. Recently and after completion of the research for this report, in the case of the Tintaya mining project in Peru, dialogue reverted to controversy in the face of proposed new mining projects in Espinar. As noted in

the introduction to the Tintaya case study, this situation illustrates the need for broader application of the positive lessons described in this report.

Key lessons that emerged from these case studies include the following:

- Dialogue processes should prioritize joint decision-making and attaining community consent, and the sponsors of these processes should support the participation of women by reducing barriers to their engagement.
- Participatory and ongoing dialogue roundtables that effectively formalize a space for dialogue with communities can be a useful mechanism to foster stakeholder discussion and consensus building. Roundtables should develop clear rules, agendas, and communication strategies that keep all relevant stakeholders informed of decisions made.
- Dialogue with communities should be conducted in local languages and scheduled according to community preferences.
- Governments and companies should provide indigenous communities with complete, truthful, and adequate information prior to consultation.
- Indigenous federations must have the time and resources necessary to consult their member communities and make internal decisions in a manner consistent with their traditional decision-making processes.
- Governments and civil society should prioritize indigenous capacity building, including on issues such as environmental monitoring, negotiation, human rights, and others.
- National and local governments should create and strengthen agencies for indigenous affairs, and should approach consultation processes with openness and good faith.
- Governments should recognize international human rights jurisprudence, conventions, and treaties when developing laws and regulations for consultation processes – in particular, the right of indigenous peoples to FPIC.
- National and local governments should coordinate closely on policy matters related to consultation.

The three case studies summarized in this report provide some background and detail on the findings that served to generate the above recommendations.

# San Martin subnational government consultation with indigenous peoples on proposed ordinance

In late 2011, Oxfam America funded the Peru-based civil society organization Paz y Esperanza to conduct research on the San Martin subnational government's process of developing a consultation ordinance regulating future consultations with indigenous peoples in the region. The government led this consultation process between 2010 and 2011, and it incorporated several good practices for inclusive dialogue with indigenous peoples and provided important lessons on facilitating contributions from indigenous organizations to maximize their support and approval for the consultation process.

The San Martin case study is an example of a well-organized and participatory dialogue roundtable with indigenous peoples about legislative measures that fostered constructive consensus-building. With a reasonable investment of time and resources, and a willingness to listen to indigenous voices, the local government managed to reach a healthy consensus among all actors and avoided generating tensions that might have led to social conflict.

*... the Awajún people had never before been consulted. From now on, top government officials should consult with the indigenous peoples' boards, with their recognized representatives. In the future this should be a good practice, to have prior discussion on legislative proposals bringing together the views, vision, and feelings of the Awajún people.*

— Ephraim Ensakua Kinstun, president of the Regional Indigenous Development Organization of San Martin, 2012

## Background

### Consultation issues in the national context

As noted earlier in this report, in recent years numerous social conflicts have emerged around socio-environmental issues in Peru, in many instances in response to oil and mining projects. The situation became particularly explosive in June 2009 when police clashed with indigenous protesters in the town of

Bagua in northern Peru, leaving 34 dead and numerous injuries among police officers and indigenous peoples. This conflict set the stage for a national dialogue on the right of indigenous peoples to be consulted about such projects.

The Peruvian government has had the obligation to consult with indigenous peoples on measures that affect them since the International Labour Organization Convention 169 on Indigenous and Tribal Peoples (Convention 169) was ratified by Peru in 1993.<sup>20</sup> However, the Peruvian government did not pass the legislation necessary to ensure adequate implementation of Convention 169 until September 2011, when President Ollanta Humala signed the Indigenous and Native Peoples Right to Consultation Law (No. 29785, referred to subsequently as the Consultation Law). This law requires the Peruvian government to consult indigenous peoples affected directly by legislative and administrative measures or development projects such as oil drilling, mining, roads, and forestry.

### **Local context**

Peru's San Martin region has more hydrocarbon concessions on indigenous territories than most regions in the country, and indigenous peoples' demands that the government respect their right to be consulted have emerged on several occasions. For example, in 2009, indigenous communities participated in protests related to this issue, blocking access to local roads. These protests spurred a direct dialogue between San Martin's president and representatives of indigenous organizations, which ultimately resulted in the Catachi Agreement.<sup>21</sup> Among other commitments, with the Catachi Agreement, the San Martin subnational government agreed to establish an ongoing dialogue roundtable to respond to indigenous demands.

The issue of consultation processes in San Martin reached national attention when, in 2009, Peru's Constitutional Court issued a landmark decision on a case involving oil exploration in the Cordillera Escalera, an environmentally protected area in the region. The Constitutional Court ruled that Convention 169 is binding to the state and companies, and that oil exploration in the Cordillera Escalera should be suspended until the government created a subnational development plan.<sup>22</sup> Despite this decision, in 2010 the national government

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<sup>20</sup> "Peru: Alternative Report 2008 on the Fulfillment of the ILO Convention No. 169" (December 2008), <http://www.pazyesperanza.org/documentos/inforesumeing.pdf>.

<sup>21</sup> The Catachi Agreement was signed on May 15, 2009, in the context of indigenous protests demanding consultation rights.

<sup>22</sup> Dan Collins, "Perú: ¿Agua o Petróleo?," BBC, April 9, 2009, [http://www.bbc.co.uk/mundo/economia/2009/04/090408\\_peru\\_agua\\_mineria\\_mr.shtml](http://www.bbc.co.uk/mundo/economia/2009/04/090408_peru_agua_mineria_mr.shtml).

agency Perupetro auctioned several oil blocks in San Martin without consulting indigenous peoples.

