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<td>Acknowledgements</td>
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Acronyms

AJAM Administrative Jurisdictional Mining Authority
CIDOB Confederation of Indigenous Peoples of Bolivia
CONAMAQ National Council of Ayllus and Markas of Qullasuyu
COMIBOL Bolivia National Mining Company (Corporación Minera de Bolivia)
CSUTCB Sole Union Confederation of Bolivian Campesino Workers
CSR Corporate Social Responsibility
DME Design, Monitoring and Evaluation
FENCOMIN National Federation of Cooperatives of Bolivia
FAOINP Federation of Ayllus Indigenous Organisations of North Potosi
FPIC Free, Prior and Informed Consent
ICMM International Council for Mining and Metals
IFAD International Fund for Agricultural Development
ILO International Labour Organisation
INGO International Non Government Organisation
IM4DC International Mining for Development Centre
MNV Minera Nueva Vista
SLTO Social License to Operate
TCO Traditional Communal Lands (Tierras Comunitarias de Origen)
TIPNIS Isiboro Secure Indigenous Territory and National Park
UNESCO United Nations Educational, Scientific and Cultural Organization
UNPFII United Nations Permanent Forum on Indigenous Issues
WVA World Visions Australia
1 Background and Context

1.1 Introduction

The objective of this study was to explore how foreign mining companies can better work to advance Indigenous governance and sustainable socioeconomic development. The investigation was carried out by the University of Queensland's Institute for Social Science Research, in collaboration with World Vision Australia (WVA), with funding from the International Mining for Development Centre (IM4DC). The central question is how mining affects Indigenous governance in Bolivia.

This report is divided into three sections. Section 1 gives an overview of the background and context relevant to mining and Indigenous governance in Bolivia. Section 2 discusses the findings from the interviews in La Paz, Cochabamba, Oruro, Potosi, and two mining communities. Section 3 gives guidelines to mining companies, and considers potential opportunities for International Non Government Organisations (INGOs) and government involvement. Section 4 provides conclusions.

This study is based on two key premises:

1. That strong Indigenous governance is critical to effective and sustainable development within Indigenous communities, enabling communities to deal with changes associated with modernization and globalization, and for them to determine the approach and the type of development they want.1

2. By working with, supporting and strengthening Indigenous governance structures and mechanisms, mining companies have much to gain by:
   a. reducing their operational risk through building greater trust and mutual understanding with local communities. This provides more effective company-community engagement, minimises conflict and opposition to mining activities, and reduces operational disruption and efforts toward managing grievances.
   b. building their brand and reputation through improving the impact of the development projects they support. This can place them in a stronger competitive position when bidding for future projects, and ensure they are meeting stakeholder and investor expectations.

The study builds on World Vision’s 40 years of experience of working with Indigenous Peoples in Latin America. World Vision currently works with seven countries in Latin America, predominantly with Indigenous communities in the areas of citizenship, governance, bilingual education, climate change and food security. World Vision works directly with Indigenous communities on long term development programs which often span 15 years. The breadth and longevity of its programming in Latin American has led to many lessons learnt in relation to sustainable development in Indigenous contexts. One of its most significant insights is that the most effective means to support sustainable development in Indigenous communities is to strengthen local Indigenous governance structures and decision making processes.

Governance is defined as “power, relationships, and processes of representation and accountability – about who has influence, who decides, and how decision-makers are held accountable”.2 Indigenous governance is understood as “the way in which Indigenous society functions, with its own system for exercising power, making decisions, and resolving conflicts”.3 Indigenous governance is interlinked with self-determination,

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The Declaration of Indigenous Rights is the most comprehensive document addressing the rights of Indigenous Peoples. The Declaration confirms the right of Indigenous Peoples to self-determination as well as their right to remain distinct and to pursue their own visions of economic and social development. With respect to self-governance, the Declaration confirms Indigenous people to freely determine their political status and pursue economic, social, and cultural development through maintaining and strengthening their distinct political, legal, economic, social, and cultural institutions.

In a 2006 sitting, the UNPFII considered an expert report on ‘Indigenous participation and good governance’. Those UN agencies consulted in the review:

…highlighted the importance of strengthening indigenous governance structures and institutions in order to have effective and sustainable development within indigenous communities. They pointed to the need for ensuring effective participation in all stages of the development cycle, such as obtaining free, prior and informed consent, equitable benefit-sharing schemes and dispute resolution mechanisms. Strong indigenous governance structures provide the basis for indigenous communities to deal with the changes imposed by modernization and globalization, without becoming further disempowered and marginalized.

The UN agencies that participated also regretted how:

… many development projects by governments and intergovernmental organizations as well as the private sector result in further weakening traditional governance structures, which have already suffered the effects of colonization. Experience from various agencies, including IFAD (International Fund for Agricultural Development), shows that the strengthening of traditional governance has positive results and agencies are gradually adopting or strengthening policies in support of traditional Indigenous governance systems. … Other important factors include enhancing, strengthening and building capacity of emerging Indigenous leadership, particularly youth and women leaders.

Indigenous governance systems often reflect traditional social norms of reciprocity and consensus, and in practices for resolving conflicts and managing commonly held resources. Standard development approaches often require considerable adaptation and negotiation in these contexts. Pragmatically, representative Indigenous organisations assume a heightened importance as a portal to understand their unique worldviews and aspirations, in conceptualising development thinking and designing development projects. INGOs and other development actors are also increasingly recognising that Indigenous governing structures, whether formal or informal, are strong forms of social capital on which to build development initiatives.

Accordingly, multilateral aid agencies like the World Bank and IFAD have developed guidelines to ensure that development efforts do not displace Indigenous organisations – as they may be vulnerable to external influences.

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7 Idid, UNPFII 2006, p.6


influences – but rather focus on strengthening their capability, particularly in relation to external negotiation and stakeholder management.\textsuperscript{10}

Commonly, external non-Indigenous actors do not understand the development vision and priorities of Indigenous communities, often assuming western worldviews of economic development. They then assert their own interpretation of development needs and aspirations on Indigenous communities, bypassing the process of engagement and negotiation that would otherwise occur through traditional Indigenous governance structures. This practice is not limited to the private sector and mining companies, and includes the governments, consultants, and even NGOs and aid agencies, that are both stakeholders and often advisors to the mining company.

Indigenous groups typically have a long history of struggle with the more dominant or colonising mainstream. The strength of their cultural attachment to ancestral territory can deepen the degree of cultural differentiation and political contest with the nation state’s efforts to progress economic development. Levi and Maybury-Lewis explored the diverse conceptualisations of ‘Indigeneity’ operating across the “global Indigenous movement”, noting the increasing numbers of peoples identifying as Indigenous, especially in sub-Saharan Africa.\textsuperscript{11} In their search for commonality, they concluded that “more than anything, Indigeneity is a political identity”, a “discourse of empowerment and social justice for the most disadvantaged members of society”. Thus, as noted by Eversole, “understanding the relationships between Indigenous Peoples and their nation-states is key to understanding Indigenous poverty, and to uncovering the potential for change”.\textsuperscript{12}

Foreign mining companies are constantly navigating this complex terrain and this study considers how their interests could better align with the development vision of Indigenous communities, and thereby contribute to Indigenous development, while ensuring companies adequately manage their business risk and stakeholder engagement. By contextualising Indigenous governance and identifying some key entry points, this study aims to inform a more positive ‘mining-for-development’ approach in Indigenous communities.

Understanding the dynamics of community-NGO-company-state relationships, as well how these actors exercise informal or formal influence, will provide guidance to actors motivated to improve sustainable business and development practices. Some factors sustaining the status quo are deeply ingrained, but others may be more responsive to new ways of working.


\textsuperscript{11} Levi, J. and B. Maybury-Lewis. 2012. Becoming Indigenous: Identity and Heterogeneity in a Global Movement. in Indigenous Peoples, Poverty, and Development, edited by G. Hall and H. Patrinos. New York: Cambridge University Press. pp.6, 16-17. http://siteresources.worldbank.org/EXTINDPEOPLE/Resources/407801-1271860301656/Chapter_2_Becoming_Indigenous.pdf. They described the considerable heterogeneity anthropologically between different Indigenous groups, from reindeer herders (e.g. Saami, Scandinavia), to shifting cultivators (e.g., Karen and other hill tribes along Thai-Burmese border), to hunter gatherers (e.g. forest dwellers of central Africa), and to casino wealthy tribes of North America.

1.2 Method and Limitations

Desk research included a brief review of the existing literature on mining and Indigenous governance in Bolivia and Latin America, as well as a review of Bolivia's legislative framework, and the development of a semi-structured interview guide for the field work (see Appendix 1). Fieldwork took place between June and September 2014, with 91 interviews carried out in La Paz, Cochabamba, Oruro, Potosi, and case studies in two mining communities in Potosi and North Potosi. The two case study locations were located in the same geographic area but offered contrasting perspectives on the impact of mining operations on Indigenous governance. They were selected based on the information collected in the La Paz interviews, which suggested that one location offered a positive example of community engagement, communication and intercultural dialogue in practice and the other was an example of less effective company-community relations.

The interviews included officials from national, provincial and local governments and agencies related to mining interests, community development and Indigenous governance; political party leaders including a former Vice President and senators; representatives of INGOs and Bolivian civil society organizations mining cooperatives and mining companies; and analysts and academics. The different interviews are categorised by organisational type in Table 1. A reasonable spread was achieved across the categories of government, Indigenous organisation, NGO, mining industry and research/consultants. Despite efforts to achieve a gender balance, the vast majority of people interviewed were men (86%), which reflects the extent to which men dominate positions in government, industry and Indigenous organisations in Bolivia. About one third (35%) of interviews were held in the national capital of La Paz, another third (36%) were held in the regional centres of Potosi and Chochamba, and the remaining third (29%) were held at a local village or municipality level.

Table 1: Interviewees by organisation

<table>
<thead>
<tr>
<th>Organisational Type</th>
<th>Number</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>National Government</td>
<td>12</td>
<td>24%</td>
</tr>
<tr>
<td>Provincial (Department) Government</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Municipal (Local) Government</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Indigenous organisations</td>
<td>21</td>
<td>23%</td>
</tr>
<tr>
<td>Domestic NGOs</td>
<td>9</td>
<td>19%</td>
</tr>
<tr>
<td>International NGOs</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Mining companies</td>
<td>11</td>
<td>17%</td>
</tr>
<tr>
<td>Mining cooperatives</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Research, academia, think tanks</td>
<td>10</td>
<td>16%</td>
</tr>
<tr>
<td>Private consultants</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>91</td>
<td></td>
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The interviews were carried out in Spanish and Quechua by Australian anthropologist Kathryn Robb and Bolivian social scientist Williams Colque. As a part of the study, the field researchers debriefed key stakeholders in La Paz in September 2104, as well as in Lima in November 2014. These activities provided an opportunity for the team to gain feedback on the preliminary recommendations.
To analyse the data qualitatively, the research team developed a list of key phrases and hand coded the transcripts accordingly. Preliminary analysis of key phrases revealed three emerging themes: (1) the politics of mining policy and legislation; (2) Indigenous territorial management and visions of development; and (3) approaches to Indigenous community engagement and sustainable development in practice. Thematic analysis revealed areas of consensus and conflicting views within these themes. It also showed relationships between themes and categories of interview participants (e.g. mining companies, government and non-governmental actors).

The project had a number of limitations. When the project was first conceived in 2012, the political environment in Bolivia appeared to be pro-Indigenous governance. There was a widespread international perception of Bolivia as a leader in supporting Indigenous self-determination and Indigenous rights, as enshrined in their 2009 Constitution. A long history of participatory self-governance presented a favourable enabling environment for Indigenous communities to prioritise and monitor development projects. There appeared to be opportunities for mining companies to contribute to long-term local development for Indigenous communities by using existing participatory mechanisms and channelling benefits through municipal development plans. Under decentralisation legislation introduced in 2010, there was also a move towards Indigenous communities converting into autonomies (Indigenous Autonomous Municipal Governments). This offered the potential for local Indigenous municipal government authorities to be directly negotiating with mining companies around mining impacts and benefits.

What emerged during the life of the Project was a more complex and rapidly changing situation. Relationships between Indigenous groups and the government grew strained, with some organic peak representative bodies dismantled and replaced by pro-government bodies. The government passed new mining legislation in 2014 which contradicted the progressive Indigenous rights discourse in the 2009 Constitution, and tended to favour foreign mining companies and national mining co-operatives over Indigenous organisations. A range of local political tensions also emerged at a local level between competing Indigenous and non-Indigenous groups, with some Indigenous peoples choosing to align with either campesino unions or mining cooperatives, instead of local Indigenous organisations. The research was also conducted during the national presidential election campaign which created a very politically charged environment.

Interview responses were often coloured by these political tensions and opposing viewpoints. Bolivians typically exhibit a high awareness of national politics and are unabashed in voicing their opinions. Many have a proud history of protest against successive governments. This is particularly the case for Indigenous Bolivians. Political positions and discontent thus strongly framed many of the interview responses.

The project also hoped to be working closely with INGOs active in Bolivia. With the political changes outlined above, INGOs have come under the spotlight for supporting Indigenous land rights and anti-government sentiment. While INGOs have the potential to play an important facilitating role between mining companies and Indigenous communities, the risk of expulsion by the government and heavy control over INGOs has led to INGOs in Bolivia assuming a lower profile and engaging less in Indigenous rights issues.

The survey questionnaire was not designed to be limited to the mining companies involved in the two case studies. Interviewees certainly did not limit themselves to the two case studies, which was particularly the case for the 32 interviews conducted in the capital La Paz. Most informants at a provincial (departmental) and municipal level had a history of dealing with a number of mining companies, so they also generalised beyond the case study locations. Even for the interviews conducted near the two case study mines, many informants expressed strong views of the mining industry in Bolivia and the legacy of multiple mining companies which had worked near their communities. Where the report refers to mining companies, this is a general reference to the interviewee’s perceptions of mining companies in general and not to the particular mining companies involved in the two case studies. When a particular mining company was involved, this company has been named. References to mining companies in the text should not be generalised to the mining companies involved in the two case studies.
1.3 The Bolivian Context

Despite great natural resource wealth, Bolivia has yet to fulfil its potential to transform mining benefits to sustainable outcomes for Indigenous communities. Silver, gold and tin have been Bolivia’s ‘lifeblood, salvation, and curse’ since colonial times.\textsuperscript{13} Despite the largest mineral deposits being on Indigenous land, Indigenous communities remain disadvantaged in comparison to the Bolivian \textit{mestizo} (mixed ancestry) population. For the greater part of the past 400 years, a few have benefitted while the majority Indigenous population remained on the periphery. The mining industry in Bolivia has been and continues to be criticised for exploitation, suffering and disproportionate wealth distribution. Bolivia is among the poorest countries in Latin America,\textsuperscript{14} and one of the most unequal in the World:\textsuperscript{15} the richest 10% of the population holds 44% of the total income, while the poorest 10% only holds 0.5%.\textsuperscript{16}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{indigenous_groups_of_bolivia.png}
\caption{Indigenous groups of Bolivia}
\end{figure}

\begin{itemize}
\item \textsuperscript{13} Waltraud Q. Morales 2010. A Brief History of Bolivia. Infobase Publishing, p.xxxii.
\item \textsuperscript{14} Bolivia’s annual income per capita was US$1,760 in 2009, and 60% of the country’s 9.1 million inhabitants lived in poverty (38% in extreme poverty).
\item \textsuperscript{15} Gini coefficient of 0.57. The Gini coefficient is widely used as a summary income inequality measure. Complete inequality would result in a Gini coefficient of 1.00. If there were perfect equality the coefficient would be 0.
\end{itemize}
There are 37 different Indigenous Peoples in Bolivia (see Figure 1). Of these, the largest are the Quechua and Aymara (comprising 30.7% and 25.2% respectively). Close to two thirds (62%) of the population identifies as Indigenous, which is the highest in Latin America. The Indigenous population is relatively disadvantaged in comparison to that of the non-Indigenous, including mortality and morbidity rates. In Bolivia, two thirds of Spanish speakers have completed some secondary education, while only a third of Aymara, Quechua and Guarani speakers have. The gap in number of years of schooling between Indigenous (5.9 years) and non-Indigenous (9.6 years) people is the highest in all of Latin America. The average monthly income of an Indigenous household is equivalent to about half that of a non-Indigenous.\footnote{Patrinos, H.A. and E. Skoufias. 2007. Economic Opportunities for Indigenous Peoples in Latin America: The World Bank, The International Bank for Reconstruction and Development. http://siteresources.worldbank.org/INTLAC/Resources/Synthesis_ConferenceEdition_FINAL.pdf} Poverty among Indigenous people is entrenched over the life course. Even when there is access to secondary or higher education, Indigenous Bolivians are frequently unable to convert that to significantly greater earnings or to reduce the poverty gap with the non-Indigenous population. Among all of Latin America, Bolivia has the highest gap in earnings for each additional year of schooling between Indigenous and non-Indigenous.\footnote{UNPFII. 2009. Ibid. pp.27-28.}

The political and social landscape for Indigenous communities has changed dramatically in Bolivia over the last 30 years. In the 1980s, along with the advent of democracy, there was a resurgence of traditional forms of community organization, such as Ayllus, which are family-based networks with communally owned territories.\footnote{In most instances, the territory of an Ayllu does not match a municipality's jurisdiction. For example in Jesús de Machaca, 24 Ayllus are in one municipality, whereas the Ayllu of Larecaja comprises five municipalities as well as territory that is outside any municipality. Some Ayllus do fit perfectly in a municipality, such as in San Antonio de Lomerio in Santa Cruz, and others approximate a municipality, as in Aucapata and Carabuco. See http://www.cebem.org/cmsfiles/publicaciones/MunicIndig.pdf} Indigenous intellectuals formed the Andean Oral History Workshop, to recover and revive traditional practices in the rural highlands.\footnote{Marcia Stephenson. 2002. “Forging an Indigenous Counterpublic Sphere: The Taller de Historia Oral Andina in Bolivia.” Latin American Research Review 37, 2 pp. 99-118.} A federation of Ayllus became an alternative to union-organised campesinos (farmer cooperatives), which represented the same communities. The push for Indigenous self-governance grew with the financial support of INGOs.


Bolivian state discourse divided Indigenous people along Indigenous and campesino lines. Those organized as Ayllus were considered Indigenous, as opposed to the union-organized campesinos, whose members were also often Indigenous and followed traditional practices.\footnote{Fuentes, F., Burbach, R. and M. Fox. 2013. Latin America's Turbulent Transitions: The Future of 21st Century Socialism. London, Zed Books.} A confederation of traditional governing bodies of highland Indigenous communities was formed in 1997, called the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ). At a national level, it joined the Confederation of Indigenous Peoples of
Bolivia (CIDOB), which was focused more on the lowland communities to the East of Bolivia. In 2005, CONAMAQ and CIDOB came together with the Confederation of Bolivian Campesino Workers (CSUTCB), which was the national union body representing the campesinos. Together they formed Unity Pact between campesino and Indigenous organizations to support the election of the country's first Indigenous president, Evo Morales. Under his leadership, the 2009 Constitution put forward the most explicit and comprehensive recognition of Indigenous rights worldwide and recognized Indigenous organizations as part of the state system of governance. Bolivia then enshrined as domestic Law the 2007 United Nations Declaration on the Rights of Indigenous Peoples. According to the Constitution, all levels of government were to adopt one Indigenous language in addition to Spanish. The Constitution recognised Indigenous rights to cultural identity, intercultural education, local government, territories and natural resources.

In 2009, the highest number of Indigenous people were elected at a national level in the electoral history of Bolivia. Indigenous people, once marginalised from the political positions of power, converted into a new elite in the national, provincial and municipal levels of government. The 2010 Framework Law of Autonomies and Decentralization took the recognition of Indigenous self-governance a step further, creating the possibility of Indigenous autonomies which could be exercised at the territorial, municipal or regional, but not provincial (departmental) level.

Indigenous communities were thereby given the option of becoming self-governing autonomies, composed of executive and legislative branches, with powers to independently govern their jurisdictions and public resources. Significantly, the legislation also afforded them the option to develop Indigenous customary law, including community laws and justice. The process became more contentious than expected, with attempts to define norms and procedures opening deep and possibly irreconcilable conflicts within some Indigenous communities. While eleven groups have attempted to convert into Indigenous autonomies none to date have been unsuccessful. While the trajectory for Indigenous rights and self-governance in Bolivia appeared to be a model for many other countries and seemed to be on the path of consolidation, what has emerged in practice is quite complex and seemingly intractable.

Land and resource sovereignty conflicts between the government and Indigenous Peoples have emerged, as well as conflict over legislation related to natural resources. In the high profile case of the Isiboro Secure Indigenous Territory and National Park (TIPNIS), for example, the national government proposed to build a road through a national park and Indigenous territory, leading to a nationwide protest and confrontation between Indigenous groups and government. Leaders of the demonstration highlighted the lack of consultation, including the gaining of Free, Prior and Informed Consent.

In addition to the Indigenous organisations, mining companies and municipal governments, the fourth major local institutions of relevance to this study are mining cooperatives. Mining cooperatives are part of the artisanal and small scale mining sector, characterized by informal, labour intensive, minimally mechanized, and low-technology mining operations. Although some mining cooperatives can be traced back to the first half of the 20th century, the most significant event occurred in 1985 when COMIBOL (the state owned

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27 UNPFII. 2009. Ibid.


29 There are 9 subnational administrative units in Bolivia, which are known in Bolivia as ‘departments’.


Bolivia National Mining Company (Corporación Minera de Bolivia)) decided to close most of its mines due to the plummeting international price of tin. Having lost their jobs, many workers formed mining cooperatives. Over the past 30 years, the number of miners working with cooperatives has increased, affording them increased electoral relevance and power to pressure successive governments by using activist tactics such as blockades and demonstrations.32

A complex operating context for mining has emerged in Bolivia, with three main actors sharing the space: private mining companies, local mining cooperatives and COMIBOL. While the majority of mining concessions are held in the hands of cooperatives or COMIBOL, private companies amount for the major part of the mining production and exports (70%, $US 2,149 million), followed by the mining cooperatives (21%, $US 660 million) and COMIBOL (9%, $US 273 million).33

The context in Bolivia for international foreign mining companies is very distinct to neighbouring countries such as Peru and Chile, where the context is more stable for investment. Despite mining contributing a more significant proportion to GDP in Bolivia (14.1%) compared with Peru (5.2%) and Chile (8%)34 the level of foreign investment is much lower in Bolivia and there are currently only a handful of medium or large international mining companies operating.35 Those that do, often operate under a Bolivian national subsidiary. According to the interviews held, the current lack of foreign investment in Bolivia is due to the investment risk of operating in a context with uncertain legislative and judicial frameworks. Bolivia has a long-standing reputation for conflict between communities and companies and threats of resource nationalism. Ernst & Young’s recent report on Business Risk Radar for Mining and Metals rated ‘resource nationalism’ as the third highest risk to the global industry, citing Bolivia is an example.36 The nationalisation of Canadian mining company American Silver in 2010 was very high profile in the international mining community and signalled the risks of investing in this context.37 Increasingly, the global leaders in mining consider the socio-political risk to investments alongside the more traditional financial risks. Thus, large multi-national mining companies are more likely step back from high-risk investments, leaving the way open for smaller companies with poorer records to step in. For some years, international mining companies have been waiting for an improved legislative framework to be established in Bolivia.38 In June 2014, the Government controversially introduced the Mining and Metallurgy Law # 253 (the ‘Mining Law’), signally the first major overhaul of the mining sector since 1997.

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33 La Razon, 20 de Abril de 2014, Anuario Estadístico Minero Metalúrgico.
34 http://micla.ca/countries/bolivia/
35 The largest companies operating are Inti Raymi S.A, Sumitomo Corporation–San Cristóbal, Glencore International AG–Sinchi Wayra, PanAmerican Silver Corp. and Coeur d’ Alene-Manquiri S.A.
38 Fundacion UNIR 2014. La Veta de Conflict, Ocho Miradas sobre Conflictividad en Bolivia, 2010-2014, pg.186
1.4 Case Studies

The two mining operations examined here are the Amayapampa gold project and the San Bartolomé silver mine, both located in the Province (Department) of Potosí. The Amayapampa gold project provides an example of difficult company-community relations, while the San Bartolomé silver mine offers a positive example of community engagement, communication and intercultural dialogue in practice. That said, even this positive case was struggling with the challenges of environmental sustainability, absence of coordination with municipality and perceptions of exclusion by some community members. Both case studies were chosen because of the strength of their Indigenous governance context and, in the case of Amayapampa, because the municipality was considering converting to an Indigenous autonomies. Both are located on Traditional Communal Land (TCO) titles.

Figure 2: Case study locations

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39 There are 9 subnational administrative units, called Departments in Bolivia. At the subdepartmental level there are provinces, regions and municipalities.
1.4.1 **Amayapampa Gold Project**

The Amayapampa gold project is in the Bolivian Cordillera Oriental, a range of the Andes Mountains on the eastern edge of the Altiplano (highlands) region. It is well known for the ‘Christmas massacre’ in 1996 in which communities occupied the mine and prevented entry of a foreign mining company. The government defended the interests of the mining company, sent in the military to reoccupy the mine by force, with six killed and many more wounded.40

The Amayapampa district has a long history of mining, and small-scale artisan mining has been ongoing since the 1500s. Modern mining began in the 1980s, with a private Bolivian mining company called CESMSA. For a short period from 1994 to 1996, it was owned by De Capo Resources. From 1996 to 2000, the mine was owned by Canadian mining company Vista Gold. Mining activity resumed in 2003, after several years of inactivity, under the ownership of Canadian Luzon Minerals from 2003 to 2007. In 2008, the mine was purchased by the Australian company Republic Gold.41 In 2012, Singaporean gold developer Lion Gold acquired a 100 percent interest in Vista Gold (Antigua) Corporation and its subsidiaries from Republic Gold. Minera Nueva Vista (MNV) S.A., a wholly owned subsidiary of Vista Gold (Antigua) Corp thus became the owner. Despite the change from Australian to Singaporean ownership, people continued to use MNV interchangeably for both companies, largely because the community relations staff remained the same, and because at the time of the research Lion Gold had only been engaging with the community for twelve months.

A string of other foreign owned mining companies have worked in Amayapampa since the mid-1990s. Despite considerable investment in exploration, none of these mining companies to date has entered the production stage. Most of the companies have left the area due to financial difficulties and conflict with the community. While the majority of the Ayllu supported mining, two communities opposed it which led to conflict between the Ayllu and the two communities. With each attempt, different companies have signed agreements with the community, making promises and raising expectations of future benefit. One company promised a percent of the share of the mine. Another company negotiated two separate Social Licenses to Operate (SLTOs), leaving the Ayllu out of one, and leaving the urban population out of the other.42

While MNV is the registered owner of all the concessions, it does not own the land associated with the Project. There are a range of contested land ownership issues within the project area, with much of the land held in Traditional Community Ownership (TCO) and other parts owned privately.

The existing SLTOs granted by the Ayllu and urban communities are tenuous, and there is a lack of clarity among community members on the status of the agreements, especially with regard to compensation and other community entitlements. Ad hoc payments were given to certain Indigenous leaders, but there is little clarity as to the purpose of the funds or how they were distributed. As a risk management strategy, the company developed a working relationship with the local campesinos, paying 250 workers despite the lack of construction or production. The campesino union thus came to play a highly influential role in the project, with responsibility for hiring and firing of staff at the mine site.

While they are opposed to the mining cooperatives, the campesino unions are more urban based that the Indigenous Ayllus. Amayapampa sits within the Chayanta municipality which was one of the eleven municipalities moving towards Indigenous autonomies, but the process was stalled due to opposition from

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40 [http://www.puebloindio.org/Mailinglist/Mail_96/Amayapampa_Christmas_Massacre.htm](http://www.puebloindio.org/Mailinglist/Mail_96/Amayapampa_Christmas_Massacre.htm)
42 Social License To Operate (SLTO) refers to site-specific, ongoing approval and broad social acceptance within the local community and other stakeholders for a project to proceed. Under civil law in Bolivia, the SLTO is also a formal permission granted by a government regulator, contingent on community approval.
the urban population, and those who identify more as campesino than Indigenous. Thus the companies support for the campesino exacerbated this local tension between these two political groups.

Neither Republic Gold or Singapore Gold has effectively consulted or developed a relationship with the Indigenous organization that represents the Ayllus in the North Potosi region. Accordingly, Indigenous leaders had formed the view that the mining company saw their organic organization as a threat and a source of potential conflict. They also felt that they were not properly consulted and that consultation focused instead on preferred community members. There was also general community feedback that the real decision makers from the mining company are never present at meetings and that the community relations team do not speak their language, know their territory, or understand their needs or priorities.

Despite there being no production so far and a troubled history of community-company relations, the local rural and urban population remains committed to the Amayapampa deposit being developed by a foreign mining company. Should the mine fall into the hands of mining cooperatives or the Bolivian government, there was a widespread view that this would lead to lower salaries and reduced worker and environmental standards. There was general acceptance that the community itself does not have the technology or know how to mine the site.

The Singaporean Company Lion Gold had initiated a number of ad hoc social projects, including building schools, funding school teachers and equipping health posts. These projects were not planned in conjunction with the municipality and there was no connection to the Indigenous district plan elaborated by the Ayllu. Neither Singaporean Lion Gold nor the Australian Republic Gold appeared to have knowledge that an Indigenous plan existed. A patron/client relationship appears to have developed under both companies, with community members presenting random wish lists to the mining company, including sports trips, alcohol for festivities and the provision of basic materials.

There has been consultation, but no real collaboration with the Chayantaka municipal government in relation to their five-year development plan or annual operating plan. There appears to have been limited consultation with the municipality regarding the royalties they will be due and possibilities for sustainable investment when the mine starts production.43 An INGO with many years of experience of working with the community had very limited knowledge of the community projects run by the mining company and the mining company had very limited knowledge of the community projects run by the NGO, indicating a poor understanding of stakeholders, community assets and future development needs.

1.4.2 San Bartolomé Silver Mine

The San Bartolomé silver mine in the southern Bolivian city of Potosi is operated by Empresa Minera Manquiri (known as just ‘Manquiri’). Manquiri is a subsidiary of US mining company Coeur d'Alene. San Bartolomé is located on Potosi’s historic Cerro Rico (‘Rich Mountain’) and is one of the largest pure silver mines in the world and the second largest silver mine in Bolivia. The ownership structure is complicated. The Bolivian national mining company, Corporación Minera de Bolivia (COMIBOL), is the underlying owner of all of the mining rights relating to the San Bartolomé mine. COMIBOL leases the mining rights for the surface deposits to several Potosí mining cooperatives. The cooperatives in turn sub-lease their mining rights to Manquiri, which started mining in June 2008.

Manquiri’s operations in the San Bartolomé silver mine offer a comparatively positive example of community engagement, communication and intercultural dialogue in practice, albeit not without challenges. The company’s community relations team is small but multi-disciplinary, with a Quechua community liaison officer, a lawyer who has a long history of working with Indigenous rights, an engineer and administrative staff. To benefit the affected communities, the company is funding the preparation of an Indigenous

43 Under national legislation, municipal governments receive 15 percent of the royalties.
Development Plan, facilitated by a team of consultants who worked closely with community members to articulate and implement an Indigenous vision of development.

This mining precinct is under considerable scrutiny internationally because the city of Potosi and the adjacent Cerro Rico ('Rich Mountain') is a UNESCO World heritage site. UNESCO has warned that that world heritage status will be removed if Cerro Rico is not protected. Despite the positive efforts of Manquiri, interviewees expressed concern about the current state of the Cerro Rico due to the cumulative legacy of many years of mining.

Manquiri has numerous stakeholders, including the mining concession with COMIBOL, ten mining cooperatives of the Cerro Rico who transport their material, and the Ayllu of Jesus de Machaca, whose Indigenous Development Plan Manquiri supports. Manquiri is one of the few mining companies in Bolivia that maintains direct contracts with mining cooperatives. