

AMERICAS

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VOLUME 8, NUMBER 2

Consulta Previa and Investment

SPECIAL SECTION: THE PERILS AND PROMISE OF CONSULTA PREVIA

Steps and Examples from
Chile, Colombia, Guatemala & Peru

**Reducing the Risk
of Conflict for Banks**
Daniel Schydlofsky & Robert Thompson
AND
**Contradictions in Domestic
and International Laws**



**Teams
and Players
to Watch**

DEBATE:
**Does the
World Cup
Bring
Development?**



**“We are the
protagonists.”**

—Romero Ríos
Founder of the *Federación de
Comunidades Nativas Maijunas*
on his community's
consultation process



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The Perils and Promise of Consulta Previa

Indigenous communities in the Americas are guaranteed the right to be consulted in advance about activities that affect their lands or way of life. But the record of many governments in implementing this right is mixed—generating, in different cases, conflict, consensus, and lessons for the future. Our special feature section starts on page 51.





Peasants and natives of San Juan Sacatepéquez, 12 miles (20 km) west of Guatemala City, protest against the inauguration of a cement factory in the area.

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JOHAN ORDONEZ/AFP/GETTY



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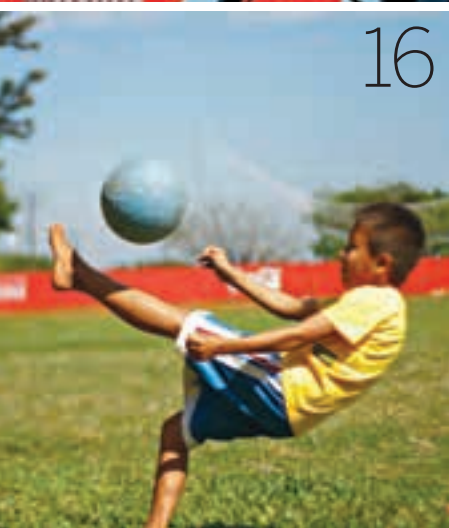
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in our next issue:

Higher Education and Competitiveness (PLUS: THE 2014 SOCIAL INCLUSION INDEX)

With few Latin American universities on the list of top 50 global academic institutions, can the region's higher education system produce the engineers and scientists needed to remain globally competitive?

Getting to the Table

How a new generation of organizations is improving dialogue and reducing conflict over mining in Latin America.

Diana Arbeláez-Ruiz and Daniel M. Franks

Mining is a lot more than complex technology, logistics and finance. While mineral extraction does require an amazing array of machinery, computers, and processes for transporting and treating the materials, it is just as much a social project that is negotiated and conducted within a social context.

And just as the technological challenges require qualified engineers, geologists and other specialists, the social aspects of mining demand skilled, sophisticated experts who can lay the foundations for productive dialogue between communities, governments and project proponents.

Such a dialogue is critical to the viability of mining projects today. Securing the support of not only the communities immediately surrounding a site but of the larger society can be accomplished only within a framework of understanding that can endure throughout the life cycle of a project. Whether this step is required by law or pursued voluntarily, few mining projects can hope to succeed over the long term without it. Continuous

dialogue among governments, communities and extractive companies that involves a consensus about both sharing opportunities and managing risk is essential.

Latin America is ahead of other regions in the expertise and practice of dialogue around mining. Largely as a result of its history of conflicts over mining, the region has generated scores of groups dedicated to fostering dialogue at all levels: project, regional and national.

With the support of the International Mining for Development Centre, we conducted two workshops in November 2013 in Lima, Peru, that were aimed at tapping this rich experience—and learning from it. The workshops included more than 60 specialists from 10 countries in the Americas: Argentina, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Panama, and Peru—with representatives from Australia.

Here are some of the things we learned.¹

Diana Arbeláez-Ruiz, is a research fellow at the Centre for Social Responsibility in Mining at the University of Queensland. **Daniel M. Franks** is the deputy director of the Centre for Social Responsibility in Mining.

GET STARTED EARLY AND KEEP IT GOING

Dialogue is important in the early phases of development. Early dialogue, such as free, prior and informed consultation and/or consent, is important not just to reach out to communities, but also to help inform decision making and integrate a plurality of perspectives and norms into the company's plan and operation. Early on, there are also opportunities to optimize project design for social and environmental outcomes and to establish the forums to maintain this focus over the life of the project.

But dialogue must also be a continuous process with multiple actors. Dialogue plays an important role in policy making, impact assessment, regulatory approval, and negotiating agreements with Indigenous and local communities. It also involves participatory monitoring and collaboratively setting the conditions for the closure of the mine. In short, dialogue must be embedded into all aspects of the life cycle of a project.

Spaces for dialogue on natural resource extraction have emerged in many countries in Latin America over the past decade. Peru's long-standing *Grupo de Diálogo Minería y Desarrollo Sostenible* (Dialogue Group on Mining and Sustainable Development—GDMDS), established 13 years ago, is now a network of over 500 people.

In the past three to five years, similar groups have emerged in Argentina, Chile, Ecuador, Brazil, and Colombia, to mention a few, and there is interest in Guatemala, the Dominican Republic and Panama. Within Latin America, a network now exists that promotes exchange between members, organizes international, multi-stakeholder forums, and seeks to support the technical capacity of dialogue initiatives at the national and regional levels.

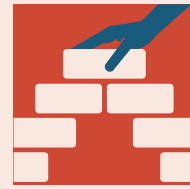
The core function of these dialogue groups is to create social capital among diverse participants. While the motivations and support for a dialogue group might vary, they generally share an understanding that dialogue, as an approach in itself, must be promoted and dialogue skills developed. The groups help build a culture for dialogue by allowing participants to learn through non-binding processes that permit seemingly incompatible actors to approach each other.

Dialogue groups have a multitude of functions. Some put forward position papers (e.g. Peru). Others commission research to inform the public about mining (e.g. Colombia). Several host speakers from different backgrounds to speak to particular issues. Most serve as a platform for forming relationships outside the pressures of negotiation processes, giving participants an opportunity to challenge stereotypes about different stakeholders. In national contexts where the debate on mining and its role in development is highly polarized, such as in Colombia or Argentina, dialogue tables

can generate reliable information and shift polarization to informed debate.

The dialogue groups of Peru and Argentina have formed sub-groups that focus on specific themes, such as impact assessment and royalties. The Peruvian group has been particularly influential in the debate around the *canon minero* (the redistribution of mining revenue to regional and local governments) and citizen participation in the mining sector, while providing support for regional dialogue tables and regional leaders.

Knowledge-sharing among groups and countries is a key benefit of broader dialogue networks, helping to improve processes and even regulations around complex topics such as *consulta previa* and revenue sharing.



BUILD BRIDGES

Sustaining dialogue isn't easy. Mining industry proponents may fear losing control when the mining project is opened to outsiders. Some find that government or industry willingness to participate in a non-binding dialogue process is limited or changes over time. Early on, a key challenge is to begin bridging ideological, political or trust barriers to get actors to "talk mining."

These issues are more significant where a critical mass around dialogue has not been built, and industry, civil society, community, and government actors from various territorial levels have not developed the habits or skills for effective dialogue. Effort is needed to harmonize often diametrically opposed understandings of critical timelines. Some actors seek immediate results, while others need time to come to the table.

Even the act of bringing people together from diverse sectors can be unexpectedly complicated. Such processes typically require time commitments that might be difficult to accommodate for public servants or industry professionals. Regional or local stakeholders may need dialogue to come to them or may require resources or time for issues to be consulted on at a grassroots level.

Furthermore, difficulties might arise in connecting a dialogue table or group with other relevant dialogue processes and institutions in the government or private sector.



STAY CONNECTED

In countries like Peru, there is already an established dialogue infrastructure with numerous local and regional levels. At the local level, organizations such as the Tintaya *mesa de diálogo* (dialogue table) have many years of experience working through project-specific issues. At the national level, the Peruvian government has the *Oficina Nacional de Diálogo y Sostenibilidad* (National Office for Dialogue and Sustainability) that has devised indicators to monitor conflict potential and deploys personnel nationally to help bridge conflicts and promote agreement negotiation.

The office has proposed a National System for Conflict Prevention and Management. Peru also has a *Defensoría del Pueblo* whose mandate centers on supervising the work of the state and defending fundamental rights. Over the past decade it developed a framework on conflict that ranges from conflict monitoring and early warning systems to mediation. The Ministry of Energy and Mines is also playing a role promoting *mesas de diálogo* as spaces of inter-sectorial dialogue. All of these multiple spaces reflect various ways of approaching conflict transformation or of situating dialogue and mining in relation to each other. An encouraging trend is that across Latin America, groups like the Latin American Dialogue Group are networked and meet regularly to share experiences and promote a common agenda.



PRE-PROJECT ASSESSMENTS AND CONSULTATIONS AREN'T ENOUGH

The environmental impact assessment that governments require for new mining projects can be a vehicle for underlying or emerging conflict or dissatisfaction to get some air time. A new extractive project invariably brings uncertainty, fear of change and clashing priorities. This early stage of a project mobilizes opponents and creates a period of vulnerability for project proponents.

For this reason, the environmental impact assessment should be perceived as a political process, in which building relationships and trust can weigh more than scientific conclusions about impacts and their management. There are many examples of projects that have received formal approval from government agencies on the basis of their environmental impact statement, only to face community backlash on the very same issues that were addressed in it.

Impact assessment can be largely meaningless to communities in the absence of conditions that can give it credibility. This is where dialogue comes in. Dialogue can help to build a credible and meaningful process.

To have credibility, legitimacy and reliability, impact assessment needs to be conceived as part of an ongoing process of understanding and adjusting. People have to trust the information they see.

One way to address this is through participatory or independent monitoring that takes place not just at the time of the assessment but throughout the life of projects. An exercise in citizen oversight, monitoring committees also allow relationship and trust building, the generation of reliable data, and the development of social capital to negotiate systems of environmental management.

In Peru, there have been experiences of participatory environmental monitoring in many regions, including Apurímac, Ancash, Cajamarca, Cusco, Junín, Moquegua, Pasco, and Puno. For example, in the case of Tintaya mine in Cusco, the community and business created a monitoring committee that lasted.

YOU NEED TO TRUST THE INFORMATION

But how do you create relevant and credible monitoring for mining projects? A scientific approach is not enough. Reporting on project impact needs to respond to community concerns, which only become clear through dialogue. And monitoring without a starting point—the baseline conditions in the absence of a project—can leave many community questions unanswered; hence the importance of early dialogue. All of this requires resources. Who will pay for monitoring and for creating channels of participation? The costs need to be internalized within project budgets—not left for civil society and communities to carry out on a voluntary basis.



INTEGRATE CONSULTATION/ASSESSMENT PROCESSES WITH DIALOGUE AND MONITORING PLANS

The connection between impact assessment and other planning processes, such as free, prior and informed consultation and/or consent, is a key and unresolved issue in many countries.

For example, how can consultation or consent be informed if a community does not have access to the information generated by impact assessment for the activities they are being consulted about? How is traditional knowledge articulated in impact studies? Is impact assessment communicated in an inclusive way?

Beyond the early stages, how does impact assessment inform prior consultation for project expansion or for closure?

These are questions that demand study and considered responses, which might come from integrated forms of impact assessment that consider cultural interaction and social inclusion. Impact assessment and dialogue need to be ongoing processes informing each other as well as informing negotiation and decision making throughout the project life cycle. Given that mining often evolves in clusters, an understanding of the cumulative dimensions of impact is also necessary, including the fatigue for communities that may be associated with repeated consultations.

UNDERSTAND THE DIVERSITY OF THE COMMUNITY AND ITS DEMANDS

Differences in goals and perceptions—often based on ethnicity, gender, age, disciplinary background, language, and education—inevitably color a community's perspective on a mining project. These differences must be accounted for in the dialogue process. For example, what are the economic opportunities for younger generations? How are rural women affected by environmental changes? Are notions of development consistent with Indigenous understandings of *buen vivir* (having a good way of living)?

Is information presented in a clear language, in local languages, and in appropriate formats? Are all affected and interested groups represented in the dialogue processes, and do they have opportunities for meaningful participation? Attention to difference is the core of dialogue, whether it is situated within a dialogue group, *consulta previa* process,

impact assessment, negotiated agreement, participatory monitoring, or development planning. It is not surprising that key issues such as gender equity or intercultural dialogue are still not addressed at the dialogue table with the depth they require. But posing such problems also helps dialogue participants consider strategies to address them.

When stakeholders can discuss their concerns openly and frankly—and work out ways to manage differences—it is almost certain that everyone will benefit. Getting to that point is a long-term process and requires the creativity and efforts of various sectors.

The dialogue groups of Latin America are the result of dedicated efforts from regional civil society movements, complementing and informing responses from industry, local communities and the state. Through their activism, they remind us of our collective responsibility as beneficiaries of the products of the mining industry and our role in getting people to the table to talk about the consequences and benefits of mining.



¹ The four-day series of workshops was made possible thanks to the financial support of Australia's International Mining for Development Centre, and the collaboration of Peru's *Grupo de Diálogo Minería y Desarrollo Sostenible*, *Societas Consultora de Análisis Social* and CARE Perú.