The Cordillera Escalera case and escalating local frustration over the lack of adequate consultation processes created fertile ground for advocacy on the issue of indigenous peoples' right to consultation and the need for a local government ordinance on consultation. The subnational government of San Martin began development of the ordinance prior to the approval of Peru's new Consultation Law, and in response to signs from the previous administration – that of former President Alan Garcia – that the draft Consultation Law would not be passed into law.

### **Stakeholders**

- Subnational government of San Martin
- Numerous local indigenous federations representing three distinct ethnic groups: the Awajún, Chayahuita, and Kichwa.<sup>23</sup> Seven of these organizations united to form a coalition called “La Fuerza de los Pueblos Indígenas” (The Strength of Indigenous Peoples), which prepared a joint submission of inputs for the ordinance.<sup>24</sup>
- Nongovernmental organizations, including Paz y Esperanza, the Institute for Legal Defense (IDL), the Centro Amazónico de Antropología y Aplicación Práctica (CAAAP), Soluciones Prácticas ITDG, Urku Estudios Amazónicos, and Care-Perú.
- San Martin Defensoría del Pueblo (the office of the regional human rights ombudsman)

### **Consultation process**

Responding to pressure from indigenous peoples and civil society, the San Martin government created the consultation ordinance to establish a solid, innovative legal mechanism for consultation with indigenous peoples based on

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<sup>23</sup> Indigenous organizations actively involved in the consultation included the development coordinator of the Indigenous Peoples of San Martin (CODEPISAM); the Awajún Regional Indigenous Federation of Alto Mayo (FERIAAM); the Regional Indigenous Development Organization of San Martin (ORDISAM); the Kichwa Indigenous Federation of the San Martin Region (FEPIKRESAM); the Ethnic Council of the Kichwa Peoples of the Amazon (CEPKA); the Kichwa Indigenous Federation of Huallaga-Dorado (FEKIHD); the Shawi Indigenous Federation (FERISHAM); the Regional Central Unica of Rondas Campesinas of San Martin (CURRC-SM); and a new women's federation called Regional Federation for Indigenous, Rondera, and Rural Women. Other ally indigenous organizations also lent their support for the process, but had less direct involvement.

<sup>24</sup> The seven organizations are CODEPISAM, FEPIKRESAM, CEPKA, FEKIHD, ORDISAM, FERISHAM, and CURRC-SM.

contributions from indigenous peoples themselves. The subnational government created a political space for dialogue via a roundtable with indigenous peoples, which brought together 33 institutions representing indigenous organizations, civil society, and subnational government.

The roundtable had a clear and narrow focus. Participants broke into two technical committees, one of which focused exclusively on the consultation ordinance proposal.<sup>25</sup> Paz y Esperanza and CAAAP participated in this committee, supporting indigenous organizations in the process of developing a validated and consensus-based proposal for the ordinance.

The consolidated proposal drew on recognition of the right to FPIC as enshrined in relevant jurisprudence, such as findings of the Inter-American Court of Human Rights and Peru's Constitutional Court. Additionally, the proposal drew on contributions from national indigenous organizations like the National Organization of Amazon Indigenous People (AIDSEP) and the Confederation of Amazon Nationalities of Peru (CONAP), which had participated in national dialogue roundtables on the issue of consultation and community consent, as well as from relevant legislative initiatives from Congressional committees, inputs from Peru's Human Rights Ombudsman's Office (Defensoría del Pueblo), and the text of the Consultation Law itself.

Indigenous organizations undertook information dissemination and discussion among their member communities, and held meetings and workshops within the provinces of Huallaga, El Dorado, and Lamas. In addition, two macro-regional meetings were held, with participation from indigenous leaders from the regions of San Martin, Amazonas, and Cajamarca, who shared experiences regarding new consultation policies. Paz y Esperanza and IDL supported La Fuerza de los Pueblos Indígenas coalition by organizing meetings, forums, seminars, and capacity-building workshops.

In June 2011, the San Martin government presented the proposed ordinance. Participants agreed that the ordinance should be reviewed by a wider committee of government, indigenous, and civil society representatives<sup>26</sup> and that participating indigenous organizations should have ample time to evaluate the proposal internally through discussions with the communities that they

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<sup>25</sup> The other technical committee addressed a particular land rights dispute between Shawi communities and the Korean company Ecoamerica.

<sup>26</sup> This committee included representatives of the regional government and of indigenous organizations, the president of the Indigenous Peoples Roundtable, the indigenous adviser, and representatives from CAAAP, Soluciones Prácticas ITDG, Amazónicos para la Amazonia (AMPA), Paz y Esperanza, Urku Estudios Amazónicos, and the Committee on Development of Indigenous Peoples.

represent. By September 2011, the indigenous federations had reached consensus.

The dialogue roundtable provided legitimacy to the consultation and participation process, ultimately enabling the parties to reach consensus regarding the ordinance. Participating indigenous organizations relied on a strategy that promoted principles of democracy and transparency, and that, from the outset, prioritized strengthening indigenous institutions through dialogue with subnational government.

## Lessons learned

### **Governments and civil society should prioritize indigenous capacity-building.**

Governments and civil society organizations should prioritize programs that strengthen indigenous organizations and build leadership skills among their members in order to promote community participation in decision making concerning natural resource use. Indigenous organizations with enhanced knowledge of international human rights norms and political advocacy skills will be best prepared to defend their rights. In addition, these organizations must be prepared to provide their member communities with relevant information and training and must effectively monitor local views and experiences in an ongoing manner. In this case, civil society groups provided critical capacity-building and technical support to indigenous organizations throughout the process.

### **Indigenous federations must have the time and resources necessary to consult their member communities and reach internal agreements in a manner consistent with their traditional decision-making processes.**

Consultations and dialogue should be as inclusive and participatory as possible, and should respect the cultural values and traditional decision-making processes of the indigenous peoples being consulted. The indigenous organizations that participated in the roundtable brought key messages back to their member communities for discussion prior to the finalization of agreements. This approach helped to ensure alignment between the decisions of indigenous leaders and the views of their members, and also served as a measure to reduce the risk of future community discontent (and the potential for social conflict).

**National and local governments should create and strengthen agencies for indigenous affairs, ensuring that these offices have adequate logistical and financial support.**

The San Martin government established an Agency for Indigenous Affairs, which played a supporting role in the consultation process (in close collaboration with other local government representatives). Made up of individuals with the appropriate attitudes and skills, this office helped to ensure the success of the consultation. In order to be effective, agencies or departments for indigenous affairs need adequate staff, budget, and logistical support. The goals and objectives of these offices should be identified in a participatory manner and derive from the priorities of indigenous communities. In particular, these offices might provide technical support to local governments for the development of policies aiming to protect the rights of indigenous peoples.

**Participatory and ongoing dialogue roundtables can be a useful mechanism to foster stakeholder discussion and consensus building, and thus to ensure community consent.**

The roundtable created by the San Martin government became an important space for dialogue and consensus building. In order to be effective, these roundtables must be afforded a degree of permanence and adequate financing, should be open and participatory in nature, and must have a clear agenda that drives participants toward concrete actions and results. When dialogue roundtables are well structured, they represent an opportunity for participatory management and conflict prevention.

**Governments should recognize international human rights jurisprudence, conventions, and treaties when developing laws and regulations for consultation processes—in particular the right of indigenous peoples to FPIC.**

As evidenced in the Cordillera Escalera case referenced here, government should ensure that consultation processes meet international standards, at a minimum in compliance with relevant jurisprudence, conventions, and treaties. The failure of government to incorporate international standards in legislation is shortsighted, and policies created in this vacuum risk being overturned by courts at the national level (e.g., Peru's Constitutional Court) or regional level (e.g., the Inter-American Court of Human Rights).

**Indigenous communities should have the opportunity to participate in consultations using their native languages.**

The indigenous leaders who participated in this consultation greatly valued being able to communicate in their native languages. Officials within the Agency for Indigenous Affairs were fluent in these native languages, and this language ability helped keep the conversation fluid. According to Regional Indigenous Development Organization of San Martin (ORDISAM) President Efrain Ensakua Kinstun: “Our language represents the Awajún identity; it should be respected just as we respect other languages. ... We have the right to be heard.” Enabling indigenous communities to engage in discussion and debate in their native languages contributed to more effective communication.

**National and local government should coordinate closely on policy matters related to consultation and the process of seeking community consent.**

The San Martin consultation experience demonstrates that local government consultations can help to build consensus among stakeholders on significant and contentious issues. If the national government does not coordinate with local government, much valuable, localized input from indigenous peoples could be lost.<sup>27</sup> Local governments – particularly those with strong indigenous peoples’ offices – may have established systems for identifying relevant indigenous organizations and communities in their regions. To support implementation of the Consultation Law, Peru’s national government is creating a database to register communities of indigenous peoples. Coordination and information sharing with local governments will be critical to ensure the success of this registry system.

**Affected communities should consider ways to strategically use the media to communicate key messages to the general public.**

In this case, the media played an important role in promoting community efforts in support of the consultation ordinance. Indigenous organizations developed an advocacy plan in coordination with Paz y Esperanza, and they managed to express their opinions and raise awareness among government representatives and the general public by participating in radio programs and taking advantage of press opportunities. At the same time, the media should make a special effort to take into account the voices of indigenous peoples when addressing issues related to community consultation and consent.

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<sup>27</sup> In fact, most of the indigenous federations that participated in the San Martin consultation are not represented by an indigenous federation at the national level.

# Espinar *campesino* communities' dialogue and negotiation experiences around the Tintaya mine

Oxfam America developed this case study to highlight lessons learned from the stakeholder dialogue and negotiation process around the Tintaya mining project in the southern province of Espinar, in Peru. To facilitate engagement and coordination within the context of considerable social tension around the mine, stakeholders created a dialogue roundtable in late 2001. The roundtable included representatives of the six highland *campesino* communities (i.e., the indigenous farming communities) in the direct area of influence of the mine; the mining company (BHP Billiton at the time and Xstrata since 2006); and organizations such as CooperAcción, the Cusco Regional Coordination of Communities Affected by Mining (CORECAMI), and Oxfam. Although not a perfect solution, remarkably the dialogue roundtable continued until 2012 and stakeholders interviewed for this research generally found the space to be highly useful.

Oxfam America worked with Societas<sup>28</sup> – a consultant with specialized experience in issues related to mining, community relations, and dialogue – to conduct this research. Societas employed a predominantly qualitative methodology to examine how men and women in the area of the mining project view their past consultation, dialogue, and negotiation experiences. Information gathering included analysis of secondary sources and in-depth, semi-structured interviews with municipal officials, local leaders (men and women), and key stakeholders. Based on this research, Oxfam developed this overview of the Tintaya consultation, dialogue, and negotiation experience.

