

**Participatory Democracy in Latin America:  
The Collective Right to Prior Consultation in Ecuador and Bolivia\***

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**Abstract**

Part of the institutions that seek to deepen participatory democracy, *consulta previa* (or prior consultation) is the collective right of indigenous communities whose lands or environment could be potentially affected by resource extraction or mega-development projects to be consulted before projects begin. The gap between prior consultation's formal rules and its implementation has occasioned a variety of social movement responses, ranging from national protests to locally-organized popular consultations. Using a most similar cases research design and employing process-tracing, we comparatively study the political causes, coalitions, and features of the process of adoption, regulation, and implementation of prior consultation in Bolivia and Ecuador. We argue that variation in the level of indigenous mobilization and in their relationship with the government accounts for the differences across and within cases. We also provide an interpretation of the extent to which this new institution has affected the organization of local politics and (to some extent) the allocation of public goods.

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*“Pero no nos vengan con cuentos de democracia participativa. Es decir, que ganemos nosotros las elecciones y ordenen ellos.”* [But do not come to us with stories of participatory democracy, that is, we win the elections and they want to rule] President Rafael Correa, *Enlance Ciudadano* 249, December 10, 2011 in Macas, Morona Santiago, Ecuador.

## **Introduction**

Throughout Latin America and in the aftermath of neoliberal hegemony, large portions of civil society are meeting in the halls of municipal buildings or in the gyms and *salones de actos* of public schools to discuss, deliberate over, make recommendations for, and even take legally-binding decisions on the provision of public goods as well as major infrastructure and development projects. From healthcare policy to the environmental impact of extraction of non-renewable resources, Latin American citizens are participating in a host of new local institutions brought to them by patchwork processes of democratization and decentralization. These two processes of democratization and decentralization have been rolled out piecemeal over the last three decades and are full of contradictions and complexities, but have nevertheless opened an exciting array of possibilities for participation in the region.

Latin America has been at the forefront of the creation of participatory institutions or “democratic innovations,” which, as defined by Graham Smith (2009, 1) are “institutions that have been specifically designed to increase and deepen citizen participation in the political decision-making process.” Local participatory governance and budgeting programs, for example, first emerged in the late 1970s and 1980s in southern Brazilian cities with a history of well-organized neighborhood associations (Avritzer 2009, 26; Baiocchi et al. 2011, 43-44; Souza 2001, 162). And even though participatory budgeting diffused to cities throughout the world, by 2010, 63% of the cities with participatory budgeting were still in Latin America (Sintomer et al. 2010, 10, cited in Pateman 2012, 13). Communal councils, local health councils, territorially

based organizations, and local vigilance committees are other examples of participatory institutions that, while not exclusive of Latin America, are nowadays abundant in the region.

Are these participatory institutions politically consequential or simply “window dressing”? If politically consequential, are participatory institutions deepening democracy by providing common citizens with opportunities to decide on public issues, such as the distribution of public goods? If mere “window dressing” from the point of view of democracy, what other functions are they serving? For example, are these institutions serving as watchdogs for the ruling elites (who through local bosses or social organizers can extend their vigilance to the neighborhood level), or vehicles of political legitimation, or steam valves of open political conflict?

During the past decade, social movements have brought left-wing presidents to power in Bolivia and Ecuador. Both Presidents Rafael Correa and Evo Morales emphasized the importance of popular participation in their political campaigns. Moreover, their administrations presided over the introduction of sweeping institutional political reforms in the new constitutions of 2008 (Ecuador) and 2009 (Bolivia). Following a most-similar cases research design, we comparatively study the adoption, implementation, and consequences of *consulta previa* (or prior consultation) in these two countries. *Consulta previa* is the collective right of indigenous (and in Ecuador Afro-descendant) communities whose lands or environments could be potentially affected by resource extraction or mega-development projects to be consulted before projects begin. It is a right derived from an international norm (the International Labor Organization, ILO, Convention 169) that has constitutional status in both countries. Yet, there is a significant gap between prior consultation’s formal rules and its implementation in each case and over time.

We argue that such gap between rules and implementation largely reflects the balance of

power between state elites and the indigenous movements, as well as the tensions that exist between a participatory (populist) agenda and the dictums of non-renewable resource extraction for economic growth. We observe this gap by process-tracing the main events of adoption, regulation, and implementation of *consulta previa* in each case. From the 1990s to the present, we see that while a *reactive* type of sequence explains the relationship between state and indigenous movements and the evolution of *consulta previa* in Ecuador, in Bolivia the institution of *consulta previa* has undergone three distinct periods, characterized by different logics of reproduction of power among social and political actors. From the 1990s to 2005, a *reactive* type of sequence characterized the process of adoption and partial implementation of *consulta previa* in Bolivia. From 2005 to 2009, the process of *consulta previa* had *self-reinforcing* features due to the political alignment between state authorities and the indigenous movement against the neoliberal elites. After the re-election of Evo Morales to the presidency in 2009 (and the institutionalization of the process of nationalization of hydrocarbons, which had started in 2006), however, the process of *consulta previa* exhibits a *continuous* type of logic. In the words of local actors, “*la consulta previa está en la congeladora*” (prior consultation is in the freezer). We argue that variations across countries and across time reflect the changing balance of power between state elites and the indigenous movement, as well as the increasing temporal reliance of both economies on extractive industries. As we show below, the gap between the adoption rules and the implementation practices of prior consultation has occasioned a variety of responses in each case, ranging from national protests to locally-organized popular consultations on large-scale projects to attempts to create a new law that would regulate the process of consultation and make it possible to contest consultation outcomes in the national courts. Ultimately, prior consultation is a highly contested institution in Latin America, the future of which remains

uncertain. However, important lessons can be drawn from the comparative analysis of *consulta previa*'s institutionalization and its evolution in Bolivia and Ecuador up to the present.

### **Case Selection and Methodology**

Many similarities make Bolivia and Ecuador excellent cases for comparison. They are similar in population size and levels of socio-economic development. They are both unitary countries. They both transitioned to leftist governments in the mid-2000s and have highly organized indigenous movements, with more historic movements based in the highlands and relatively more recent mobilization of indigenous communities in their respective Amazonian or low lands regions. Moreover, they are both highly dependent on the extraction of non-renewable natural resources. But perhaps most importantly, the new constitutions of Bolivia (2009) and Ecuador (2008) are at the vanguard of the recognition of nature rights, such as the rights of “Mother Earth” (Madre Tierra). They also articulate an innovative idea of development based on the concept of “Living Well” (“Vivir Bien” or Sumak Kawsay), defined as “access and enjoyment of material goods and the effective, subjective, intellectual, and spiritual realization, in harmony with nature and in community with human beings.”<sup>1</sup> (Pérez Castellón 2011, 66-67). According to Argentine constitutional scholar Raúl Zaffaroni, the new constitutions of Bolivia and Ecuador, with their recognition of nature’s rights, establish a new constitutional paradigm (Zaffaroni and Calizaya 2009, cited in Pérez Castellón 2011, 66-ft 7). The right to prior consultation is embedded in and central to this new jurisprudence. Yet, despite these structural and institutional similarities, the implementation of prior consultation has taken distinct paths in Ecuador and Bolivia.

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<sup>1</sup> Bolivia, 2006, “Plan Nacional de Desarrollo: Bolivia digna, soberana, productiva y democrática para vivir bien,” p. 10. Cited in Pérez Catellón, 2011, p. 66.

We apply the method of theory-guided process tracing (Bennett 2009; Falleti 2006; Mahoney 2012) to identify the key events that are constitutive of the process of interest in each country, namely the process of adoption, regulation, and implementation (or institutionalization) of prior consultation. In this paper, and to ensure the analytic equivalence of the units that are compared, we focus on the consultation events that belong to the extractive industries, most notably mining and oil in Ecuador and hydrocarbons in Bolivia.<sup>2</sup> It is worth mentioning that even within this subset of prior consultation processes, there is extensive variation. The changing nature of the affected communities, the companies or government agencies involved in the process, as well as the different mechanisms for aggregating preferences and arriving at collective decisions make these experiences highly varied. Yet, there are some overarching similarities across cases of *consulta previa* and across the two countries that are worth highlighting.

First, *consulta previa* processes have been implemented to legitimate hydrocarbon and mineral extraction and the expansion of the extractive frontier toward the Amazonia. Second, at least two discourses regarding the meaning and implementation of prior consultation can be distinguished: the government or state actors' discourse on the one hand, and the social movements or activists discourse on the other, and they are often in direct confrontation with one another. Third, a common criticism of social activists has been that prior consultation was implemented (particularly in the early consultation cases) ex-post and not prior to the commencement of exploitation. Fourth, there has been contention over whether the process

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<sup>2</sup> Hence, we do not include here an analysis of the process of consultation over the construction of highway that would have run across the Territorio Indígena y Parque Nacional Isiboro Sécuré (or TIPNIS), in the lowlands of Bolivia. The process was challenged by communities that opposed the construction of the highway as being ex-post and having only reached part of the affected communities. In September of 2011, government security forces heavily repressed a march organized to protest the construction of the highway in Chaparina (Beni). By early 2013, the construction project had been suspended.

would be binding. Fifth, implementation of prior consultation highlights problems of representation within the indigenous communities, which are not always united in their positions toward the proposed projects.

In the following two sections we analyze the process of institutionalization of *consulta previa* in Ecuador and Bolivia, respectively. We draw from the historical institutionalist literature to characterize the type of processes under study (in particular, Collier and Collier 1991; Falletti and Mahoney 2013; Mahoney 2000; Pierson 2000). In the last section we conclude.

### **Process-Tracing *Consulta Previa* in Ecuador**

#### *Reactive Sequences and Legal Ambiguity in the Implementation of Consulta Previa*

In Ecuador, the collective right to prior consultation has been caught in the friction between the expansion of the extractive frontier and the legal recognition of new forms of participation in extractive policymaking. Social movement mobilization, with a key role played by regional and national indigenous federations, accounts for both the initial legal incorporation of the right as well as subsequent constitutional reforms that resulted in more substantive guarantees. The state, which is both dependent on extractive industries and forced to contend with politically effective movements, has systematically sought to contain the democratic possibilities of *consulta previa* by narrowing the scope of community decision-making. Over the time period studied (1997-2012), the specific adoption strategies undertaken are the product of a *reactive sequence* of contention between the state and social movements (Collier and Collier 1991, 30-31; Mahoney 2000).

This dynamic of contention has resulted in change over time in the official strategy vis-a-vis prior consultation. In the first phase, each wave of constitutional reform advocated for by the

indigenous movement was subsequently limited by executive intervention. For example, President Correa circumvented the progressive language of the 2008 Constitution by promulgating a decree that outlined a more technocratic vision of participation. In the second period, the executive intervened again, this time to shift the site of consultation from decision-making over the extractive project itself to the content of social investment agreements that channel revenues from the project to local communities. The change over time reflects a learning process on the part of state actors, the indigenous movement's declining capacity for mobilization, as well as the specific dynamics associated with each extractive sector. Ultimately, this protracted reform process—comprising various constitutional rights, executive decrees and ordinary laws—has resulted in a legal ambiguity around the right to prior consultation. This ambiguity has occasioned contention over interpretation of the right, especially over the meaning of the constitutional language of “free, prior and informed” (on the issue of ambiguity in rule interpretation, see Streek and Thelen 2005, 9-13). But in addition to this ambiguity, the successive waves of legal incorporation and regulation of *consulta previa* contain “poison pills” (Brinks and Blass 2013).<sup>3</sup> In Ecuador, these are formal rules, usually in the form of regulatory presidential decrees, which are designed to undermine the substantive content of participation that might have been in the spirit of prior consultation constitutional reforms. Examples of poison pills contents are requirements that community commentary be “technically valid” or the stipulation that the “relevant authority” decides in the case of community opposition. We conclude that upon closer inspection, reforms that appear to be a more substantive recognition of this collective right in fact limit community participation and protect the viability of extractive projects.

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<sup>3</sup> Brinks and Blass (2013, 7) define “poison pills,” as formal rules with the potential to cripple or seriously limit the operation of an institution (such as courts) that is otherwise autonomous and strong.



*Phase One: From ILO Convention 169 to the Technocratic Vision of Decree 1040*

In Ecuador, the ratification of ILO Convention 169 in 1998 was both a product and indicator of the growing political power of the Ecuadorian indigenous movement, particularly the national federation CONAIE and its political party arm Pachakutik. ILO Convention 169 was designed to protect the human rights and protect the territories of indigenous peoples.<sup>4</sup> In its Articles 6, 7, and 15, it establishes that indigenous peoples must be consulted anytime a legislative or administrative measure could directly affect them or their environment. Of particular concern are development projects or displacement processes that could negatively impact the indigenous peoples' access or use of their lands and territories.<sup>5</sup> The movement burst onto the political scene in May of 1990 with its first national uprising in response to inflation and a rising cost of living. This resulted in a 16-point political program, comprising both ethnic and class demands, including the declaration of Ecuador as a plurinational state, the recognition of indigenous land rights, a consumer price freeze, and bilingual education (Yashar 2005, 144-146). In 1992, the Amazonian Kichwa organization OPIP marched to Quito to demand recognition of indigenous territory as a space of cultural (re)production (rather than as a means to economic livelihood; see Sawyer 2004, 83-84). In June 1994, CONAIE, along with the National Ecuadorian Federation of Campesino and Indigenous Organizations (FENOC-I), and the Evangelical Federation of Indigenous Ecuadorians (EFIE), organized a two-week long mobilization against neoliberal agricultural reform (Andolina 1994; Sawyer 2004). That same year, the CONAIE published its 55 page political program calling for a new Constitution and

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<sup>4</sup> ILO Convention 169 builds upon and substitutes the 1957 ILO Convention 107 (for an analysis of this international norm, see Rodríguez-Piñero, 2005).

<sup>5</sup> The convention was ratified on April 14, 1998 by Congress and signed into law by President Alarcón on May 15, 1998 (Van Cott 1998; CAOI and ECUARUNARI 2012).

ratification of ILO Convention 169 (CONAIE 1994, 17; 20).

The demands of the indigenous movement were realized with the convocation of a Constituent Assembly in 1997. Proximately, the 1997-1998 Assembly was a product of a legitimacy crisis, in which CONAIE and other social movements played a key role (Andolina 2003; Chuji 2010, 55). Earlier that year, mass street protests of a broad front of organizations including CONAIE forced President Bucaram to step down. Over the next two months, the indigenous federation installed 'people's assemblies' around the country, culminating in an alternative constituent assembly (October 13-24, 1997), that developed proposals later informing Pachakutik positions in the official Constituent Assembly (Andolina 2003, 731-736, 739; CONAIE 1997). The rewriting of the Magna Carta presented an opportunity to renew the push for ratification of ILO Convention 169 (Van Cott 1998), gaining further momentum from the support of ex-President Osvaldo Hurtado (then president of the Constituent Assembly). The Convention was ratified three weeks before the Assembly finished drafting the new Constitution.

National indigenous mobilization was additionally linked to the work of Pachakutik congressional representatives and the escalation of oil-related conflict in the Amazon. In 1996, Pachakutik won eight seats in Congress, almost 10% of the legislature. Among those elected were Luis Macas, a founder and former president of the CONAIE (Mijeski and Beck 2011, 48), and Miguel Lluco, a Kichwa deputy from Chimborazo, who played a key role both in the protests that led to the Constituent Assembly and in the Convention's ratification process, and who would later serve as the party national coordinator.

Meanwhile, in the province of Pastaza, Kichwa organization OPIP was embroiled in a decade-long conflict with oil company Arco-Oriente, in the course of which it invoked ILO Convention 169 prior to its ratification (Fontaine 2004; Chavez 2011, 14-15). Natural resource

and territorial politics became central to the Ecuadorian indigenous movement as confrontations proliferated with the continuing expansion of the oil frontier.<sup>6</sup> In August 1998, the new Constitution entered into force guaranteeing two distinct rights to consultation: one for indigenous and Afro-Ecuadorian peoples (Art. 84); the other of all communities relating to the environment (Art. 88). The former is one of a series of new collective rights of indigenous peoples. Article 84 guarantees that indigenous peoples “be consulted about plans and programs of exploration and exploitation of nonrenewable resources found in their lands and that can affect them environmentally or culturally; to participate in the benefits that these projects generate, as soon as possible, and receive compensation for the socio-environmental damages they cause them.” In the following section, which treats the rights of “the population” and “communities” vis-a-vis their natural environment, Article 88 states, “All state decisions that can affect the environment must have previously had the opinions of the community, for which it will be duly informed. The law guarantees its participation.”

Following the ratification of the new, these constitutional rights to consultation were unevenly incorporated into law, resulting in an ambiguous legal status and questionable implementation practices. For example, although the 1999 Law of Environmental Management guarantees the right of consultation for environmentally harmful activities, this right is limited to “information” and the burden is on the community whose environment is potentially harmed to obtain this information via “petitions” and “actions of an individual or collective character before the relevant authorities” (Art. 28-29).

In response to the persistence of oil-related conflict in the Amazon, in 2002 President Noboa propagated Decree 3401, which provided the regulatory framework for the first

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<sup>6</sup> The eighth and ninth rounds of oil tender, in which new concessions were opened up for international bidding, were held in 1995 and 2001.

consultation process in Ecuador. The law contained some progressive elements that reflect the political power of the indigenous movement at the time. For example, it explicitly recognized *consulta previa* as a collective right of indigenous peoples, established consultation prior to project concession, and it recognizes national and regional indigenous federations (CONAIE, CONFENIAE) as overseers of the process (see, for example, Art. 13, 21, 40). At the same time, as it soon became the norm in *consulta previa* implementation, it established a technocratic vision of participation, stipulating that only “technically and economically viable, and legally appropriate” opinions “will be considered in decision-making” (Art. 31). Ultimately, the decree is a somewhat incoherent document: it regulates both indigenous and environmental consultations without clearly distinguishing between the two (Chavez 2011). Between August and December of 2003, 263 Amazonian Kichwa communities were consulted regarding oil extraction in blocks 20 and 29 (Chavez 20; García Serrano 4-5). Despite a questionable process (e.g., the information provided was only in Spanish rather than in Kichwa), 236 of these communities pronounced themselves for a "conditional yes" and the project was approved.

In 2006, President Correa was elected riding a wave of social mobilization, and promised to convene a constituent assembly, as demanded by the indigenous movement (Chuji et al. 2010). In November 2007, one hundred and thirty popularly elected delegates convened to rewrite the constitution, which occasioned a protracted debate over the right to prior consultation among the members of the Natural Resources and Biodiversity Committee and on the floor of the plenary.<sup>7</sup> The Committee debated this issue internally from January to late April 2008 but could not reach consensus and thus, on April 29, presented both a majority proposal (prior *consultation*) and a minority proposal (prior *consent*) to the Plenary. The main difference was

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<sup>7</sup> On April 15, 2007, there was a popular referendum on whether to rewrite the Constitution; 86.79% voted in favor. Elections were held on September 30, 2007; Correa’s party (Alianza País) won 80 of the total 130 seats.

that the latter proposal entailed that the decision resulting from the consultation process would be binding. Committee President Monica Chuji, a longtime Amazonian Kichwa activist from the Amazon region, and two other Committee members supported consent; the other nine members supported consultation. In the course of developing what would become Art. 398 in the Constitution, two distinct visions of community participation in the context of extractive projects emerged. Supporters of the majority proposal for prior consultation argued that resource extraction, which generates national development, should not be held hostage to local interests. Proponents of the minority proposal were more skeptical of the benefits of resource extraction, and claimed that a consent requirement would deepen democracy. After much debate on the floor and again within the committee, as well as lobbying by the executive in favor of consultation rather than consent, the majority proposal for prior consultation won. Although the majority proposal prevailed and, with only small revisions, became the final text in the Magna Carta, *consulta previa* continued to be a source of conflict, both within the regime and between the government and social movements. Throughout the protracted process of the adoption and implementation of the right to prior consultation, the indigenous movement has advocated for the rights of affected local communities, and the dominant faction of President Correa's party, Alianza Pais, has privileged the interests of the national majority.

The 2008 Constitution guarantees the two distinct rights of consultation of the 1998 Magna Carta; albeit with more detail, some innovative features, and different wording. In the section on the collective rights of indigenous and Afro-Ecuadorian peoples, Article 57 guarantees two types of consultations: *consulta previa* and *consulta pre-legislativa*.<sup>8</sup> The former

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<sup>8</sup> Pre-legislative consultation is the collective right of indigenous, Afro-Ecuadorian, and Montubian communities to be consulted prior to any law that could affect any one of the 21 collective rights listed under Constitutional Article 57 (See Art. 57, Num. 17). Analysis of this right is beyond the scope of this paper.

consists of “prior, free and informed consultation, within a reasonable period, about plans and programs of exploration, exploitation and commercialization of non-renewable resources that are found in their lands and that can affect them environmentally or culturally...If the consent of the consulted community is not obtained, the Constitution and the law will be upheld”; the article thus “recognizes and at the same time negates the substantive content of prior consent” (Chuji et al, 128). The second right, so-called environmental consultation, states that all communities must be consulted about any “state decision or authorization that can affect the environment” and will be “thoroughly and opportunely informed” (Art. 398). Compared to earlier legislation, it clarifies that the “consulting subject is the State”, not the concession-holder. Finally, in the case of a “majority opposition” to the project, “the decision as to whether to execute the project or not will be adopted by duly justified resolution by the relevant authority”, either the Ministry of Environment or the Ministry of Nonrenewable Resources.<sup>9</sup>

While the Constituent Assembly was still in session, indeed in the midst of the debate between consultation and consent described above, President Correa promulgated Executive Decree 1040 to regulate “mechanisms of social participation” in state decisions affecting the environment. On April 22, 2008 the President, the Minister of Environment, the Minister of Electricity and Renewable Energy, and the Minister of Non-Renewable Resources signed the decree into law. Written only months before the new constitution would be voted by referendum, it cited the 1998 Constitution (Article 88) and the 1999 Law of Environmental Management (Articles 28 and 29). Yet, the word “consult” appears nowhere in the decree.

Returning to the terms of the debate of the late 1990s and ignoring the 2008 constituent assembly discussions over indigenous and environmental rights, Decree 1040 establishes a

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<sup>9</sup> Article 398 on environmental consultation was eventually addressed in the April 2010 Organic Law of Citizen Participation, but very little new content was added (Art. 82-83). Indeed, it is almost a “literal copy” of the constitutional article (Potes 2012).

relatively limited vision of community participation. It prioritizes the provision of information by the State and “promoter” of the project, and the exclusion of citizens’ opinions that fail to meet the criteria of “technical and economic viability.” In contrast to Decree 3401, promulgated by President Noboa in 2002, consultation takes place *after* concession has occurred (but prior to approval of the Environmental Impact Assessment). Furthermore, community opposition to a project does not entail its suspension or cancellation. As stated in Article 19, “participation” can proceed despite the absence of participants. And in the event of community rejection of the proposed activity, the project can still be realized if the “competent authority insists” and will ultimately be taken up by the superior institutional authority (Art. 22). Finally, by establishing an important role for the “promoter” of the project (Art. 15), the Decree violates the soon-to-be ratified Constitution, which stipulates that the State is the “consulting subject” (Art. 398). Thus, Decree 1040 introduces several poison pills that undermine substantive recognition of *consulta previa*. It excludes community input that fails to meet the standard of “technical viability”. The company is allowed to participate, which could unduly influence community members’ opinions of the project. Finally, it is unclear that processes implemented under the guidelines of Decree 1040 are really *prior* consultations: the decree mandates that social participation occur before the approval of the Environmental Impact Assessment, but not prior to the concession of the oil or mining block (concessions which, as in Bolivia, are fait accompli by the time of the consultation).

Despite its violation of the Constitution, Ecuadorian officials have continued to rely on Decree 1040 for “social participation” processes, and tend to define *consulta previa* as an “information session” rather than use the constitutional language of collective rights that is

invoked by activists.<sup>10</sup> This emerged in interviews with key informants and in explicit references to the Decree in the documentation of the social participation processes around the Mirador mining project and in subsequent regulatory measures (such as Executive Decree 121, the Environmental Regulation for Mining Activities).<sup>11</sup> Indeed, it appears that the promulgation of Decree 1040 was timed in order to establish a narrower understanding of consultation. It was an executive reaction against the more progressive language contained in the soon to be ratified Constitution.

The social participation process for the Mirador open pit gold mine in the southern Amazon in November 2010 reflected the technocratic vision established by Decree 1040, as well as the legal ambiguity around the constitutional right to prior consultation. The process was carried out by the Ministry of Environment (MAE) and the Chinese-owned mining company ECSA and took place in three information centers within the zone of influence of the project. The prominent role of the concession-holder, in line with Decree 1040, nonetheless violated the 2008 Constitution.<sup>12</sup> The participation process treated two phases (“Exploitation and Benefit”) at once. Although there is some ambiguity in the relevant regulation with reference to the requirement for an environmental impact study and accompanying participation, the MAE

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<sup>10</sup> This vision of participation was reiterated in the 2009 Mining Law, which contained a chapter on social participation in mining projects. The law explicitly states that the goal of such processes is to promote the sustainable development of mining activity, ensuring the rational exploitation of mining resources, respect for the environment, social participation in environmental matters and the development of the localities located in the areas of influence of a mining project.” On March 17, 2009, the CONAIE challenged the constitutionality of the 2009 Mining Law, as they claimed the law had not been submitted for their consultation, as guaranteed by the constitutional right to pre-legislative consultation for any law that will affect the collective rights of indigenous communities. In its March 18, 2010 ruling the Court dismissed the charge of 2009 Mining Law, classifying it as “conditionally constitutional” given the “exceptional situation” of the transition to a constitutional order.

<sup>11</sup> The Decree was also used to guide social participation processes for dozens, if not more, oil projects in the northern Amazon (Fiske 2013; and Amelia Fiske, personal communication, April 24, 2014).

<sup>12</sup> Two days after the contract for exploitation was signed the Ministry of Nonrenewable Resources’ twitter account, possibly in response to criticism, tweeted that “the personnel that carried out the process of social participation were not paid by #ECSA, but by the Ministry of Environment” (Potes 2012).



functionaries interviewed stressed that there should be a socialization process for each and every phase of a project. The lumping together of two project phases may make community members face an overwhelming amount of technical information, thus rendering their participation less substantive.

As stipulated in Decree 1040, the information centers where the public hearings were held were open for two weeks, seven days prior and seven days after the three simultaneous hearings on November 5, 2010, during which representatives from both MAE and ECSA were available to address concerns.<sup>13</sup> Throughout the two-week period, citizens from affected communities had the opportunity to review the environmental studies and leave comments and questions. Their questions were about contamination, animals, jobs, energy, transportation, community relations, benefits, communication and information, and education.<sup>14</sup> Responses were short, repetitive, vague, and refused to admit any negative impact of the project. Despite the requirement that opinions be “technically and economically viable” in order to be incorporated into the final version of the environmental study, most questions or responses were not articulated in a “technical” register.

The report observes that the information center and public hearings were “well attended,” notes the lack of “opposition” aside from concerns about the generation of employment, and concludes with the need to keep the community informed and “maintain a constant dialogue.” But in a November 11 letter addressed to the provincial offices of the MAE, the Consortium of Social Organizations of El Pangui (the canton where all three “information sessions” took place) requested the nullity of “ECSA’s hearing” for several reasons, among them, violation of

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<sup>13</sup> As stated in the Final Report, “...depending on whether the question is technical, environmental, social or legal,” the consultant, company representatives, or authorities present “absolve the concerns raised” (15).

<sup>14</sup> [Cite Comment Registry document.]

constitutional Article 398 (due to the participation of the promoter, ECSA), the lack of convocation of affected sectors, such as Saraguro and Shuar indigenous communities, and, perhaps most problematic, the failure to provide the full environmental impact assessment for community review, as required by law (instead, a summary was presented).<sup>15</sup>

In light of this less-than substantive implementation of the constitutional right to *consulta previa*, some communities have carried out their own unofficial consultation processes. On October 2, 2012, the community water management organization, UNAGUA, comprising two rural parishes in the canton of Cuenca, organized a Consultation on mining in the town square of one, Victoria del Portete. The two parishes, and especially the latter, have been a stronghold of the anti-mining movement in the province, and in Ecuador more generally. Much of this mobilization has been organized via small-scale farmers who both manage and depend on their local irrigation system, and their primary concern is the potential effect of the large-scale gold mining project Quimsacocha—one of the five “strategic” mining projects the Correa administration plans on developing—on their water supply. Members of UNAGUA voted on the following question: Do you agree with mining activity in the *páramo* [the wetland system] and water sources of Kimsakocha? The speeches that opened and closed the event, as well as the instructions published by the organization, emphasized the State and company’s failure to comply with the constitutional right to prior consultation and asserted the negative effects of mineral exploitation on local water supplies. Ninety three percent voted against the mining project.

The official response was swift, and evidenced yet another instance of the reactive

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<sup>15</sup> See <http://cordilleracondor.wordpress.com/2010/12/03/piden-nulidad-para-audiencia-minera-de-ecsa/> Accessed 01/10/13. The last critique mentioned, which would constitute the most important violation, is corroborated by another critical account of the process, see <http://icci.nativeweb.org/boletin/138/sacher.html>.

sequence that characterizes the conflict between state and social movements around the issue of prior consultation. In a “Manifiesto” published in Cuenca’s paper of record on the same day, the government’s provincial representative asserted that the consultation lacked constitutional and legal grounds, and amounted to mere “political manipulation,” a message repeated in flyers posted on telephone poles in Victoria del Portete. Meanwhile, during his weekly radio address the following Saturday, President Correa questioned the consultation’s democratic credentials. Referring to UNAGUA, he claimed, “they convoke, they organize, they control, they count the votes, and we are going to see how they marked the votes, how the people voted six times.”<sup>16</sup> UNAGUA members with multiple water rights (due to the size of their property, or because they hold a right in the stead of an émigré) were allotted multiple votes; this larger share of representation in turn carries an obligation, in the form of greater level of participation in collective work projects known as the *minga*, which include maintenance of the infrastructure for potable water as well as irrigation<sup>17</sup>.

The community-organized consultation thus occasioned a debate over the form and content of democratic decision-making, in at least two senses. First, there was tension between the liberal principle of one person, one vote, and a more republican conception of citizenship, in which voting rights are linked to participation in the management of a public good. Second, and more broadly, the Quimsacocha consultation was one of many incidents in ongoing contestation between, on the one hand, a majoritarian, representative, and *national* vision of democracy linked to national economic development, and a participatory, direct, and *local* form of decision-making.<sup>18</sup> According to Correa, the non-binding nature of consultations means that the desires of

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<sup>16</sup> *Enlace Ciudadano* 241, 10/08/11

<sup>17</sup> See interview with UNAGUA President Carlos Perez at [http://www.ivoox.com/carlos-perez-guartambel-audios-mp3\\_rf\\_840160\\_1.html](http://www.ivoox.com/carlos-perez-guartambel-audios-mp3_rf_840160_1.html) 10/13/11; Accessed 01/17/13.

<sup>18</sup> For an example of President Correa’s discourse on electoral versus participatory democracy, see *Enlace*

the community (often glossed as “particular” or “minority” interests) should not trump the exigencies of national development, among them, the expansion of mining and oil extraction.

*Phase Two: Lessons Learned? Implementing Consulta Previa without Threatening Extraction*

Conflict over *consulta previa* reignited in the summer of 2012, when the Secretary of Hydrocarbons (SHE), in coordination with the Ministry of Environment, initiated the process of consultation for the 11th Round of Oil Tender, slated to open on November 28, 2012. From the outset, the process of consultation was as much an object of contention as the planned expansion of oil extraction to the untapped reserves of the southern Amazon, in the provinces of Pastaza, Morona Santiago, Napo and Orellana. This time, contention centered on the implementation of Executive Decree 1247, which President Correa signed into law on July 19, 2012 in order to regulate the consultation of indigenous communities in regards to the tender and assignment of oil blocks.<sup>19</sup> The Decree seemed to mark an important advance in the implementation of constitutional principles, and the SHE appeared dedicated to avoid conflict with (or perhaps, contain the resistance of) indigenous communities, as evidenced by a detailed website that provided much more information about the consultation process than had been available for prior social participation processes.<sup>20</sup> In contrast to Decree 1040, Decree 1247 uses the language of consultation (rather than the vaguer and now legally outdated language of “social participation”) throughout the text, explicitly citing Constitutional Article 57, Num. 7, and renaming the Centers of Information “Consultation Offices.” In addition, there is no role for promoter of the project in

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*Ciudadano* 249, 12/10/11.

<sup>19</sup> Notably, the Decree was emitted one week before the Inter-American Court of Human Rights issued its decision on the case of Sarayaku vs. Ecuador, ruling in favor of the Amazonian Kichwa community for the Ecuadorian state’s failure to consult them prior to Argentinian company CGC carrying out oil exploration on their territory. The oil concession was originally granted in 1996, and the Sarayaku first brought their case before the Court in 2003.

<sup>20</sup> See <http://www.rondasuroriente.gob.ec>

the participation process, since this decree regulate the pre-bidding process and thus is *prior* to the concession to a particular company.

Despite these advances in the application of prior consultation and the reassertion of the State's role in the process, there are important continuities in the form and content of participation. For example, the list of “mechanisms” of participation is practically identical. Furthermore, only opinions that are “technical, economically viable, and legally appropriate,” as judged by the Secretary of Hydrocarbons, “will be considered in decision-making” (Art. 18); in addition, even opinions that meet these standards can be rejected by the relevant authority. There is perhaps a more important point in terms of the evolution of approaches to adoption. Decree 1040 was designed to avoid more substantive language guaranteeing consultation—and perhaps promulgated prior to the ratification of the 2008 Constitution for precisely that reason. Decree 1247, however, appears to advance a more progressive understanding of the collective right to prior consultation, at the same time that it is designed to encourage community support for extractive projects. For example, it is the “responsibility” of the consultation facilitator to present information about “the social benefits of the project” as well as the “mitigation measures and social compensation” (Art. 10). Perhaps more importantly, the Decree contains a long section of comprehensive, targeted social investment proposals (in the areas of health, education, social welfare, housing, water and sanitation) that the Consultation Office should develop with Coordinating Ministry of Social Welfare to be disseminated to communities in the area of influence of the project. The Decree is surprisingly explicit about the political stakes of such investment, which will “*motivate the participation* of communities” (Article 16, emphasis added). Linking investment and participation ensures that the latter is less likely to threaten project viability. Although there is no clear mechanism (such as voting) to ascertain community

support for oil extraction—and, following the Constitution, the consultation is non-binding—the Decree stipulates that the fulfillment of “agreements and consensus that could come from the consultation process” is “obligatory” (Art. 23). These binding agreements, however, are assumed to center on the content of the aforementioned social investment projects rather than extraction itself, as the Decree states that they must be in line with existing plans for national and local development.

Despite generating yet another cycle of contention between indigenous movements and the state, the implementation of Decree 1247 has aligned with official goals to expand the extractive frontier. Overall, 10,469 members of communities within the area of influence of 17 oil fields participated in the process, which was realized in 45 permanent offices, 106 itinerant offices, 37 public hearings, 32 general assemblies for feedback.<sup>21</sup> Over the course of the process, local and national indigenous movement leaders, as well as members of the communities where hearings and information sessions took place, criticized various aspects of the consultations. In particular, they questioned the process for (1) relying on a legal instrument (Decree 1247) that was not subject to pre-legislative consultation, as required by Constitutional Art. 57, Num. 17 (2) not aiming for consent, as required by ILO Convention 169 (3) being rushed and presenting insufficient information (4) involving economic “blackmail” or “manipulation” due to the offer of social investment (5) dividing communities.<sup>22</sup> Social movements thus claimed that the

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<sup>21</sup> There is variation across different sources (Secretary of Hydrocarbons, Ministry of Environment, state-owned newspaper) regarding both the timeframe and number of blocks in which communities were consulted. The Secretary of Hydrocarbons website itself alternates between stating 13 blocks and 17 blocks. (See <http://www.rondasuroriente.gob.ec/portal/es/web/rondasuroriente/resumen-ejecutivo> and <http://www.rondasuroriente.gob.ec/portal/es/web/rondasuroriente/asistentes-a-la-consulta-previa>. Accessed 03/27/13). Regarding the timeframe, according to my interview, the consultation process took place between July and December, the *Telégrafo* article cited above states that it began in June. The SHE website does not specify the start and finish date.

<sup>22</sup> Servindi "Nación Sapara denuncia intromisión en sus territorios de la secretaria de Hidrocarburos" at <http://servindi.org/actualidad/70355>, 08/14/12; *El Universo* "Con lanzas y ajíes, amazónicos rechazaron

consultation was neither prior, free nor informed, and ultimately questioned whether the state-led process counted as a consultation at all, often referring to it as a “so-called” consultation.

Meanwhile, prominent state actors publically defended implementation of *consulta previa*, accusing leaders of spreading disinformation and not being authentic representatives of indigenous communities.<sup>23</sup> Contention over the issue came to a head on November 28, 2012, when hundreds of protesters from indigenous and allied organizations rallied outside the Marriot Hotel, where Minister of Nonrenewable Resources Wilson Pastor officially inaugurated the 11th round of oil tender at an energy and oil convention.<sup>24</sup> Protestors took the opportunity to declare their opposition to the consultation process. Delfin Tenesaca, the president of the highland Kichwa federation ECUARUNARI, declared that consultation should be binding.

In contrast, official accounts of the consultation process emphasize full compliance with Constitutional principles and international norms. Specifically, the SHE claims that the process was prior, free and informed as the consultations were (1) carried out sufficiently prior to the *eventual* allocation or assignment of...oil blocks" (2) free of any type of "intimidation, coercion,

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proceso de consulta previa" at <http://www.eluniverso.com/2012/09/11/1/1355/lanzas-ajies-rechazo-proceso-consulta-previa.html>, 09/11/12; *Fundación Pachamama*, "Nación Shuar exige el cese inmediato del proceso de 'consulta previa'" at <http://pachamama.org.ec/nacion-shuar-exige-el-cese-inmediato-del-proceso-de-consulta-previa/>, 09/20/12; *Fundación Pachamama* “La XI ronda petrolera será un fracaso, por falta de participación” at <http://pachamama.org.ec/la-xi-ronda-petrolera-sera-un-fracaso-por-falta-de-participacion-segun-las-nacionalidades-indigenas/>, 10/26/12; *Fundación Pachamama*, Boletín de prensa CONAIE – CONFENIAE: “Indígenas amazónicos se oponen a la XI Ronda Petrolera. No vale la pena y debe suspenderse de inmediato.” <http://pachamama.org.ec/boletin-de-prensa-conaie-confeniae-indigenas-amazonicos-se-oponen-a-la-xi-ronda-petrolera-no-vale-la-pena-y-debe-suspenderse-de-inmediato/>, 11/28/12; *Acción Ecológica* "Acción Ecológica Opina: Con oposición y contradicciones termino la promoción de la Ronda Sur Oriente" 04/02/2014 [Acción Ecológica listserv]<sup>23</sup> See *El Universo*, "Ministro Pástor afirma que sí hicieron consulta previa a licitación petrolera" <http://www.eluniverso.com/2012/12/05/1/1355/ministro-afirma-hicieron-consulta-previa.html> 12/05/12; and the SHE page at <http://www.rondasuroriente.gob.ec/portal/es/web/rondasuroriente/resumen-ejecutivo><sup>24</sup> EFE Newswire, "Indígenas ecuatorianos se manifiestan contra licitación petrolera", [http://www.ecuadorenvivo.com/20121128102195/sociedad/indigenas\\_ecuatorianos\\_se\\_manifiestan\\_contra\\_licitacion\\_petrolera.html](http://www.ecuadorenvivo.com/20121128102195/sociedad/indigenas_ecuatorianos_se_manifiestan_contra_licitacion_petrolera.html), 11/28/12; Amazon Watch, "Indigenous Protests Grow as Ecuador Auctions Amazon Oil Blocks", <http://upsidedownworld.org/main/ecuador-archives-49/3994-indigenous-protests-grow-as-ecuador-auctions-amazon-oil-blocks>, 11/28/12. For photographs, see “Bienvenidos al nuevo festín Petrolero” <http://marchaporlavidanet.net/2012/11/30/bienvenidos-al-nuevo-festin-petrolero/>

pressure or manipulation” (in contrast to the “manipulation” by opposition NGOs) (3) based on a detailed socio-environmental diagnostic.<sup>25</sup> According to a Ministry of Environment (MAE) official interviewed, the division of labor between the SHE and the MAE resulted in relatively substantive exercise in participation, in which attendees asked detailed and thoughtful questions (03/07/13). Despite the lack of an interest aggregation mechanism in the law itself, communities with well-developed decision-making practices (for the most part of the Kichwa nationality) used the forum to come to internal consensus over both oil extraction and social investment needs. Furthermore, he noted the importance of the fact that the State carried out the consultation, as opposed to a private company (as in the case of the Mirador socialization). He also noted that despite the government’s “interest” in oil extraction, nowadays communities feel that the State better addresses and represents their interests. He recounted that there were only four blocks of the twenty-one in which communities rejected oil development—and claimed that in those cases, resistance was primarily a result of opposition on the part of political leadership, albeit the majority were in favor of the projects.<sup>26</sup> He did however, admit some “errors” in the process, such as the issue of insufficient translators, the rush and abruptness of the process, and that, perhaps most importantly, the information presented by the SHE (as opposed to the more detailed diagnostic prepared by the MAE) was “very deficient.”

As stipulated in Decree 1247, the consultation process resulted in agreements (“Acts of Commitment”) between state officials and community representatives, promising social investment in the communities within the area of influence of the new oil fields. The total minimum commitment amounts to \$115 million. Upon the signing of the respective exploitation contract, each future contract holder will contribute between \$5 and \$15 million to a state-run

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<sup>25</sup> <http://www.rondasuroriente.gob.ec/portal/es/web/rondasuroriente/resumen-ejecutivo>

<sup>26</sup> See above footnote on discrepancies in the number of blocks across sources.



Social Investment Fund. In line with the political logic of the new consultation framework, which seeks to make extraction politically viable through large investments in social services and infrastructure, although the results of the consultations were not binding, the agreements for local social investment are. Thus, read in comparison to Decree 1040 and the Mirador social participation process, it appears as if state officials have learned that the right to prior consultation can be formulated such that it does not threaten the expansion of the extractive frontier. Indeed, according to a Ministry of Environment bureaucrat who participated in many community consultations, the recent electoral increase in support for the administration among the communities located near planned oil projects—itsself partly a product of increased social spending in long-neglected communities—convinced officials that a more substantive consultation process would not become a forum for local resistance (Interview 03/07/13). In addition, the much-noted decline in indigenous movement’s capacity for mobilization since its height in the 1990s through the early 2000s in part accounts for the state’s ability to successfully implement the prior consultation process despite substantial protest (for apex, see Andolina 2003, Yashar 2005, and Colloredo-Mansfield 2009; for decline, see Chuji et al. 2010, Ramírez Gallegos 2010). On the other hand, the combination of indigenous protest and apparent lack of investor interest has slowed the progress of the 11th round of oil tender; the SHE has twice extended the deadline for bid offers.<sup>27</sup>

### **Process-Tracing *Consulta Previa* in Bolivia**

The introduction of the collective right to *consulta previa* in Bolivia has been part of a process of political and constitutional transformation that has sought to strengthen the

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<sup>27</sup> See <http://www.rondasuroriente.gob.ec/portal/es/web/rondasuroriente/inicio> and “Gobierno suspende apertura de ofertas de XI Ronda Petrolera” at [http://www.elcomercio.ec/negocios/Ecuador\\_licitacion-petroleo-XIRondaPetrolera\\_0\\_956904499.html](http://www.elcomercio.ec/negocios/Ecuador_licitacion-petroleo-XIRondaPetrolera_0_956904499.html), Accessed 07/16/2013.

participatory component of democracy. It is one of many institutional innovations with this objective, including local councils, recall referenda, popular ratification, direct election of justices, and popular initiatives, among others (Wolff 2012, 186-89). However, the process of adoption, regulation, and implementation of *consulta previa* has varied over time. Three phases or periods can be identified, each of which has distinct implications for the process of democratic deepening

### *Phase One: From ILO Convention 169 to the Law of Hydrocarbons*

From 1990 to 2005, the process of institutionalization of *consulta previa* in Bolivia was, as in the case of Ecuador, a *reactive* type of process, characterized by reaction and counter-reaction events and dynamics between successive neoliberal administrations, on the one hand, and the pressures for political and economic inclusion of the indigenous organizations (in particular those of the low lands who had been excluded from the post-1952 corporatist regime), on the other. In direct response to the indigenous mobilization that had led to the 1990 March for Territory and Dignity, organized by the Confederation of Indigenous Peoples of Bolivia (CIDOB), President Jaime Paz Zamora ratified the ILO Convention 169 in 1991. Bolivia was thus one of the first four countries (together with Norway, Mexico, and Colombia) to ratify this international instrument (Schilling-Vacaflor 2012, 10).<sup>28</sup> The availability of this international instrument was important in the recognition of indigenous rights to prior consultation and land claims. However, as in the case of Ecuador, Bolivia's ratifications of the Convention in 1991 responded to domestically originated pressures and political dynamics. In other words, it was

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<sup>28</sup> To date, twenty-two countries have ratified the ILO CONVENTION 169, of which fifteen are in Latin America. Source: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312314), last accessed on March 21, 2013.

heightened indigenous mobilization and demands that led to national legislation recognizing the right to prior consultation of indigenous communities.<sup>29</sup> During this first period, the Dirección de Gestión Socioambiental of the Ministry of Hydrocarbons and Energy (MHE) was created and put in charge of conducting consultations, and some consultations with indigenous communities would have taken place during this period, mostly guided by the ILO Convention 169 and the Environment Law 1333 of 1992.<sup>30</sup>

Further extensions and amendments to the right of prior consultation followed in the footsteps of heightened social unrest and mobilization, which centered on the access and exploitation of natural resources, and were articulated in terms of indigenous identity. After the “gas war” of October 2003, President “Goni” Sánchez de Lozada decreed that natural gas would not be exported without “consultations and debates” that would have to take place before the end of that year (Decree 27210). Social mobilization continued over Goni’s neoliberal economic policies, ultimately leading to his resignation soon thereafter.

Vicepresident Carlos Mesa assumed the presidency and called a national referendum on hydrocarbons, which contained five questions relating to their exploitation and administration by the state. Overwhelmingly, Bolivians favored state ownership of hydrocarbons (92%) and the re-founding of the national oil company Yacimientos Petrolíferos Fiscales Bolivianos, YPFB (87%). In 2005, Mesa presented a bill on Hydrocarbons to Congress. However, the political context was less than auspicious to compromise. The political right, led by the Comité Cívico de Santa Cruz demanded more departmental autonomy as a counterbalance to the rising power and clout of the indigenous movement and as a safeguard of their territorial and economic interests. The political left, led by Evo Morales and the Movimiento al Socialismo (MAS), demanded

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<sup>29</sup> Interview with Oscar (Oki) Renán Vega Camacho, in La Paz, Bolivia, March 20, 2014.

<sup>30</sup> Interview with Monica Castro, in La Paz, Bolivia, March 21, 2014.

more state participation in the ownership and administration of natural gas. Amidst a new wave of popular protests, Mesa resigned before he had to decide on whether signing or vetoing the new Law of Hydrocarbons 3058. As President of Congress, Horlando Vaca Diez signed the law into effect.

*Phase Two: From the Law of Hydrocarbons to the 2009 Constitution.*

Between 2005 and 2009, and especially once the MAS wins and assumes the presidency in 2006, the process of institutionalization of *consulta previa* becomes a *self-reinforcing* type process, in which the government largely supports the demands of the indigenous movement and organization, which constitute the core of its social bases for political support and mobilization.

Law of Hydrocarbons 3058 was central to the institutionalization of *consulta previa* in Bolivia. One of the ten titles contained in this law was explicitly devoted to “the rights of the peasant, indigenous, and original peoples” (Title VII). Articles 114 and 115 of the law directly invoke the ILO Convention 169 and legislates that a mandatory process of consultation of indigenous communities had to take place prior to the implementation of any hydrocarbons exploitation project. And not only the process of prior consultation was mandatory, but the “decisions resulting from this process of consultation ought to be respected” (Art. 115, Law 3058). The law also specifies the Ministries of Hydrocarbons and of Environment are responsible for implementing the consultation and that the national executive would cover the costs of the process.

It is noteworthy that neither Mesa’s bill nor the original MAS proposal included such lengthy section on prior consultation.<sup>31</sup> Instead, a proposal to legislate on the consultation of

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<sup>31</sup> President Mesa’s proposal mentioned that, in the Tierras Comunitarias de Origen (TCO’s), a process of consultation with indigenous communities would be mandatory prior to the elaboration of the study of

indigenous communities and peoples was elaborated by the nongovernmental organization CEJIS, which worked closely with the five major national indigenous organizations grouped in the *Pacto de Unidad* (CEJIS 2004, 189-206).<sup>32</sup> Moreover, ten days after Law 3058 was approved, the *Pacto de Unidad* presented a letter to the President of Congress requesting, among other changes, that the consultation process would not only be respected but also “binding.”<sup>33</sup> Although no changes would be introduced to the law, the demands of the organized indigenous movement reflect their degree of mobilization and leadership at the time, just before the MAS assumed the presidency.

However, crippling regulations, or “poison pills” to use Brinks and Blass’s (2013) term, start to transpire in 2007 and 2008, just as the *consultas* began to be systematically carried out in the hydrocarbons sector. The first regulations of the right to prior consultation came with President Evo Morales’s Decrees No. 29033 and 29124 of early 2007. These decrees recognize the rights of indigenous peoples and communities to be consulted prior to the exploration or exploitation of non-renewable natural resources in their territories. However, they introduce important changes with regards to the financing of the consultation process as compared to Law 3058. These decrees now established that the consultation process would be financed by the hydrocarbons project or activity under consideration, not by the national executive as per the 2005 Law of Hydrocarbons. Thus, those in charge of the exploration or exploitation project,

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environmental impact. It was a short one-sentence paragraph in the environmental monitoring article, towards the end of the bill (Bolivia. Presidencia de la República, *Proyecto de Ley de Hidrocarburos*, September 6 2004, Art. 107, p. 37). Similarly, the MAS proposal included one sentence indicating that ILO Convention 169 would have to be complied with in when hydrocarbons activities involved TCOs (Bancada Parlamentaria MAS-IPSP, *Proyecto de Ley de Hidrocarburos*, Art. 62, transcribed in CEJIS, 2004, p. 139).

<sup>32</sup> The Pacto Unidad grouped the CONAMAQ, CIDOB, CNMCIOBS, CSIB, and CSUSTB.

<sup>33</sup> Pacto de Unidad del movimiento indígena originario, campesino, colonizadores y sin tierra, de las tierras altas y bajas. *Proyecto de Modificatoria a la Ley No. 3058, Ley de Hidrocarburos*. 27 de mayo de 2005.

presumably the hydrocarbons corporations, would provide the economic resources necessary to carry out each consultation.

The second and more crippling change in the regulation, or “poison pill,” came with Decree 29574 of 2008. In this decree, President Morales legislated that the process of prior consultation could take no longer than two months (with one extra month for compliance with the terms of the consultation). In the previous regulatory decrees, it was up to the parties to establish the timing of the consultation process, which would be followed by a period of three months for compliance with the agreement. By limiting the duration of the consultation process, Morales took power away from the indigenous communities, who without control of the terms of the negotiation (technocratic knowledge and economic power are concentrated in the corporations), could until then control the timing of the process at least. Now, they were forced to reach an agreement within a relatively short window of time.

Despite these poison pills, it was in 2007 that the MHE started to regularly conduct consultations with indigenous communities prior to exploitation of hydrocarbons projects and recorded these processes in its annual reports.<sup>34</sup> Moreover, at the same time the constitutional assembly was in session and to some extent the MAS majority in congress and in the constituent assembly acted as if still a force “outside of the state.” Portions of the MAS government and of its political bases continued to associate the state with its neoliberal past and therefore with a set of institutions that had to be changed.<sup>35</sup> The result, as in the case of Ecuador a year earlier, was an exceedingly progressive constitution, particularly from the point of view of indigenous rights (Schavelzon 2012) including the right to *consulta previa*. The new constitution listed prior

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<sup>34</sup> Pointing towards the important role that international norms and actors have had in supporting the institutionalization of prior consultation in Bolivia, it is worth noting that the MHE signed a contract with the United Nations Development Program in May of 2007 for the implementation of public consultations as legislated in Law 3058 and its regulatory Decree 29033.

<sup>35</sup> Interview with Claudia Peña, Minister of Autonomies, in La Paz, Bolivia, March 20, 2014.

consultation as one of the mechanisms of “direct and participatory democracy,” applicable to all Bolivian citizens, and distinctive from “communal democracy” that referred specifically to the indigenous territorial communities (Constitution of 2009, Art. 11). However, all other references to the right of prior consultation in the 2009 Constitution were made in relation to the indigenous peoples and nations. In fact, recognizing the collective right of indigenous peoples and nations to self-government, the new constitution sees them as sovereign entities and lists their rights and responsibilities alongside those of the central, departmental, and local governments. Among the rights of the “indigenous original peasant territories” (or TIOCs) is the right to the “prior and informed consultation” regarding the exploitation of non-renewable natural resources in their territories (Constitution of 2009, Art. 30, II.15; Art. 304, I.21; Art. 403).

*Phase Three: After the apex of the 2009 Constitution, “the MAS State”*

After 2009, as the MAS entrenches itself in the state (no longer seeing as an exogenous set of neoliberal institutions that requires changing) and in its governmental role, the national political leadership starts to circumvent some of the social rights gained in the constitution. The discussion of a framework law of participation, for example, an explicit and ongoing demand of the indigenous organizations of the *Pacto de Unidad*, has been put “in the freezer,” at least until after the 2014 presidential elections,<sup>36</sup> as has the process of granting autonomy to the indigenous territories.<sup>37</sup>

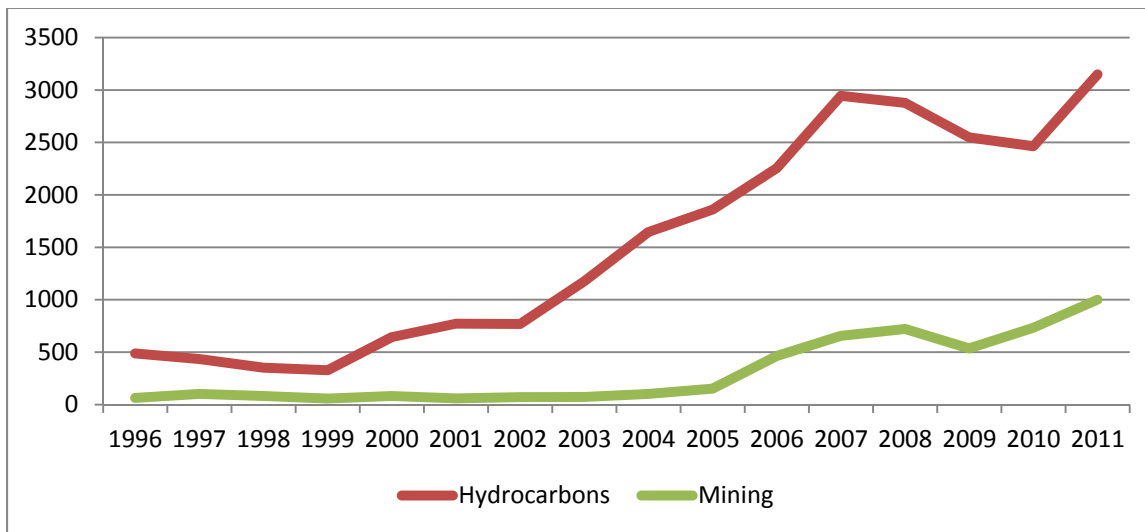
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<sup>36</sup> This was the expression used by several interviewees, including Claudia Peña (Minister of Autonomy) and Renán Paco Granier (leader of the “officialist” CONAMAQ). Interviews conducted, respectively, on March 20 and on March 19, 2014, in La Paz, Bolivia.

<sup>37</sup> While according to the constitution, the TCO’s had to change their denomination to TIOC’s no other formal changes than the name were associated with such transition. Moreover, the new Law of Autonomies makes it exceedingly difficult for TIOC’s to achieve territorial autonomy. To date, only 12 TIOCs petitioned to be granted autonomy and because the bureaucratic process is so cumbersome only one territory is likely to achieve autonomy in the near future. To some indigenous and leftist activists, the

To understand why the process of prior consultation has been mined with poison pills first and now “frozen,” it is important to consider that this process takes place against the backdrop of the expansion of the extraction of non-renewable natural resources in Bolivia. Mining and more importantly hydrocarbons royalties have grown exponentially since the early 2000s, partially due to increases in international prices but also due to higher volumes of extraction, as can be appreciated in the Figure 1:

**Figure 1** – Royalties from Mining and Hydrocarbon, Bolivia, 1996-2010 (in millions of Bolivianos, at constant value of 2010).



Source: authors’ elaboration based on data from the National Institute of Statistics (and Ministry of Economy and Public Finances): <http://www.ine.gob.bo/indice/general.aspx?codigo=40306>.

Despite the ratification of the ILO Convention 169 and the recognition of the right to *consulta previa* in the national legislation and the 2009 Constitution, its implementation has been crippled in the context of an increasing reliance on the revenues generated by the extractive sectors (particularly in the departments of Tarija, Potosí, and Santa Cruz that together receive

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recognition of indigenous autonomy is a pre-requisite for the realization the plurinational character of the Bolivian state.



65% of the total mining and hydrocarbon royalties).<sup>38</sup>

Since 2007, the Ministry of Hydrocarbons and Energy, together with the Ministry for Environment and Water, has led over 40 prior consultation processes in Bolivia in territories of indigenous original peasant communities (TIOCs).<sup>39</sup> Available information on these processes is incomplete, but for the processes for which some basic information has been found, we see that they involved contracts with seven large corporations, some of them the state-owned enterprise YPF and its subsidiaries (see Table 1).

Table 1 about here

Interviews with key informants also confirmed that in all cases of prior consultation the exploitation of natural resources was approved by the communities. Differences existed over the type and amount of compensation that the communities received from exploitation of natural resources in their collective lands. There has been ample disagreement and conflict between civil society and state and corporate actors regarding the timing and procedures for implementation of the process. Moreover, in many instances, civil society or state actors have claimed the lack of legitimacy of the achieved results. In some cases (such as the consultation process in the area of Charaguá Norte), where the community is well organized, has environmental trained observers, or is supported by environmental or judicial NGOs (such as CEJIS), some meaningful discussions take place over the environmental impact of the project and ways to palliate or diminish environmental damage. However, the asymmetry of economic power between the corporations and the communities is such that in most cases of prior

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<sup>38</sup> Data from the National Institute of Statistics of Bolivia, <http://www.ine.gob.bo/indice/general.aspx?codigo=40306>, last accessed on August 21, 2013.

<sup>39</sup> According to the reports from the Ministry of Hydrocarbons and Energy, 8 processes of prior consultation were started in 2007, 2 in 2008, 8 in 2009, 7 in 2010, 6 in 2011, and 10 in 2012. Source: <http://www2.hidrocarburos.gob.bo/index.php/memorias-e-informes-de-gestion.html>, last accessed on May 28, 2013.

consultation arriving to consensus is a mostly a matter of time (which since 2008 cannot exceed 2 months) and of negotiation of compensations for the community.

It is also worth noting that the institution of prior consultation is only being used prior to the extraction of hydrocarbons in indigenous territories but not prior to exploration projects, as it should be the case according to the legislation.

### **Conclusion: Process-Tracing a Participatory Institution**

In Bolivia and Ecuador, the institutionalization of the constitutional collective right to prior consultation has been a protracted, contentious, and incomplete process. We argue that two main factors explain these features. First, prior consultation was adopted in response to the *high levels of indigenous mobilization* observed in both countries since the early 1990s. Employing process tracing as an analytical tool, we show that the adoption of *consulta previa* in both countries is best understood as a *reactive sequence*. The governments of each country reacted to the events generated by the organized indigenous movements. But after this common origin, differences ensued between the two countries and across different political periods. The use of “poison pills” has been more prevalent in Ecuador than in Bolivia, where at least the legislation recognizes that the process of prior consultation must be respected. We argue these cross-country and temporal differences are largely the result of the balance of power between government elites and the indigenous movements in each country.

Second, the institutionalization of prior consultation in these two Andean countries is set against the backdrop of the geographic expansion of natural resource extraction. The economies of both countries have changed dramatically since the 1990s, largely due to the increase in the international prices of oil and minerals. Nowadays, both countries rely heavily on the extraction

of oil, gas, and minerals. This implies that while concessions are made to the highly organized and mobilized indigenous movements, “poison pills” are set in place in the regulatory framework that significantly undermine the collective constitutional rights and its implications for participatory democracy. Confronted with powerful pro-extractive economic interests, in both countries *consulta previa* is increasingly becoming an institution to discuss *how* (rather than *whether*) to extract natural resources. Despite this important limitation, prior consultation is firmly institutionalized in Bolivia’s hydrocarbons sector. Even if at times it appears to be a formality, it has the potential of affecting the environmental impact assessment studies and, as of recently, of leading to the implementation of communal production projects.<sup>40</sup> In Ecuador, it appears that the latest iteration of both reform adoption and implementation represents a more substantive recognition of this collective right and there has recently being significant mobilization against extraction.<sup>41</sup>

The question remains, however, of the broader political implications of prior consultation for democracy. The events of institutional adoption, regulation, and implementation analyzed support both an optimistic and a cynical interpretation, or in the words of a Bolivian environmental lawyer, “*hay de cal y de arena.*”<sup>42</sup> In the first version, the institutionalization of prior consultation provides evidence of democratic deepening via the expansion of citizen participation in the policy process. From another perspective, however, prior consultation is merely ornamental and primarily serves a legitimating function, as the basic contours of extractive projects have already been established by politicians, without community input, in the

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<sup>40</sup> Prior consultation has not yet been applied in the mining sector, where politically strong players (such as the federation of mining cooperatives, FENCOMIN) have opposed its application. But in March of 2014, the Bolivian Congress discussed a Mining Law bill that included *consulta previa* for the sector.

<sup>41</sup> International news outlets have been covering the opposition to extraction in the natural reserve of Yasuni, for example (March 2014, several sources).

<sup>42</sup> Interview with Ariel Pérez Castellón, Cochabamba, Bolivia, May 29, 2013.

context of national economies that are highly dependent on mineral and gas extraction.

Indeed, these represent the two positions in a national debate over the *consulta previa* in both Ecuador and Bolivia. In this paper, we split the difference between these seemingly contradictory interpretations, and conclude that it is precisely through a substantive expansion of participation that officials politically legitimate the ongoing amplification of the extractive industries and frontier. Our analysis suggests that officials have learned their lesson: in the contemporary political context, suffused by new rights and modes of participation, extraction without participation is unviable. In Ecuador, for example, rather than limit “participation” to company-run “information sessions,” as was the case in the 2008-2010 period, in the latest round of consultations officials have occasioned a more substantive democratic process but limited its disruptive potential, by using participatory fora as an opportunity to craft binding agreements over public investment in affected communities. By relocating the site of participation from the project itself to the social investments funded by extraction, officials have learned how to honor constitutional principles without threatening development projects, thus simultaneously deepening democracy *and* legitimating extraction. Similarly, in Bolivia, there is discussion of hydrocarbons’ corporations’ investment in community production projects as a form of compensating indigenous communities for the environmental damage caused by hydrocarbon extraction.

We must also acknowledge that the institutionalization of prior consultation points to a host of unresolved issues regarding its relationship to democracy. First, the issue of community representation or aggregation of preferences remains highly contested. Whenever the group’s interest toward a project is not clearly defined, the mechanisms of aggregation of individual preferences and representation within the community become points of political contention.

Second, prior consultation highlights the conflict between minority and majority group rights, as President Correa stressed in the opening epigraph.<sup>43</sup> Third, in communities with vast unmet needs, corporate actors have significant leverage to buy the communities' support by providing either public or private goods (from village schools to formal jobs). If prior consultation becomes further institutionalized (through a legal framework with teeth, for example), the potential exists for more community involvement and demands of accountability toward the state and the corporations. At that point, the institutional action might shift from the relation between the state and the indigenous social movements towards the courts. Then the crucial issue will become how likely are the courts of Bolivia or Ecuador to hold the state and corporations accountable. Or, alternatively, how much political pressure could the indigenous movements exert over them.

These unresolved issues notwithstanding, the collective right to prior consultation in Ecuador and Bolivia has provided communities with a formal institution to discuss development, resource extraction, and environmental conservation. In fact, the institutionalization of *consulta previa* is part of a broader redefinition of citizenship rights, which largely came about through societal pressure and mobilization. The notion of individual rights, on which the nineteenth century liberal nation-state was built, is giving way to collective group rights, which are coexisting alongside individual rights. These polities are attempting to become "plurinational" states and the participatory institutions these countries are adopting are redefining their political regimes, which are neither liberal nor illiberal democracies, but post-liberal regimes (Arditi 2008; Schmitter 1995; Schmitter and Trechsel 2006; Wolff 2013; Yashar 1999, 2005) whose the main characteristics await further scholarly conceptualization.

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<sup>43</sup> In Bolivia, a prior consultation process entailed that the Guaraní community, constituting 1.5% of the current total population, would decide on the exploitation of 83% of the country gas reserves.

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**Table 1 - Prior consultation processes led by Ministry of Hidrocarbons and Energy, Bolivia, 2007-2013**

<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2007	Total E & P Bolivie	Prospección Sísmica 3D y Prospección Magnetotelúrica Gravimetría - Bloque Ipati	Municipios de Lagunillas y Villa Vaca Guzmán. Provincia Cordillera y Luís Calbo.	Santa Cruz y Chuquisaca	PIOs (APG Alto Parapetí, Iupaguasu y Karaparirenda)
2007	Transredes S.A.	Gasoducto Lateral Margarita - Palos Blancos	Municipio Entre Ríos, Provincia O'Connor	Tarija	Asamblea del Pueblo Guaraní APG Itika Guasu
2007	Transredes S.A.	Variante Gasoducto al Altiplano GAA Zona El Tigre	Municipio Samaipata, Provincias Florida y Cordillera	Santa Cruz	Comunidades Bermejo, La Negra y La Coca
2007	Transredes S.A.	Expansión Lateral Gasoducto Vuelta Grande	Tercera Sección del Municipio Macharetí, Prov. Luís Calvo	Chuquisaca	Asamblea del Pueblo Guaraní APG Capitanía Macharetí
2007	Transredes S.A.	Construcción Gasoducto Carrasco - Cochabamba	Municipio Chimoré, Provincia Carrasco,	Cochabamba	Fed. Sindical Agropecuaria Mamoré Bulo, Colonizadores Carrasco Tropical, Fed. Especial de Colonizadores Chimoré, Fed. Unica de Centrales Unidas del Tropic, Fed. Especial Campesina de Yungas del Chapare y Fed. Sindical del Trópico.
2007	Transredes S.A.	Interconexión Campo Percheles GAA y OCSZ II	Municipio La Guardia, Provincia Andrés Ibañez y Municipio de Cabezas, Provincia Cordillera	Santa Cruz	Comunidades Cañaverl I, Platanillos y Basilio. Comunidades San Joaquín y San Isidro
2007	YPFB Chaco	Construcción de Líneas para los Campos Percheles y El Dorado	Municipio La Guardia, (Provincia Andrés Ibañez) y Cabezas (Provincia Cordillera)	Santa Cruz	Guaraníes de la Capitanía Zonal APG Takovo Mora, APG Nueva Esperanza, comunidad San Isidro de Área, San Isidro 1 y San Isidro 2

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<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2007	YPFB Chaco	Perforación de 5 pozos en Campo Percheles	Municipio La Guardia, (Provincia Andrés Ibáñez) y Cabezas (Provincia Cordillera)	Santa Cruz	Comunidades Campesinas (Comunidad San Isidro de Área y Comunidad Cañaverl I. Tupac Katari, San Joaquin, Platanillos y Nueva Esperanza).
2007	Pluspetrol	Desarrollo del Campo Tajibo - Bloque San Isidro	Municipio Charagua, Provincia Cordillera	Santa Cruz	APG Charagua Norte
2008	YPFB Petroandina SAM	Exploracion Sísmica 2D- Bloque Lliquimuni Fase I	Provincias Caranavi, Larecaja, Sud Yungas y Franz Tamayo	La Paz	Colonizadores del norte La Paz
2009	BG Bolivia	Desarrollo del Campo Palo Marcado	Municipio Villa Montes, Provincia Gran Chaco	Tarija	TCO Weenhayek
2009	Total E & P Bolivie	Perforación Exploratoria Pozo Aquio X-1001	Municipio Lagunillas, Provincia Cordillera	Santa Cruz	TCO Alto Parapetí e Iupaguasu
2009	Total E & P Bolivie	Perforación Exploratoria Pozo Incahuasi X-2	Municipio Lagunillas, Provincia Cordillera	Santa Cruz	TCO Alto Parapetí e Iupaguasu
2009	YPFB Petroandina SAM	Exploración Sísmica 2D Bloque Lliquimuni Fase II	Municipios Palos Blancos y Guanay, Provincias Sun Yungas y Larecaja	La Paz	TCO Lecos de Larecaja y TCO Mosetenes Comunidades Campesinas
2010	Petrobras Bolivia S.A, YPFB Corporación	Exploración Sísmica 3D Bloque San Antonio	Municipio Entre Ríos, Provincia O'Connor	Tarija	TCO Itika Guasu, Comunidades Tucainti y La Costa
2010	Petrobras Bolivia S.A	Exploración Sísmica 3D Bloque Ingre	Municipios Monteagudo y Huacreta, Provincias Hernando Siles	Chuquisaca	TCOs Avatiri Ingre y comunidades indígenas y campesinas
2010	Pluspetrol	Exploración Sísmica 2D Bloque San Isidro	Municipio Charagua, Provincia Cordillera	Santa Cruz	TCO Charagua Norte e Isoso

**Table 1 - Prior consultation processes led by Ministry of Hydrocarbons and Energy, Bolivia, 2007-2013**

<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2010	YPFB Chaco	Línea de Recolección el Dorado	Municipio Cabezas, Provincia Cordillera	Santa Cruz	TCOs Takovo Mora
2010	YPFB Petroandina SAM	Exploración Sísmica 2D Bloque Iñau		Chuquisaca y Santa Cruz	APG: Kaami, Alto Parapetí, Iupaguasu, Iti Caraparirenda, Avatiri Ingre
2010	YPFB Transportes	Gasoducto de Integración Juana Azurduy	Municipio Yacuiba, Provincia Gran Chaco	Tarija	TCO Yaku Igua
2012	BG Bolivia	Perforación Pozos: Escondido 9 (EDD-9) y Escondido 10 (EDD-10)	Provincia Gran Chaco	Tarija	TCO Weenhayek, OTB Comunidad Campesina Arenales y OTB Comunidad Campesina Simbolar El Carmen
2012	Repsol E&P Bolivia S.A.	Sísmica 3D Huacaya, Área Coipipendi	Municipios Villa Vaca Guzmán, Machareti y Huacaya, Provincia Luis Calvo	Chuquisaca	Pueblo Indígena de Tentayapi, Asociaciones Comunitarias Zona Machareti, Zona Ingre, Comunidades Indígenas Guaraníes Bororigua, Pentirenda, Los Naranjos, Boycobo, Pueblo Indígena Guaraní Caratindi y la Asamblea del Pueblo Guaraní Tartagalito.
2012	oop 12 x 40 Km Tram	Sísmica 2D Huacaya, Área Coipipendi	Municipios de Villa Vaca Guzmán (Muyupampa), Machareti, Villa Huacaya y Huacareta, Provincias Luis Calvo y Hernando Siles	Chuquisaca	Pueblo indígena Villa Hermosa, las asociaciones comunitarias de la Zona Ingre, Zona Santa Rosa y Zona Machareti, y las comunidades indígenas de Ango Aguasu, Bororigua, Los Naranjos y Boycobo
2012	Repsol E&P Bolivia S.A.	Perforación, Explotación y Construcción de la Línea de Recolección Pozo Margarita - 8 (MGR-8)		Tarija	TCO Itika Guasu

**Table 1 - Prior consultation processes led by Ministry of Hidrocarbons and Energy, Bolivia, 2007-2013**

<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2012	Total E & P Bolivie	Líneas Laterales del Campo Aquio (Bloque Aquio) y del Campo Incahuasi (Bloque Ipati)	Provincia Cordillera	Santa Cruz	TCO's Alto Parapetí, Kaami, Iupaguasu y Parapitiguasu
2012	Total E & P Bolivie	Desarrollo y Explotación del Campo Aquio (Bloque Aquio) y del Campo Incahuasi (Bloque Ipati).	Provincia Cordillera	Santa Cruz	TCO Alto Parapetí
2012	Total E & P Bolivie	Perforación y tendido de línea de recolección Pozo Incahuasi - 3		Santa Cruz	TCO Alto Parapetí, Comunidad Indígena Mocomocal – Capitanía Iupaguasu
2012	YPFB Corporación	Construcción, Operación y Mantenimiento Planta de Extracción de Licuables del Río Grande		Santa Cruz	APG Takovo Mora, Central Sindical Unica de Campesinos de Cordillera
2012	YPFB Transporte S.A.	Expansion Gasoducto Villamontes - Tarija (GVT) Fase II		Tarija	TIOC Itica Guasu, Comunidades Campesinas Palos Blancos, Cañadas y Tacuarendy
2012	YPFB Transporte S.A.	Construcción Loop 6 km del GAA, Tramo Pongo - Totoroco		Cochabamba	Chuñuchuñuni, Huayllas, Challa Grande
2012	YPFB Petroandina SAM	Perforación Exploratoria Lliquimuni Centro Bloque Lliquimuni	Municipio La Paz, Provincia Caranavi	La Paz	Moseten, Lecos y Comunidades Interculturales
2012	YPFB Corporación	Planta de Separación de Líquidos Gran Chaco	Municipio Yacuiba, Provincia Gran Chaco	Tarija	APG Yaku Igua

**Table 1 - Prior consultation processes led by Ministry of Hydrocarbons and Energy, Bolivia, 2007-2013**

<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2012	YPFB Transporte	Expansión Líquidos Sur Asociado al GIJA	Municipio Camiri, Provincia Cordillera	Santa Cruz	Comunidad mixta campesina e indígena Tahiguati
2012	BG Bolivia	Pozos de Producción Ibibobo 3,4 y 5 y Facilidades de Producción			Comunidad campesina Palo Marcado
2012	YPFB Corporación	Sísmica 3D Itaguazurenda Ovai Boyuibe	Municipio Boyuibe, Provincia Cordillera	Santa Cruz	APG Parapitiguazu
2013	YPFB Transporte S.A.	Loop 12" x 40 Km Tramo Ñancaroinza – Río Cuevo, Oleoducto Camiri – Yacuiba 1		Santa Cruz y Chiquisaca	Macharetí
2013	YPFB Transporte S.A.	Loop 12" x 12,1 Km Tramo 1 Villamontes – Chimeo, Oleoducto Camiri - Yacuiba		Tarija	Comunidades Campesinas Cototo y Puesto I
2013	YPFB Chaco S.A.	Construcción de Líneas de Recolección para los pozos CAI-X11, CAI-X1001, CAI-1002, CAI-2, CAI-3, CAI-9 y Facilidades de Producción Campo Caigua Tarija Bolivia		Tarija	Gran Comunidad Campesina Terairi (la Comunidad Caigua)

**Table 1 - Prior consultation processes led by Ministry of Hydrocarbons and Energy, Bolivia, 2007-2013**

<b>Year</b>	<b>Company</b>	<b>Activity, work, or project</b>	<b>Municipality and Province</b>	<b>Departament</b>	<b>Pueblo Indígena Originario or Com Camp</b>
2013	YPFB Chaco S.A.	Perforación del Pozo DRO-X1001, Tendido de su Línea de Recolección y Tendido de la Línea de Recolección de Pozo DRS-B		Santa Cruz	TCO Tacovo Mora
2013	Petrobras Bolivia S.A.	Perforación del pozo Sábalo 6 (SBL-6) y Línea de recolección, Campo Sábalo – Bloque San Antonio	Municipio Villamontes, Provincia Gran Chaco	Tarija	Comunidad Indígena Guaraní Tucuinty
2013	Repsol E&P Bolivia S.A.	Sísmica 2D del campo Margarita Sur	Provincias Gran Chaco y O'Connor. Municipios Caraparí y Entre Ríos.	Tarija	Comunidades del Cantón Suaruro y la Comunidad Campesina de Zapatera Norte
2013	YPFB Transporte S.A.	Loop 12" x 61,5 Km Tramo 3 Abapo - La Ponderosa, Oleoducto Camiri - Santa Cruz (OCSZ 2)		Santa Cruz	

Sources: <http://www.slideshare.net/FTIERRA2010/omar-quiroga>; 2012, 2013, and 2014 Reports by the Ministry of Hydrocarbons and Energy, Bolivia