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**Rethinking the Consultation-Conflict Link:
Lessons from Bolivia's Gas Sector**

Almut Schilling-Vacaflor

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Rethinking the Consultation-Conflict Link: Lessons from Bolivia's Gas Sector

Abstract

This article sheds light on 26 consultations in Bolivia's gas sector (2007–2012) and challenges simplified conceptions of prior consultation as a tool for conflict prevention and resolution. It shows that consultations do not only appease conflicts, but also exacerbate them as these procedures are used to negotiate broader grievances. This study further argues that narrow consultations (like those carried out in Bolivia) – rather than comprehensive ones – repress conflicts in the short-term by limiting opportunities to mobilize against extractive projects. It also reveals that the degree of conflict and prevention potential of consultations varied according to the affected groups and highlights the ambiguous effects of the entanglement of consultations and compensations.

Keywords: prior consultation, FPIC, indigenous rights, extractive industry, resource conflicts, Bolivia

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Rethinking the Consultation-Conflict Link Lessons from Bolivia's Gas Sector

Almut Schilling-Vacaflor

Article Outline

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1 Introduction

Processes of prior consultation and, in particular, the principle of free, prior and informed consent (FPIC) are conceived as potentially powerful tools for countervailing the serious shortcomings that characterize the practices of extractive industries all over the world.¹ They are intended to

1 I am extremely grateful to Varinia Rodas and Omar Quiroga for helping me obtain access to the relevant documents from the Bolivian Ministry of Hydrocarbons and Energy used for this study. I also want to thank Marco Aparicio, Matthias Basedau, Riccarda Flemmer, Annegret Mähler, Isabella Radhuber, Michael Schilling

- a) help protect the rights of indigenous and other land-connected peoples, that are often-times violated by large-scale resource extraction projects (Anaya 2005; Barelli 2012), and
- b) democratize resource governance by giving local populations a say over decisions that affect them (McNeish 2010; Schilling-Vacaflor 2013).

Szablowski (2010: 113) refers to FPIC as a globalizing regime of negotiated justice, "in which decision making is to a material extent the result of negotiations rather than the product of adjudication, administrative decision making, or purely private, individual decision making" (cited from Dezalay 1994).

While not being the explicit aim of prior consultations, it is widely assumed that they prevent and resolve resource conflicts, especially when carried out in accordance with FPIC (see Laplante and Spears 2008; United Nations Interagency Framework Team for Preventive Action 2010; McNeish 2010; Sohn 2007). This assumption is not only academically reproduced, but is also shared by corporation, governmental and NGO staff worldwide. For example, when officially celebrating the promulgation of the Peruvian Consultation Law on 6 September 2011, Peru's president, Ollanta Humala, said that they wanted to carry out consultations that "facilitate participation without conflict, allow for conversation and to sit down and talk, and thereby reach a peaceful solution."² Similar opinions have been expressed by most of the 80-plus Bolivians, Peruvians and Ecuadorians interviewed in the framework of the author's research project on the connections between prior consultation and conflict from 2010 to 2012; many of them added that consultations would prevent and resolve resource conflicts whenever carried out appropriately. According to international human rights like the ILO Convention 169 (ILO C169) on the Rights of Indigenous Peoples and Tribal Populations and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), the minimal conditions that prior consultations should fulfill are that they

- a) be carried out in good faith,
- b) be based on a genuine and constant dialogue between the state and the affected communities,
- c) be carried out prior to the planned measure,
- d) involve legitimate representatives from all local communities affected,
- e) be carried out in a social, linguistic and culturally adequate way,
- f) aim to achieve the consent of the consulted communities, and
- g) recognize established agreements as binding (Morris et al. 2009; DPLF 2010).

Empirical evidence of the actual contribution of prior consultation to its envisaged objectives and, subsequently, to prevent and resolve resource conflicts is, however, scarce. In fact, many examples from across the globe actually reveal an absence of meaningful consultations and a

and Olivier Vogel for their very helpful comments on a previous version of this article. Moreover, I am grateful to the Fritz Thyssen Foundation for its generous support of the fieldwork I undertook to collect the article's data.

2 Online: <www.youtube.com/watch?v=8Wtd25UB61Y>.

presence of deficient, conflictive consultation practices. In response to the lack of meaningful participatory processes, local communities from Argentina, Guatemala and Peru carried out their own (symbolically and politically powerful) community referenda, whereby the great majority expressed their rejection of the planned projects (see Fulmer et al. 2008; Laplante und Spears 2008; Walter and Martinez-Alier 2010). In several other cases, participatory processes were controlled by the lead corporations as part of their respective corporate social responsibility (CSR) policies; many of them were merely informative events that did not grant real decision-making power to the groups consulted (see Frynas 2005; Lo 2010; Gustafsson 2013). O'Faircheallaigh (2010) points to additional problems faced in reaching agreements between extractive corporations and local communities – like the fact that many of them contain confidentiality clauses or provisions that prevent local populations from taking legal or political action against either project activities or their impacts. According to international human rights instruments, the state – and thus not the lead corporation – has the primary obligation to ensure that the indigenous right to prior consultation and to FPIC is met. It might be expected that the state is more suited for fulfilling this task as it is directly bound by human rights and also should be better able to strike a balance between diverse interests and different policy sectors.

In Latin America, where 15 states have ratified ILO C169, we find surprisingly few examples of state-led prior consultations concerning extraction projects. To date, the only countries in the region that have comprehensive experience in implementing such consultations are Bolivia and Colombia.³ In Bolivia over 20 consultations on planned gas projects have been concluded since Supreme Decree (SD) 29033 for implementing prior consultation in the hydrocarbon sector was promulgated in 2007. This SD is exceptional in that it, to date, is the only domestic legal norm in the whole region that regulates prior consultation and has been perceived as legitimate by the different indigenous organizations.⁴ There are good reasons to expect consultation practices to be exemplary in a state like Bolivia: It officially celebrates its plurinational character. It is governed by an indigenous president (Evo Morales, 2006–present). And it has witnessed progressive legal reforms (see below) as well as the nationalization of the hydrocarbon sector in the past few years. Despite these potentially enabling conditions for socioecologically friendlier extraction practices, including an increase in the role and decision-making power of local communities, many scholars of Bolivia have suggested that we should not be overly optimistic in this regard (see Bebbington and Humphreys Bebbington 2010; Gudynas 2010; Postero 2013). In any case, with the exception of a handful of illuminative single-case studies (Bascopé Sanjines 2010; Giné and Villaroel 2011;

3 Colombia has carried out prior consultations since 1994, but it is not officially known how many of them have been concluded. Beyond a few in-depth case studies, there is little information about the respective procedures and their results in the country (see Rodríguez Garavito and Orduz Salinas 2012; Amparo Rodríguez 2011).

4 Peru is the only Latin American country with a general law on prior consultation to date, but it is strongly contested (Schilling-Vacaflor and Flemmer 2013). Other countries in the region (Chile, Colombia and Ecuador) have issued decrees for regulating consultations, but these have been rejected by the respective domestic indigenous organizations.

Humphreys Bebbington 2012; Pellegrini and Ribera Arismendi 2012), consultation practices in Bolivia's extractive industries have not yet been comprehensively analyzed.

This article aims to reduce this research gap by presenting context-sensitive analyses and comparisons of all 26 of the consultations concluded in Bolivia between February 2007 and February 2012. More specifically, the study focuses on contestations that emerged during these procedures and the manner in which they were dealt with. Based on its explorative findings, this article problematizes the idea that prior consultations lead to the prevention and resolution of conflict and instead formulates diverse connections at play between consultation practices and resource conflicts – which may be of broader relevance and have the potential to inspire debates on similar phenomena beyond Bolivia's borders. The study draws on rich and innovative data (including consultation reports from the Ministry of Hydrocarbons and Energy [MHE]); over 40 interviews conducted with state, corporate and indigenous representatives; and a range of secondary literature and media articles.

2 Consultation Cases, Procedure and Results

2.1 Consultation Cases

The right to prior consultation of indigenous and peasant communities⁵ was established in Bolivia's Hydrocarbons Law 3058 (2005) and is complemented by SD 29033 (16 February 2007), which regulates consultations in this sector. Between February 2007 and February 2012, 26 such consultations were concluded; this consisted of 11 on exploration projects, 8 on exploitation projects and 7 on the expansion of existing or construction of new gas ducts (see Table 1). Despite the fact that the state ratified ILO C169 in 1991, adopted the UNDRIP as domestic law in 2007 and explicitly established the right to prior consultation in the 2009 Constitution, it has not carried out consultations in any other sector to date.⁶ The absence of a law on prior consultation and of respective sector-regulating norms has contributed to this shortfall.⁷

5 The distinction between indigenous and peasant communities is a difficult one to make and is closely related to Bolivia's history. It was especially the indigenous communities that lived within *latifundios* who founded peasant unions after the agrarian reform of 1952 (see Rivera Cusicanqui 2003). Highland and valley Aymara and Quechua populations identify themselves to a greater extent as being peasants, while lowland minorities generally consider themselves indigenous peoples.

6 The only exception is the recent consultation undertaken regarding the planned highway through the National Park and Indigenous Territory of Isiboro Securé (TIPNIS), which was the result of the many months of protests, struggles and litigation that took place in 2011 and 2012. The TIPNIS consultation has already been critically analyzed by many scholars and nongovernmental organizations and will thus not be discussed here in detail.

7 Such a law is currently being formulated and supposed to be debated in Congress in the near future (Ministerio de Gobierno 2012).

A quick glance at the lead corporations of the planned projects subject to consultation since 2007 (see Table 1) substantiates the impact that Bolivia's transfer of hydrocarbons to state ownership has had since 2006. This process of nationalization has basically consisted of the establishment of new contracts with transnational corporations and the enhancement of the role of the public corporation Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) in the gas sector. Foreign corporations like British Gas, Petrobras, Pluspetrol, REPSOL YPF and Total E&P currently work as service providers in cooperation with the aforementioned public enterprise. Moreover, corporations like Transredes S.A. from the United States and the largely British Chaco S.A. were taken over by YPFB in 2008 and 2009, respectively, which is another example of the increasing role of the state in the country's extractive industries. The Bolivian-Venezuelan consortium YPFB Petroandina S.A.M. was founded in 2007 and is now taking the lead on important new and planned extraction projects.

As over 83 percent of Bolivia's gas reserves lie under Guaraní land in the Chaco region (Perrault 2008: 9), the majority of the consultations (18 cases) were held with Guaraní communities. According to the 2001 census, the Guaraní people in Bolivia represent 1.55 percent of the total national population⁸ and their communities are spread over three departments: Chuquisaca, Santa Cruz and Tarija. Some Guaraní entities (*capitanías*) like Itika Guasu, Charagua Norte, Alto Parapeti and Takovo Mora have been consulted several times. Due to the fact that Bolivia's legislation also grants the right to prior consultation to peasant and settler communities, five consultations were held exclusively with them as well. Another three consultations were carried out with other indigenous minority groups – namely, the Weenhayek from Tarija (two) and the Leco and Mosen from the North of La Paz.

The described consultations do not cover all new gas activities from February 2007 to February 2012. Only those classified as "Category 1" projects (those that affect protected areas, indigenous peoples or peasant communities) by the Ministry of Environment and Water (MEW) are required to be passed to consultation. This state entity has, however, been accused of deliberately classifying some projects as "Category 2," thereby eluding its duty to carry out prior consultations (interviews with former MHE staff) – which are expensive, time-consuming and in many cases conflictive.

In 2011, more than 10 consultations were supposed to be concluded, but only a few actually went ahead due to the extremely tense relationship between the government and the indigenous organizations related to the TIPNIS conflict. The paralysis of planned extraction projects led to serious conflict, not only between the state and the indigenous organizations but also within the state administration and between state entities and the interested corporations. In several cases, Bolivia had to pay costly standby payments for idle workers and machines.

8 Online: <www.ine.gob.bo>.

Table 1: Concluded and Analyzed Consultations from February 2007 to February 2012

<i>Case: Year</i>	<i>Activity</i>	<i>Corporation</i>	<i>Department</i>	<i>Consulted Communities</i>
1: 07	Gasoducto, Carrasco	Transredes (now YPFB Transporte)	Cochabamba	Peasant communities
2: 07	Gasoducto Lateral, Margarita Palo Blanco	Transredes (now YPFB Transporte)	Tarija	Guaraní: Itika Guasu
3: 07	Exploration, Ipati and Aqui Block	Total E&P	Santa Cruz, Chuquisaca	Guaraní: diverse communities
4: 07	Exploitation, San Isidro Block	Pluspetrol	Santa Cruz	Guaraní: Charagua Norte
5: 07	Exploitation, Percheles and El Dorado Block	Chaco S.A. (now YPFB Chaco)	Santa Cruz	Peasant communities
6: 07-08	Exploitation, Percheles and El Dorado Block	Chaco S.A. (now YPFB Chaco)	Santa Cruz	Guaraní: Takovo Mora
7: 07	Gasoducto, Vuelta Grande	Transredes (now YPFB Transporte)	Chuquisaca	Guaraní: Macharettí
8: 07	Gasoducto, Percheles Block with GAA and OCSZ II	Transredes (now YPFB Transporte)	Santa Cruz	Peasant communities
9: 07	Gasoducto, Variante al Altiplano Zona al Tigre	Transredes (now YPFB Transporte)	Santa Cruz	Peasant communities
10: 07	Gasoducto, Villamontes-Tarija fase II	Transredes (now YPFB Transporte)	Tarija	Guaraní: Itika Guasu
11: 08-09	Exploration, Palo Marcado Block	BG Bolivia	Tarija	Weenhayek
12: 08-09	Exploration, Lliquimuni Block fase II	YPFB Petroandina SAM	La Paz	Moseten, Leco
13: 09	Exploration, Aquio X-1001 Field, Ipati Block	Total E&P	Santa Cruz	Guaraní: Alto Parapeti and Iupaguasu
14: 09	Exploration, Incahuasi X-2 Field, Ipati Block	Total E&P	Santa Cruz	Guaraní: Alto Parapeti and Iupaguasu
15: 09	Exploration, Tajibo and Tacobo Blocks	Pluspetrol	Santa Cruz	Guaraní: Charagua Norte and Isoso
16: 10	Exploration, Ingre Block	Petrobras	Chuquisaca	Guaraní: Avatiri Ingre
17: 10-11	Exploration, Iñau Block	YPFB Petroandina SAM	Santa Cruz, Chuquisaca	Guaraní: diverse communities
18: 10	Exploitation, El Dorado Block	YPFB Chaco S.A.	Santa Cruz	Guaraní: Takovo Mora
19: 10	Gasoducto, Juana Azurduy	YPFB Transporte	Tarija	Guaraní: Yaku Igua
20: 10	Exploitation, Margarita Block	REPSOL YPF	Tarija	Guaraní: Itika Guasu
21: 10	Exploitation, Caipipendi área	REPSOL YPF	Tarija	Guaraní: Itika Guasu
22: 11	Exploration, Tajibo and Tacobo Blocks	Pluspetrol	Santa Cruz	Guaraní: Charagua Norte
23: 11	Exploitation, Palo Marcado Block	BG Bolivia	Tarija	Weenhayek
24: 11	Exploration, Katari-Bulo Bulo	YPFB Chaco S.A.	Cochabamba	Peasant communities
25: 11	Exploitation, El Dorado Block	YPFB Chaco S.A.	Santa Cruz	Guaraní: Takovo Mora
26: 11	Exploration, Itaguazurenda Block	YPFB Petroandina SAM	Santa Cruz	Guaraní: Parapetiguasu

Source: Author's compilation, based on MHE reports.

2.2 Procedure and Results

The significant time pressure to conclude prior consultations stems from the fact that corporations involved in hydrocarbon extraction activities must first present a project and sign a contract with the state. Then, the project is categorized according to its expected impact and only afterwards does consultation begin. This means that only projects already elaborated are presented to the affected local groups. The UN special rapporteur on the rights of indigenous peoples, James Anaya, has criticized this common worldwide practice:

We have to think about different development models that have to be presented to indigenous peoples, in particular for the development of resources and lands [...] these initiatives currently are developed by companies and government agencies without indigenous participation. [...] What indigenous peoples are being asked to do at best is to consent to a project that they could not help to define.

(Interview with Anaya, UN)

According to Bolivia's legislation, the MHE leads consultations in cooperation with the MEW and the Vice Ministry of Lands. In the case that the planned activity affects a protected area, these institutions must also coordinate with the National Service for Protected Areas (SERNAP). Due to the important role that questions of land ownership have frequently played within consultations, the National Institute for Agrarian Reform (INRA) has also been involved in some of the consultations. The coordination between these different entities has not always been smooth, and the relationship between the MHE and the MEW in particular has been characterized by conflicts of interest. The indigenous organizations of Bolivia have repeatedly criticized the leading role that the MHE has taken in consultations, arguing that the institution is not impartial given its mandate to carry out hydrocarbon projects.

Originally, the indigenous organizations' claim – supported by the Morales government – was to switch prior consultations from an issue between the lead corporations and the affected communities (as it was previously) to the exclusive concern of the state and local populations. Due to practical and political reasons, however, YPFB has also participated in these processes since 2008 (see SD 29574 from 21 May 2008). It has been argued that its presence is necessary for enabling direct discussions to take place on technical queries. YPFB staff explained that “as many state interests are being discussed [...] we must watch over these interests a bit and see that the processes develop in the best manner” (interview). The presence of transnational corporations within consultation processes and indigenous territories before obtaining an environmental license – which is only granted after the prior consultation has concluded and the environmental impact assessment (EIA) has been revised – has been an ambivalent issue. In some cases, the affected communities criticized the corporations' presence as an intrusion (such as in cases 10 and 12 in Table 1); in others (such as cases 20 and 21), the indigenous organizations invited the respective corporations to participate in order to be able to negotiate with them directly.

The average duration of the consultations was 13 weeks – though they ranged from 1 to 35 weeks. The first phase of the consultation process consisted of inviting the representative institutions of the affected communities to a preliminary meeting. On average, only 15.6 percent of the invited representatives were female, mostly hailing from local women's organizations (MHE reports). In a next step, the indigenous or peasant organizations submitted a consultation schedule and a respective cost estimate to the MHE, which again presented a counterproposal. In general, the representative organizations asked for longer and more comprehensive consultations and significant budgets for meetings and consultancy, while the MHE tried to keep the spending low and to conclude the processes quickly. However, compromises on these issues were usually found. According to data from 20 consultation cases, the average cost for each consultation was 23,280 USD.⁹ In many cases this amount included payments to consultants of the affected communities, who received fees of between 1,000 USD and 6,000 USD (MHE reports).

The next consultation phase comprised meetings to share and discuss the details of the project and its expected social and environmental impacts. This information was prepared by the corporation itself and presented and distributed by the MHE at the beginning of the consultation. The distributed documents were often available in the respective indigenous language as well as in Spanish. Despite the fact that the MHE revises the material and frequently asks the corporation to complete or correct it, the prepared information largely reflected the corporation's vision and was criticized by many of the consulted groups (see below).

In participatory workshops or plenary sessions held after the informative events, the consultation participants elaborated their own lists of expected socioenvironmental impacts and the respective mitigation measures for them. The number of participants in the analyzed consultations ranged from 15 (cases 20 and 21) to 2,000 (case 12), with an overall average of 407 participants (MHE reports). The average percentage of female participants in these meetings was 34. The identified impacts and mitigation measures are subsequently introduced into a final agreement signed by the MHE and the consulted organizations. This agreement has to be incorporated into the EIA, but it is not binding. The director of the MHE consultation team, Maria C. Arellano, explained that they "take notes of everything that they [the consulted communities] demand. And then it is the task of the corporation to reflect and negotiate about these demands" (interview with Arellano, MHE).

3 Consultation Practices: Conflicts and Challenges

During the consultations a wide range of grievances and contestations emerged, causing deadlocks and delays. Among the analyzed cases, though, there were none in which the affected communities rejected the project completely. Fortunately, conflicts over gas activities

⁹ Data submitted by the MHE consultation team.

in Bolivia have mainly arisen in a nonviolent manner. They have, instead, essentially manifested in public criticisms of the adversarial parties' behavior and discourse, protests, litigation and – in a few cases – the occupation of corporation property. The government and YPFB have, on occasion, complained about these blockades and inconveniences, have accused the “troublemakers” of having been instrumentalized by the right-wing opposition or “external forces” (e.g., NGOs) and have tried to ignore the contentious events to continue business as usual. In most cases, however, the parties sought dialogue and established (at least temporary) compromises before the conflicts could further escalate.

3.1 Unresolved Grievances and Future Insecurities

In almost all consultations taking place within territories having a long-standing tradition of hydrocarbon extraction, previous negative experiences and persisting socioenvironmental problems were addressed by the communities. They complained that the corporations neither accomplished their promises nor abided by the law, exploited and manipulated the local populations and the indigenous workers, acted in a nontransparent manner and, lastly, abandoned the territories without improving the quality of life of the affected groups (MHE reports, cases 2, 11, 15, 19, 25). For example, indigenous representatives have made the following claims:

The corporations many times show a good face, giving us small presents and candies, and thereby they win our good will. Afterwards they abandon the territory and leave us with deception, contamination and the sensation that we were being used.

(MHE report, case 11)

[The corporations] do not really care. They say “we will use a certain amount of water,” but then they actually use 200 times more than that. There is no sincerity, no transparency of information.

(Interview with N. Romero, CIDOB)

[The corporations] generate ruptures within our organizational structures, by exercising pressure on authorities, generating conflicts within the organizations and promoting corruption by furthering individual interests.

(MHE report, case 15)

On the one hand, the affected communities express such grievances within consultations so as to achieve stronger negotiation positions. On the other hand, they hope that the state will as a consequence become more sensitive toward their needs and interests and thus take the necessary action to rectify, sanction and compensate previous wrongs as well as avoid similar future practices. But the latter objective generally fell on deaf ears as the state entities responsible for carrying out consultations only have the duty to hold dialogue about specific

projects. Therefore, to avoid complications and delays, the consultation team instead tried to keep the consultations “narrow” by excluding all issues that did not fit within its explicit terms of reference.

The consulted communities proposed many clauses for the final agreements designed to prevent future malpractices (see Table 2). Among them were the following provisions:

- a) the appropriate behavior for corporations, including measures for preventing and offsetting any negative impacts;
- b) benefit sharing, development projects and employment;
- c) improving the communication and information flow toward local populations;
- d) increasing the participation of local organizations and representatives in corporate activities;
- e) guaranteeing the compliance of the corporations with diverse international, national and business norms; and
- f) strengthening and institutionalizing indigenous socioenvironmental monitors to regulate these corporations' activities.

However, very few substantial modifications to the originally proposed projects were incorporated into the final agreements, probably due to the fact that the prospects of success for such amendments were perceived as minimal. In this regard, Nelly Romero, vice president of the Confederation of Indigenous Peoples from Bolivia's Orient (CIDOB), explained that:

there was no consultation that actually changed a project, they only want to legitimize what has already been decided [...] they bring geophysics, environmentalists and a lot of specialized equipment. [...] We are at a disadvantage, we do not have enough arguments to say that certain seismic lines or routes of gas ducts should be changed.

(Interview)

Because the actual effect of the final consultation agreements (as regards holding extractive corporations accountable and creating cooperative relations with the local populations) is limited (further details below), the insecurity and discontent of the latter are very likely to persist for the foreseeable future. After all, the corporations still have the last word on whether and how to take the recommendations and perceptions of the consulted groups into account. Their responses have, moreover, typically been vague (such as in cases 12 and 26). For example, required mitigation measures going beyond those established in Bolivia's domestic norms and the international standards for hydrocarbon activities (like greater distances from water reserves) were in many cases rejected by arguing that the corporation would strictly adhere to the existing norms. The corporations also refused the adoption of proposed mitigation measures as these would lead to delays in the execution of the project or increase the project's overall cost, both of which were declared unfeasible outcomes.

Regarding the effect of additional studies and the increased monitoring and control of corporate activities (as included in the final agreements), other points of criticism might be

raised – for example, the question of who will revise, systematize and manage such information. The idea of the indigenous organizations is that they will comply with this task, but in general they do not (yet) have sufficient capacities to do so adequately. On this point, an advisor from the Environment and Natural Resources arm of the CIDOB noted that “besides the fact that the state does not satisfactorily comply with the delivery of information, the other problem is that we do not have enough time to read and analyze this information for drawing our conclusions” (interview).

The creation and strengthening of indigenous socioenvironmental monitors is likely to be one of the most important advances of the past few years within Bolivia's hydrocarbon sector (interviews with MHE, YPFB, REPSOL, CIDOB staff). Local indigenous socioenvironmental monitors have been trained and financed with the support of Canadian development cooperation organizations, the University Gabriel René Moreno and diverse corporations. These monitors are playing an increasingly important role in keeping tabs on the impacts of resource extraction in their territories. Two main problems exist, however:

- 1) most monitors are being paid by the corporations themselves, which limits their degree of independence, and
- 2) the effectiveness of the monitors' complaints is questionable.¹⁰

Furthermore, many Guaraníes share the long-term objective of becoming associate partners of the corporations operating in their territories. As a result, one of the three courses of study offered by the indigenous University of Macharettí is Petroleum and Gas Engineering. But, becoming equal business partners of these public companies will be by no means easy. In this respect, YPFB staff explained that the Guaraníes:

want to establish a model like in Canada; they want to be associate partners of YPFB. [...] In a conversation with YPFB's president Carlos Villegas they were told that when they have the capacity to form a company that offers the services that we require, there will be no problem in working with them.

(Interview)

10 Nelson Bartolo, head of the Assembly of the Guaraní Peoples' (APG) natural resources and environment arm, stated that “all the reports and complaints that we [the socioenvironmental monitors] lodged with government agencies fell on deaf ears.” (*Latin American Press*, 23 October 2011, “Bolivia: Guaraní Monitor Hydrocarbon Industry,” online: <www.eurasiareview.com/23102011-bolivia-guarani-monitor-hydrocarbon-industry/>).

Table 2: Average Number of Mitigation Measures Contained in Final Agreements according to Diverse Affected Groups and the Issues Addressed

	<i>Correct behavior, prevention, restoration</i>	<i>Benefits, development projects, employment</i>	<i>Communication, information, transparency</i>	<i>Participation, joint decision making</i>	<i>Norm compliance, vigilance, sanctions</i>	<i>Socioenvironmental monitoring</i>	<i>Changes to proposed projects</i>	<i>Total number of mitigation measures (mean)</i>
<i>Definition/Description</i>	Measures to prevent and restore socioenvironmental damage, for example: – reforestation – appropriate company behavior – measures to protect the water, flora, fauna, soil, health, economy, cultural sites – suitable machinery, working hours, infrastructure	establishment of socioeconomic projects (e.g., infrastructure, health, education) – agreements on employment and capacity-building – support of own development priorities – programs for improving corporation–community relationship	– correction/ completion of provided information – production of additional studies (e.g., related to water, flora, fauna, soil) – communication/ transparency regarding duties of corporation – inclusion of local perspectives in EIA	Inclusion of representative indigenous organizations/ community members in corporate activities, e.g.: participatory planning and implementation of mitigation measures and development projects	– emphasis on the obligation of norm compliance (e.g., international human rights, domestic legislation, corporation code of conduct) – vigilance and control of norm compliance – sanctions in case of violation	– role, financing and functions of indigenous socioenvironmental monitors – production of monitoring reports and submission to state and corporation – control of corporation activities and impacts (e.g., on water, flora, fauna, soil, noise levels)	Substantial changes to the design of the planned projects: – changes of exact location of planned activities (e.g., routes of gas pipelines corporate camps, drill-holes, explosions) – search for project alternatives with lesser impacts	
<i>Guaraní</i>	15.6	5.1	6.7	2.0	3.7	2.5	0.4	36
<i>Other indigenous</i>	13.9	3.3	2.7	2.0	0.6	0.3	0.4	21.6
<i>Peasant communities</i>	8.8	1.3	1.3	0.0	0.8	0.0	0.3	12.5
<i>Total (mean)</i>	13.8	3.8	4.3	1.3	2.2	1.4	0.4	27.2

Source: Author's compilation, based on MHE reports.

3.2 Context Matters: Land Tenure and Group Peculiarities

Both the consultation processes and their outcomes have been shaped by the history of each affected group, alongside its current situation as well as its relationship with the state, companies, wider society and other local groups. The consultations with Bolivia's indigenous lowland peoples were more contested than were those with peasant and settler communities. The consultations with the latter (cases 1, 5, 8, 9, 24) were rather swift and easy, with an average duration of less than six weeks (interviews with MHE and YPFB Transporte staff, MHE reports). Peasant and settler organizations generally have closer relationships with the current Bolivian government. Furthermore, in comparison to their indigenous peers, they more widely perceive hydrocarbon projects in their habitat as beneficial for their development. They thus focused on possible benefits like the improvement of their houses, productive endeavors and local infrastructure.

In contrast, the lowland minorities (Guaraní, Weenhayek, Mosen and Leco) have a tense relationship with the government and emphasize their aspirations of enhanced autonomy, including the control of their territories and the natural resources lying within them. Therefore, they view the extraction projects in their territories with suspicion and more often than not highlight their negative impacts. As a result of long and contested consultations, these indigenous groups established more detailed final agreements. For instance, the Guaraní communities elaborated agreements with the greatest number of mitigation measures (on average 36, see Table 2), other indigenous groups established agreements with less mitigation measures (on average 21.6) and peasant communities signed agreements with relatively few mitigation measures (on average 12.5). The differences between the Guaraní communities and other indigenous groups can be explained by the greater organizational strength and unity of the former as well as their extensive historical experience with hydrocarbon projects in their territories.

The indigenous minority groups, moreover, used these consultations as opportunities to discuss broader grievances not directly related to specific projects. The single most important topic of concern was land ownership and the related consolidation of indigenous territories. Bolivia's Guaraní peoples have submitted claims to acquire collective land titles since 1996, but to date no Guaraní indigenous collective land (TCO) has been able to complete its titling process. In recent conflicts with the Guaraní TCO Takovo Mora (see cases 6, 18, 25), the link between land tenure and gas activities was discussed extensively. In this case, the specific area where gas was being exploited was under dispute. In August 2011, the Ministry of Rural Development and Lands declared this area fiscal land, and respective rights were consequently granted to YPFB (Supreme Resolution 05788). As a consequence, the MHE and YPFB broke off an advanced consultation with locals, arguing that it was no longer necessary, as the affected area would not lie within indigenous lands. After several weeks of protests by the affected local communities – accompanied by media reports critical of the governments' negation of consultation – the consultation process was revived, being finally concluded in

February 2012. The discontent of the TCO's inhabitants concerning their land tenure, however, persists.

The Guaraní TCO Itika Guasu (see cases 2, 10, 20, 21) overlaps with the Margarita project, currently the largest exploitation of gas taking place in Bolivia. When REPSOL YPF started its activities there in 1997, the TCO members were not informed about the planned extraction (Perrault 2008). Moreover, despite the unclear and contested nature of local land tenure, the company still signed contracts with individual landowners – thereby indirectly weakening the territorial claims of the Guaraníes (Anthias 2012: 135–136). The APG organization from Itika Guasu would already complain about their lack of consultation in 2003; since then, they have sought to achieve compensation and indemnification payments for the negative impacts stemming from the corporation's activities (ibid.: 137). Finally, with the support of NGOs and European legal advocacy groups, the TCO Itika Guasu reached an exceptional agreement with REPSOL YPF on 29 December 2010.

However, with the exception of the establishment of a 14.8 million USD fund in support of the TCO, not many details contained in it are publicly known due to confidentiality clauses. Because of this agreement, the APG Itika Guasu essentially renounced its right to consultation regarding two new activities within the Margarita Block (cases 20 and 21). Both consultations were concluded in less than one week, with only 15 participants representing the TCO. The final agreement contained neither a rigorous list of identified impacts nor of mitigation measures, but instead referred to the agreement between the indigenous communities and the corporation (*Acuerdo de Amistad y Cooperación entre la APG IG y REPSOL Bolivia S.A.*). In general, parallel to the Guaraníes' desire that the Bolivian state should enhance their collective rights and quality of life, this indigenous group increasingly aims to secure its material well-being by getting benefits out of the gas business. Guaraní representatives often expressed that the funds received would be used for consolidating their territories and sustaining their struggle for autonomy; but the distribution and use of benefits and compensation within local communities has not yet been investigated in any detail.

In the North of La Paz, the regional organization that represents the Leco and Moseten peoples (Central de Pueblos Indígenas de La Paz [CPILAP]) stated that it was only willing to participate in the planned consultation (case 12) after their conditions were met. Among them were the following:

- a) the conclusion of their collective lands' titling process;
- b) the transmittance of better information regarding the planned activities;
- c) the organization of events for exchanging experiences with the Guaraníes and
- d) the elaboration of a strategic environmental evaluation (MHE report, case 12).

Such an evaluation does not only focus on one specific project like the EIA, but rather encompasses a more complex picture of the interplay of diverse project activities within the affected territory. This study was deemed necessary as the North of La Paz is currently the location of numerous hydrocarbon, hydroelectric and road projects (case 12, interview with

CIDOB staff). After several weeks of negotiation between the MHE and indigenous organizations affiliated to the CPILAP and the CIDOB, the consultation advanced and concluded without these organizations. Instead, it was carried out with each local community separately, which led to the fragmentation of and crises within these indigenous organizations. Moreover, some of the resulting final agreements turned out to ultimately be only weak and superficial.

3.3 Contested Information and Divergent Views of Territory and Decision Making

The information transmitted was another important point of contention in most consultations; in some of them, the corrections demanded were posited as preconditions for continuing with these procedures (MHE reports, cases 11, 15, 17, 25). Many consulted groups criticized the information presented for not encompassing all affected communities and for using antiquated or incorrect data (MHE reports). They also complained that the descriptions of the expected socioenvironmental impacts were only superficial and that the likely negative impacts of the projects were downplayed, while benefits were emphasized.¹¹

Moreover, several indigenous organizations argued that the received documents did not sufficiently reflect their own perspectives. Indeed, the responsible staff from the ministries and YPFB have only limited knowledge about the cultures, perspectives and ways of life of the affected groups, which has contributed to distrust and misunderstandings. The documentation provided about the land ownership and the affected territory usually did not coincide with the territorial visions of the affected groups themselves. The corporations concentrated only on those lands directly affected by the planned project, while indigenous organizations argued that their territories should be seen as a whole in order to avoid their fragmentation and division (MHE reports, cases 11, 14, 20, 25). For example, the Weenhayek peoples stated in a document submitted to the MHE that:

from the perspective of the corporation [...] the TCO Weenhayek only comprises the consolidated land areas, but the territorial vision of the people is much broader and overlaps individual and private properties. [...] The company's vision of our territory is completely partial and for the short term, without taking into account that we are in the midst of the process of consolidating our territory.

(MHE report, case 11)

The visions about the appropriate way of making decisions over natural resource extraction also differed. On the one hand, the indigenous organizations have repeatedly expressed that they are the owners of their territory and, thus, should be the ones to decide about any activi-

11 However, it is worth mentioning that some consultations also had a positive effect in that the communities themselves collected and disseminated detailed information about their territories and ways of life, which they submitted to state entities and corporations. They also gained additional knowledge about hydrocarbon activities in general and the specific projects affecting them in particular (see Humphreys Bebbington 2012: 60).

ties taking place within it. They claimed that the consultation outcomes must be accepted, also in the case of a rejection of the proposed measures (CIDOB and CONAMAQ 2012). On the other hand, the state and the corporations shared the perception that the decision-making power of the local populations should be rather low, as the subsoil belongs to the state (interviews with REPSOL and MHE staff). Accordingly, REPSOL staff argued that:

consultation only means the right to be informed. When a project of national interest is at stake that will benefit the whole society, they [the indigenous peoples] cannot oppose it. [...] Actually, I should not ask the indigenous authority or whoever for his permission, as the subsoil belongs to the state.

(Interview)

3.4 Conflicts over Compensation and Leadership Struggles

Negotiations over compensation for expected irreparable damages are not officially part of consultations. Nevertheless, they played a central role in many of them here. Very often, the affected communities had already held informal negotiations with the interested corporation before the consultation began, or at least did so parallel to it. Several consultations were brought to a halt by disagreements over the amount of compensation to be paid.

The inclusion of the expected socioenvironmental impacts into the final agreement is decisive for the subsequent negotiations over compensation. On average, each agreement mentioned 24 expected socioecological impacts. Their classification as either reparable or irreparable was highly conflictive (see cases 13, 14, 17, 26; interviews with MHE, YPFB Transporte, YPFB and REPSOL staff), as only irreparable impacts are compensated for. While the indigenous organizations – and in particular the Guaraníes – tried to have as many expected irreparable impacts as possible incorporated into the final agreements, the corporations – and to a certain extent also the consultation team – aimed to keep this number as low as possible.¹² On average, the Guaraníes were able to inscribe seven irreparable impacts into the agreements (the average number for all consultations was four). They regularly defended their choice of classification by giving evidence of previous negative impacts. In several cases, however, the corporations did not accept these classifications and responded with technical arguments as a way to counter the suggestion that the planned activities would cause severe, long-term damages.

The analysis of the MHE reports reveals that the classification of impacts did not follow any general, transparent code of conduct. Rather, it was the result of makeshift negotiations

¹² A former member of the MHE consultation team stated with regard to case 17 that they “were confronted with the problem that YPFB Petroandina S.A.M. in the end declined to accept the identified socioenvironmental impacts. It became complicated and the conflict reached significant levels. Finally, Bolivia’s vice president told MHE staff that it was wrong, that the established socioenvironmental impacts would not occur, that the hydrocarbon activities do not have such impacts.”

shaped by the respective situation and the various actors involved. The agreed sums seemed inadequate because most identified impacts could not simply be measured in monetary terms – a point picked up upon by Maria Arellano:

I live in peace and they disturb my tranquility. How much does this cost? [...] I do not know whether in Austria or Germany [...] they know the price of sadness. If we had some parameters for measuring that kind of thing, I would be very happy.

(Interview with Arellano, MHE)

The indigenous organizations used their chance to press for significant compensation, which is one of the few possibilities they have to achieve tangible results from consultations. In general, those communities that were better organized and exerted greater pressure received a higher level of compensation. The demand for significant compensation, sometimes related to the blocking of consultations, has been met with anger by both Bolivia's government and the interested corporations. They have repeatedly denigrated the indigenous organizations as blackmailers, egoistic and a hindrance to the country's further development.

Governmental representatives and YPFB staff have in the past few years expressed the idea that negotiations over compensation should be completely detached from the consultation process and that the affected populations should instead receive a fixed percentage of the overall project costs (interview with O. Quiroga; Ministerio de Gobierno 2012: Article 12). In contrast, the relevant authorities for natural resources from among Bolivia's indigenous and peasant organizations have proposed that "the corresponding compensation payment should not depend on the consultation process, but it should rather be determined within the EIA – based on the identified socioenvironmental impacts and as approved by the indigenous organizations."¹³

The negotiations over compensation were normally carried out behind closed doors, with only a few representatives, mostly men, present. Frequently, neither the MHE nor community members have any detailed knowledge about these negotiations or their outcomes, which makes control over the use of the sums eventually transferred almost impossible to achieve. Even after the amount to be awarded has been established, conflicts over compensation have persisted – particularly regarding its use and distribution. These conflicts frequently occurred in a general atmosphere of distrust and alleged corruption by indigenous leaders, which has led to the fragmentation of indigenous organizations as well as entire families and communities.

In several cases, leadership struggles and parallel, adversarial indigenous organizations existed before consultations began. For example, consultations were only held with some or-

13 Encuentro Nacional de Secretarios de RRNN de las organizaciones indígenas originarias campesinas del país. Resoluciones del encuentro (La Paz, 08.07.2009), online: <www.erbol.com.bo/noticia.php?identificador=2147483917739&id=1>.

organizations and not with others in cases 11 and 12. Moreover, in several cases, indigenous organizations complained that not all of their representative levels (local, regional, national) had been invited to the meetings and that the processes had thus not been sufficiently inclusive (cases 4, 10, 12, 13, 15). As a consequence of the exclusion of the relevant regional and national organizations from cases 12, 20 and 21, a deep cleavage between them and the directly affected local communities subsequently emerged.

4 Conclusion: Rethinking the Consultation-Conflict Link

This article's findings challenge simplified conceptions of prior consultation as a tool for conflict prevention and resolution. Based on rich empirical data of all 26 concluded consultations in the Bolivian gas sector from February 2007 until February 2012, it is clear that the relationship between consultation and conflict is complex. Nonetheless, several connections between prior consultation and conflict were identified, which merit further investigation.

First, consultations in Bolivia generally were not able to constructively address previous conflicts and grievances (e.g., land tenure and damages from previous extraction projects). This study finds that the current government and the interested corporations try to exclude from proceedings any such broader concerns that are not directly related to the specific project at stake. Contrary to the widely held assumption that consultation prevents conflict "whenever implemented appropriately," it seems that narrow consultations (characterized by their technical and manipulative nature and the limited decision-making power of the consulted groups) are currently more convenient for the government and corporations as they repress conflicts in the short term. Despite the fact that various deficiencies in the consultation process (e.g., regarding the quality of the transmitted information, the lack of inclusiveness of consultations or the rapid execution of consultation meetings) have provoked criticism, such procedures nevertheless offer a small opportunity to raise awareness among and mobilize local populations and their allies against planned projects. In contrast, consultations characterized by plenty of local agency, including broad agenda-setting and decision-making powers of local populations were most likely to lead to tensions between local visions of self-determined development and state-centered development goals and contribute to calls for profound structural change. Thus, although FPIC may well be capable of contributing to sustainable conflict resolution, reaching a decision actually based on informed consent would most probably be a long and highly conflictive process (entailing the risk of consent being withheld) – which generally is not in the interests of governments and corporations. Nevertheless, at the other extreme, flawed consultations risk (lost) legal action and indigenous peoples' outright rejection of planned projects or decreased willingness to participate in such processes in future.

Second, consultations led to new conflicts (e.g., regarding the amount, use and distribution of compensation payments). Despite the fact that negotiations over compensation are

not officially part of consultations in Bolivia, they nevertheless played an important role in many of those studied here. Related to contested information and divergent views on the affected territory and the project's expected impacts, negotiations over appropriate compensation amounts blocked many consultations. Additionally, the receipt and use of these funds created serious conflicts within and between local populations and indigenous organizations. The article thus confirms Arellano Yanguas's (2011) finding that poorly conceived benefit-sharing and compensation regimes actually contribute to the exacerbation of conflicts, rather than their mitigation. However, the effect of the entanglement of consultations and compensations on conflicts has been ambiguous. On the one hand, negotiations over compensations were very conflictive; on the other, they deflected a lot of attention away from the projects' expected socioecological impacts – after all, it is easier to achieve compromise on economic interests than on value-based conflicts (Jeong 2009: 26). While not being particularly conducive to rights and environmental protection, linking compensation to consultation seems to have been pivotal in going ahead with the planned projects.

Third, the investigation at hand underscores the distinct degrees of conflict potential according to diverse affected groups and their contexts. These particularities should not be overlooked, as they can help us to better understand the needs, interests and strategies of local populations as well as the conflicts between these people, the state and corporate stakeholders. Indeed, in Bolivia, consultations with the indigenous lowland minorities were more contested than were those with peasant communities, which can be explained by the facts that the peasant communities

- a) more widely perceive extraction projects to be beneficial for their development and
- b) have closer relationships with the current government.

In more general terms, the conflict prevention potential of consultations is greater when local groups focus on the possible benefits that an extractive project would deliver than when they focus on the project's negative socioecological impacts (e.g., livelihood issues); this is so because prior consultations can more easily facilitate agreements on employment and socio-economic benefit than they can convincingly prove the effectiveness of socioecological-impact mitigation measures. This article also reveals the differences that exist between diverse indigenous lowland peoples in the country. The consultations with Guaraní communities were particularly contentious and lengthy, resulting in more detailed agreements than those concluded with other indigenous groups – ultimately due to the Guaraníes' organizational unity and strength as well as their long-standing experience with hydrocarbon projects. The effect of consultations on resource conflicts thus greatly depends on the specific affected group and its (historical, political, economic, cultural, ecological) context.

Fourth, fissions within local populations and indigenous organizations not only represented a serious hurdle to the carrying out of meaningful consultations, but they were also exacerbated by many of these procedures. Most Bolivian indigenous organizations are struggling with distant relations to community bases, insufficient transparency of and control

over the resources that they administrate, and contested leaderships. Moreover, well-known insights into local communities' heterogeneous nature and internal power asymmetries (such as Mohan and Stokke 2000) were not sufficiently taken into account within these consultations. All of these factors are likely to lead to a further increase in internal disparities – for example between men and women or between representatives and constituents. Previous research on the consultation-conflict link has generally focused on conflicts between the state, corporations and the local communities, while the question under which conditions consultations exacerbate or appease cleavages within local populations and indigenous organizations has been widely neglected.

The study at hand aims to pave the way for more critical, complex and realistic reflections and studies about connections between prior consultation and conflict – a topic that is highly relevant for understanding resource governance in Latin America and elsewhere. It contributes to this objective by exploring consultation practices and respective contestations in Bolivia, which serve as an empirical source for formulating diverse and previously underresearched connections between consultation and conflict.

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