This case study demonstrates an instance in which stakeholders managed to diffuse social tension through the creation of a regular space for dialogue and consensus building. In the Tintaya case, the mining company agreed to listen to local voices and make formal commitments on issues of key concern to communities. Ultimately, stakeholders managed to reach a healthy consensus, which they maintained for over a decade.

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<sup>28</sup> See the Societas Consultora de Análisis Social web site: <http://www.societasconsultora.com>.

Despite the success of the dialogue process described in this case study, serious challenges remain to resolving the broader concerns about mining in Espinar, where Xstrata is closing the Tintaya mine and plans to expand operations through two new projects in the second half of 2012. Recently, communities have expressed concerns regarding the environmental impacts of the project, and they have requested environmental studies incorporating the new area of influence as a result of expanded mining activities.<sup>29</sup> In May 2012, local protests resulted in police killing two community members protesting alleged pollution and demanding greater benefits from mining.<sup>30</sup> Communities in Espinar would like a commitment from Xstrata to address pending environmental concerns. This situation illustrates the need for a broader application by local and national governments and by companies of the positive lessons described in this case study. In its efforts to resolve this conflict, Xstrata should approach recent community concerns with the same openness to dialogue that the company has brought to past engagement with the six project-affected communities near the Tintaya mine.

## Background

### Local context

The Tintaya mine is located in the province of Espinar in the Cusco region. Mining activities have been prevalent in Tintaya for 25 years, and mining companies (first BHP Billiton, then Xstrata) have engaged in formal dialogue processes with directly and indirectly affected communities over the past 10 years. Prior to 2001, there were several conflicts among communities in the Tintaya mining project's area of influence. The conflicts arose from complaints regarding the environmental impact of the mine and disputes concerning land acquisition. One long-standing dispute arose as a result of the government's expropriation of 2,368 hectares of community land for mining development in 1981. At that time, communities filed a protest to the terms of the expropriation with the Ministry of Energy and Mines.<sup>31</sup>

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<sup>29</sup> Danny Gibbons, "Comunicado a la Opinión Pública" (Oxfam America, June 6, 2012), <http://es.oxfamamerica.org/2012/06/06/comunicado-a-la-opinion-publica-2/>.

<sup>30</sup> Keith Slack, "Peru's Mining Conflicts Explode Again: Protests and Violence in Espinar" (Oxfam America, June 6, 2012), <http://politicsofpoverty.oxfamamerica.org/?s=xstrata>.

<sup>31</sup> José De Echave, Karyn Keenan, María Kathia Romero, and Angela Tapia, "Dialogue and Management of Conflicts on Community Lands: The Case of the Tintaya Mine in Peru" (CooperAcción, 2005), <http://www.ibcperu.org/doc/isis/10734.pdf>.

In 2001, the nongovernmental organization CooperAcción and CORECAMI produced an environmental assessment to examine the impacts of Tintaya mining operations. Based on the findings of this study, communities in the project's area of influence, together with CORECAMI and the National Confederation of Communities Affected by Mining in Peru (CONACAMI), solicited the support of Oxfam Australia's mining ombudsman. The mining ombudsman was an attempt by Oxfam Australia to fill the role that it believed should have been played by a formal government ombudsman, including the mediation of disputes between affected communities and Australian mining companies operating overseas. Communities asked the mining ombudsman to investigate their claims, advocate for them before BHP Billiton executives, and launch a dialogue process. The dialogue roundtable emerged as a result of the mining ombudsman's intervention.

### **Stakeholders**

- Project-affected communities: Tintaya Marquiri, Alto Huancané, Bajo Huancané, Huano Huano, Alto Huarca, and Huisa
- Companies: BHP Billiton (until 2006) and, at present, Xstrata
- Organizations providing technical assistance: CONACAMI, CORECAMI, CooperAcción, Oxfam America, and Oxfam Australia

## **Consultation process**

### **Formation of the dialogue roundtable**

As noted above, during the first years of the Tintaya mine's operation there was a great deal of distrust between project-affected *campesino* communities, the mining company, and local and national government representatives. Oxfam Australia's mining ombudsman Ingrid MacDonald joined the process in an effort to diffuse these tensions and foster productive dialogue, and her participation marked an important milestone in the dialogue process.

MacDonald made her first visit to the project's area of influence in 2001. She met with affected communities to document their complaints, and she conducted a field investigation regarding the veracity of the complaints detailed in the environmental assessment. She led a first dialogue session, which included representatives of BHP Billiton, CONACAMI, Oxfam America, CORECAMI, the municipality of Espinar, and CooperAcción. During the session, participants

decided to create a dialogue roundtable in which the communities, the company, and other stakeholders could all participate and discuss existing challenges and disputes.

BHP Billiton asked for one month to prepare for the process, a request accepted by all parties. The first roundtable meeting occurred on February 6, 2002. In that meeting, stakeholders established clear guidelines for the process. They agreed to a code of conduct,<sup>32</sup> a narrow list of priority issues, and the process for consultations and dialogue. They also determined that this process would employ both plenary sessions (that would make use of an external facilitator) and working group discussions.

At the request of the communities, the roundtable did not include representatives of the Ministry of Energy and Mines or any other agency of the Peruvian executive branch. However, the roundtable did invite the municipality of Espinar province to participate. The parties agreed that roundtable operations would be financed through a fund made up of contributions from all of the stakeholders involved.

## Functioning of the dialogue roundtable

Roundtable participants divided into four working groups on the issues of land, environment, human rights, and development. Representatives of each community participated in each commission, as did representatives of the mining company, CooperAcción, and CORECAMI. Community delegates or leaders managed the groups. Each group created work plans, held meetings, arranged training workshops, and produced reports about its work.

Plenary sessions were held at least twice a year. Leaders of the six community assemblies participated in the plenary sessions, as did representatives of the mining company, CooperAcción, and Oxfam. Plenary sessions aimed to evaluate progress made in working groups and the functioning of the roundtable generally, and they provided a forum for the company to respond to community concerns. The facilitator of the dialogue had to be neutral and trusted by all stakeholders. The plenary involved two days of work and was held outside of Espinar so that community members could concentrate on the issues and express their opinions freely and calmly. The mining company and CooperAcción covered expenses for the meetings.

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<sup>32</sup> The Code of Conduct required balanced representation, confidentiality, transparency, flexibility, and adherence to schedules, and that participants demonstrate mutual respect and seek consensus.

*When the Roundtable was formed, we agreed on four important topics: lands, human rights, environment, and sustainable development. We were in agreement about these four topics because that's where we had identified problems and we were able to classify them into those categories. ... We have worked as a team: community, company, and supporting organizations.*

— Erasmo Huanqce, Tintaya Marquiri community, 2012

In order to bolster the technical capacity of communities to engage in the dialogue process, CooperAcción and specialist consultants provided technical assistance to all six communities on a wide range of issues. These included, for example, dialogue and negotiation, human rights, environmental monitoring, mining technology, leadership and self-esteem, and domestic violence (the latter at special request from women in the community). CooperAcción has provided ongoing support to these communities for close to a decade, adapting its assistance according to the changing needs and demands of the communities.

## Negotiated agreement

In December 2004, dialogue resulted in a written agreement of the parties. Prior to signing this agreement, communities reviewed the text carefully with CooperAcción and Oxfam to ensure a full and clear understanding of the document. The agreement specified commitments made by the mining enterprise and by the communities – a singular achievement and real milestone in Peru.

BHP Billiton agreed to the following:

- Provide adequate compensation to communities for the lands expropriated by the Peruvian government in 1982 and later purchased by the company. The company also agreed to provide the communities additional land (25–50 percent above the amount expropriated), as well as technical assistance to facilitate resettlement onto the new lands.
- Obtain the prior consent of communal and individual landowners before launching new exploration activities on their lands.
- Recognize the importance of sustainable development for the future of the communities that live next to the mine, as well as the right of communities to determine the pace of development based on their vision and decision-making processes. The signing parties approved the creation of a “community development fund” that would include funds from international cooperation agencies, public and private organizations, and

from the company itself. Since 2004, the mining company has dedicated \$360,000 per year to the community development fund.

- Monitor environmental impact in accordance with environmental quality standards adopted by consensus. Monitoring efforts include a joint environmental monitoring program with indicators for human and animal health and a community environmental watch system.
- Address the human rights violations reported by communities<sup>33</sup> and continue to use the roundtable as an ongoing mechanism to resolve disputes and support the sustainable development of the communities.

When BHP Billiton sold its mining operations to Xstrata in 2006, Xstrata agreed to honor all of BHP Billiton's agreements with local communities.

The dialogue roundtable functioned regularly until 2012, and the agreements made have been implemented. In fact, the working groups on land and human rights have very few issues left to resolve. At this time, the dialogue roundtable is interested in becoming more of a "development" roundtable, as its members are calling it. Communities aim to secure technical assistance from organizations specializing in local sustainable development to inform their development plans and to seek funding to complement the community development fund.

## Lessons learned

### **Companies should find ways to formalize a space for dialogue with communities.**

Interviewees for this research highlighted the creation of the roundtable as a key accomplishment. The roundtable, along with the written agreement documenting the commitments of the parties, allowed for stability and continuity in the dialogue process. Maintaining an ongoing space for dialogue also allowed communities to air concerns or complaints at an early stage, preventing them from escalating into future conflict scenarios or lawsuits. Local government participation in the dialogue was also useful.

Interviewees found helpful the practice of delegating the role of recording the agreements between parties to a neutral entity. They also highlighted the importance of creating a code of conduct for dialogue early in the process and of

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<sup>33</sup> For more information on community claims of human rights violations, see De Echave, Keenan, Romero, and Tapia, "Dialogue and Management of Conflicts on Community Lands," 21.

ensuring that all parties respect this code. Because the project's area of influence may change as a result of adjustments during project implementation, roundtable participants should evaluate and revise membership in an ongoing manner as necessary to ensure that all relevant stakeholders have a seat at the table.

*The strength lies in having institutionalized it [the dialogue], because an agreement was made to meet regularly, and I think that has been respected over time.*

—Esteban Chacón, official of the provincial municipality of Espinar and member of CORECAMI, 2012

### **Dialogue processes should prioritize joint decision-making and attaining community consent.**

Consultation processes should consist of an ongoing dialogue process that prioritizes creating a shared vision for local development accepted by all parties and that empowers communities to either give or withhold their consent to the project moving forward. In the Tintaya case, both the company and the communities demonstrated a willingness to engage in consensus building. In fact, participation in decision making extended beyond the members of the roundtable; community leaders brought all working group plans back to their respective communities for approval prior to implementation. Interviewees highlighted the importance of giving communities the final say on whether and how projects move forward.

### **Governments and civil society should support the participation of women in the dialogue process by reducing barriers to their engagement and implementing leadership capacity-building programs when relevant.**

Although some women have participated in the Tintaya dialogue roundtable, in practice they have had notably less participation in the working groups and plenary sessions than men. Two main factors contribute to this imbalance: (1) community delegates to the dialogue roundtable must be elected in a community assembly and women are elected less frequently, and (2) women tend to have fewer available resources to assume the costs of participation (in terms of both time and money). Other barriers to women's participation include family responsibilities and domestic tasks that keep them from leaving the home, language (most speak the local language of the indigenous peoples, Quechua), embarrassment about speaking in public, and lack of technical preparation. However, in the instances that women have participated, several have demonstrated strong negotiating skills. For example, the mothers' club from the

community of Alto Huancane sold its 140 hectares of land to Xstrata for approximately US\$360,000 (equivalent to 1 million *soles*).

**Governments and civil society should prioritize strengthening community capacity to engage in dialogue and negotiation.**

To engage meaningfully in dialogue, communities must be aware of their rights and possess the confidence to demand respect for these rights. In this case, with support from partner organizations, community leaders strengthened their dialogue and negotiation skills considerably. Community interviewees noted that trainings helped them to increase their confidence and leadership ability at the time of negotiation. Hearing of the experiences of indigenous communities in other parts of the world also proved useful to building local capacity. For example, representatives of indigenous communities in Canada visited these communities and shared information about similar experiences. This kind of learning helped Tintaya communities to evaluate their position vis-à-vis the project and define their strategy for negotiation.

*We have had visits from indigenous communities of Canada and they told us about the benefits they have received from these projects ... very interesting, and that's when we told the company that they have to comply with their social and environmental responsibility.*

— Flavio Huanqque, former president of the Alto Huancané community, 2012

**Dialogue with communities should be conducted in local languages and scheduled according to community preferences.**

To promote inclusivity, government and companies holding consultations should consult with communities regarding both the working language of and timing of meetings. In this case, interviews suggested that men typically receive information in both Spanish and Quechua, but that women prefer to receive information in Quechua. Women expressed a preference for meetings to be held in the morning, while men had no stated preference for time of day.

**Roundtables should consider developing communications plans that promote information sharing with project-affected communities and make strategic use of media.**

Ongoing communication between the community and its representatives is critical, and interviewees for this research noted that community leaders might have done more to provide updates on the dialogue process to community members and to generate publicity around the agreements reached. Such communication would have enabled communities to better track the roundtable's progress and to avoid misunderstandings. For example, members

of the roundtable did not widely publicize results of their environmental monitoring efforts. If these results had been shared more widely, perhaps they might have cleared up doubts and reduced anxiety among community members.

Communications plans should consider how to employ media in a strategic way to promote inclusive information sharing. Plans should consider messaging not only to directly-affected communities, but also to a broader audience of communities throughout the province where the project is located. Interviewees reported that men in the project-affected area tend to receive information from more and varied kinds of media (e.g., radio, television, print documents, etc.), while women tend to prefer receiving information from the radio and through presentations made in workshops or informational meetings. A good communications plan would consider these types of customs and preferences.

# Bolivian government consultation with the Guaraní indigenous peoples of Charagua Norte and Isoso

In 2010, the Bolivian Ministry of Hydrocarbons and Energy (MHE) coordinated a highly successful consultation process around a proposed hydrocarbon exploration project in the indigenous territory of Charagua Norte and Isoso, located in the Santa Cruz region. Ultimately, the process resulted in a signed agreement between the Bolivian government and the Guaraní Peoples Assembly of Charagua Norte and Isoso (APG, for the Spanish acronym) documenting community consent prior to the initiation of exploration activities by the Argentine company Pluspetrol. The consultation process reached a positive outcome thanks largely to the willingness of the MHE to respect the use of traditional Guaraní institutions and systems.

## Background

### Location and description of the project

According to this project's public information document (a resource developed by the government that provides an overview of project plans and expected impacts), the project is located in Cordillera province in the municipality of Charagua in the department of Santa Cruz within the ancestral territories (TCOs)<sup>34</sup> of the Guaraní people of Charagua Norte and Isoso. The area of direct influence of the project includes 20 communities of the 33 communities that make up the TCO, and one peasant farming territory called Aldea Uno.

The public information document indicates that 90 percent of the seismic lines (a hydrocarbon exploration activity that uses equipment to gather information about subsurface geology) are located inside the Charagua Norte TCO and the remaining 10 percent are in the Isoso TCO. The communities that are the closest to the seismic lines are Tacobo (1.5 km), El Carmen del Espino (1.1 km), Guariri (0.5 km), Masavi (1.0 km), Aimiri (1.1 km), Takuru (0.9 km), San Isidro (1.0 km),

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<sup>34</sup> TCOs are traditional communal lands recognized by the Bolivian Constitution.

and Taputa (0.1 km). However, the document leaves out several communities that are part of the Charagua Norte TCO, and these communities could also be affected by the project because of its magnitude and reach inside the indigenous territory.

### **Legal framework**

- Bolivian Constitution
- Hydrocarbons Law No. 3058
- Supreme Decree No. 29033, which regulates consultation and participation with indigenous peoples and peasant communities concerning hydrocarbon activities
- Convention 169 of the International Labour Organization (ratified by the Bolivian Congress)
- United Nations Declaration on the Rights of Indigenous Peoples (ratified by the Bolivian Congress)
- Other international instruments pertaining to indigenous peoples' rights

### **Stakeholders in the consultation process**

- General Office on Socio-Environmental Management at the Ministry of Hydrocarbons and Energy, the agency responsible for implementing consultation processes
- Ministry of Water and the Environment, the relevant environmental agency in Bolivia
- Yacimientos Petrolíferos Fiscales Bolivianos (YPFB), Bolivia's national oil company
- Secretariat for Natural Resources and the Environment of the national APG
- Council of the Captaincy<sup>35</sup> for the Charagua Norte APG
- Socio-Environmental Monitoring Unit of Charagua Norte (made up of Guaraní community monitors)
- Council of the Captaincy for the Upper and Lower Isoso APG

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<sup>35</sup> Captaincies represent territorial and political jurisdictions within the organizational structure of the Guaraní peoples.

- Community captains (Guaraní authorities)
- Centro de Estudios Jurídicos e Investigación Social (CEJIS; the Center for Legal Studies and Social Research), a nongovernmental organization that provides technical assistance and support to communities.

## Initial failures and redirection of the consultation process

On Dec. 16, 2009, indigenous leaders from project-affected communities held a preliminary meeting with the Ministry of Hydrocarbons and Energy to discuss the scope of the project and develop a preliminary proposal for implementing the prior consultation process. This meeting led to the signing of a statement of understanding on Jan. 22, 2010. The statement was meant to launch the consultation process, which was to encompass two informational workshops and a meeting to validate agreements.

The MHE conducted one workshop in February and another in March, in line with the timetable agreed upon in the statement of understanding. For various reasons, however, consultation process workshops were not successful. The workshops involved just four communities and therefore did not reflect adequate community representation. Further, the workshops were limited to providing information on technical measures of the project. Workshops consisted of a PowerPoint slide show, which essentially summarized an informational pamphlet created by Pluspetrol Bolivia Corporation, the private oil company that hoped to explore the area.

The MHE itself acknowledged that indigenous communities received only partial information, which did not include up-to-date maps of the communities, areas of possible impact, socio-environmental prevention and mitigation measures, or information on planning for the consultation process. In addition, the MHE had not developed its timetable for specific activities in coordination with the APG (national organization). For all these reasons, indigenous leaders requested that the timetable be revised and that new planning be conducted to improve coordination and broaden participation with communities. In response to this request, MHE redirected the consultation process in a manner consistent with the traditional forms of decision making and participation of the Guaraní indigenous people.

## Consultation method

After MHE's inadequate effort to gain the prior consent of the Guaraní people through quick and essentially administrative processes, the Guaraní people proposed methodological guidelines for redirecting the consultation process in line with their traditional forms of organization and decision making. Held on April 29 and 30, the first indigenous assembly for consultation and participation aimed to achieve consensus and validation of the new planning and consultation process proposed by indigenous leaders of the Charagua Norte APG. Assembly participants reached agreement on the following points:

- Stakeholders must reach consensus at each phase of the consultation process in order to achieve "prior consent," and processes must be in line with Bolivia's current legal framework.
- The consultation process must respect the territorial integrity, institutional structures, norms and procedures, collective rights, and self-determination of the Guaraní people.
- The consultation process must generate a space for broad democratic participation through intercultural dialogue.
- The consultation process must be reprogrammed with new activities and budget to make it feasible to carry out its phases with respect for the rights of indigenous peoples.

On May 8 and 9, the second indigenous assembly for consultation and participation focused on topics of coordination and improving information. With this assembly, participants identified possible socio-environmental impacts of exploration activities. Guaraní indigenous leaders incorporated information obtained through earlier work done by the Socio-Environmental Monitoring Network of Charagua Norte, a local Guaraní community monitoring network established prior to the initiation of this consultation. On May 20 and 21, the field inspection began. The Socio-Environmental Monitoring Network of Charagua Norte, MHE, and CEJIS led the inspection, which consisted of observation and analysis of possible negative impacts that could result from Pluspetrol's exploratory activities. The field inspection resulted in the development of a registry of information for areas with higher levels of socio-environmental sensitivity.

Finally, on June 23 and 24, the third indigenous assembly was held in order to reach agreements between the MHE and Guaraní people of Charagua Norte and

Isoso. This event led to the prior consent of the Guaraní people in written agreement, through a process that respected the right of the Guaraní to make decisions regarding the use of their land and natural resources and in a context whereby the Bolivian government demonstrated respect for their rights and organizational structures.

## Lessons learned

### **Indigenous peoples must have access to complete, truthful, and appropriate information.**

From the moment when the consultation began to incorporate indigenous perspectives and concrete information from community monitors (who had previously identified sensitive areas and socio-environmental impacts in their territory), the content and scope of the consultation improved noticeably. Without the active and effective participation of the communities, extractive industry activities are more likely to have negative effects on the environment and on the rights of indigenous peoples, and companies may tend toward assessing negative impacts in purely monetary terms.

### **Consultation processes must respect indigenous peoples' traditional forms of participation and decision making.**

The broad participation of the communities of the Charagua Norte APG and of the subnational and national levels of the APG made it possible to redirect the consultation process toward a positive outcome. Importantly, indigenous communities conditioned their participation in the consultation process on absolute respect for the territorial integrity, traditional decision-making systems, indigenous rights, exercise of internal norms, and self-determination of indigenous peoples.

### **It is important to get planning right at the outset.**

This consultation process represents a significant evolution from previous processes in Bolivia, and once again highlights the need to continue to improve regulations and laws regarding consultation with indigenous peoples. In this case, an initially flawed consultation process resulted in project delays. Not surprisingly, ultimately communities demanded that the process be redirected to their legal and legitimate channels. In many cases, such deficiencies can also lead to polarization and increased distrust among the government, communities, and companies, and this distrust at times escalates to conflict.

**Government agencies responsible for consultations must operate with openness and good faith.**

In this case, the MHE General Office of Socio-Environmental Management understood the need to redirect the consultation process in Charagua Norte, which initially began with some flaws, as described above. That office acted in a receptive, open, and proactive manner with indigenous leaders so that the consultation process could arrive at a positive conclusion. The case of Charagua Norte demonstrates the need for government agencies to maintain an attitude of openness and respect toward indigenous peoples' demands for prior consultation and consent.

**Governments should support indigenous capacity-building to promote productive consultation processes.**

The Charagua Norte APG has been involved in a process of capacity building in the area of consultation and socio-environmental monitoring since 2008. The Indigenous Monitoring Network of Charagua Norte includes 15 local indigenous monitors, and has been incorporated as part of the organizational structure of the Charagua Norte APG. The network is also expanding indigenous monitoring to the different communities of the TCO. The indigenous monitors have written reports identifying socio-environmental impacts and vulnerable sites in socio-economic and environmental terms. Several indigenous monitors are currently part of the new leadership council of the Charagua Norte APG, and the APG used information about their territory and natural resources as a basis for helping to transform the nature of the consultation process.

Strengthening the technical and political capacity of indigenous peoples is an essential prerequisite to developing an appropriate consultation process. Governments should assume a central role in building the capacity of indigenous peoples in the area of consultation and socio-environmental monitoring and must create strong mechanisms for transparency in the hydrocarbon sector.

**Prior consultation must be aimed primarily at the prevention of social and environmental damages and impacts.**

As noted above, the Guaraní people of Charagua Norte had already developed their technical capacities before the government implemented its consultation. Therefore, the Guaraní Socio-Environmental Monitoring Network and the indigenous leaders of the Charagua Norte APG were able to focus on preventing the potential negative impacts of Pluspetrol operations and on making sure the company would assume its obligations and responsibilities regarding possible damage. Using the final agreement from the consultation as a binding document

(as mandated by Bolivian law), competent authorities must now ensure that the company fulfills its obligations and responsibilities through socio-environmental prevention and mitigation measures, developed with Guaraní input.

**An appropriate consultation process contributes to raising company standards for social and corporate responsibility.**

The successful Charagua Norte consultation has helped to improve the relationship between the Charagua Norte APG and Pluspetrol (although monitoring compliance with the consultation agreement will remain critical). The consultation agreement reached establishes Pluspetrol's obligations in terms of issues such as transparency and information generation, respect for the organizational structure of Charagua Norte, use of advanced technology in operations to prevent socio-environmental damage, and other issues. Thus, the consultation process has contributed to changing the balance of power between the indigenous organization and Pluspetrol and has improved conditions for the APG Charagua Norte as it works to promote indigenous rights in relation to the hydrocarbon activities in its territory.

# Conclusion

The three case studies in this report address consultation processes that involved indigenous peoples, civil society, and government and/or company representatives struggling to move from a place of tension and controversy to one of constructive dialogue.

The consultation managed by the subnational government of San Martín provides an example of local government effectively using a dialogue roundtable with indigenous peoples to foster participatory decision making. With a reasonable investment of time and resources, and a willingness to listen to indigenous voices, the local government managed to reach a healthy consensus among all actors and avoided generating tensions that might have led to social conflict.

Similarly, the Tintaya mine roundtable dialogue illustrates an instance in which stakeholders managed to diffuse social tension through the creation of a regular space for dialogue and consensus building. In this case, the mining company agreed to listen to local voices and make formal commitments on issues of key concern to communities.

Finally, in the case of the Charagua Norte and Isoso consultation, a participatory consultation process ultimately led to a binding agreement between the Guaraní organization of Charagua Norte and Isoso and the Bolivian government. The case demonstrates that when a government implements a participatory and meaningful consultation process, the process may lead to positive outcomes for the government, the company, and project-affected indigenous communities.

In order to see lasting benefits from consultation processes around extractive industry and other development projects with potentially significant impacts, governments and companies must:

- Concentrate their efforts on legal and legitimate consultation processes that aim to achieve the consent of local communities.
- Cast aside the idea of accelerating or evading consultation processes, and prioritize providing communities with access to full information and full participation in decision making.
- Adapt consultation processes to ensure that they respect traditional decision-making structures and customs, and that they allow adequate time to accommodate traditional processes.

The case studies described in this report demonstrate that achieving community consent is possible when all parties demonstrate good faith and openness. At the same time, inadequate consultation may lead to violations of rights (such as the right to a healthy environment, access to information, compensation, and reparations) as well as violations of rights concerning sacred places and other economic, environmental, cultural, and social rights. An appropriate consultation process to secure the free, prior, and informed consent of communities helps to reduce the risk of social conflict and helps to prevent situations in which communities might be forced to seek administrative or legal measures at the national and/or international levels in defense of their rights.

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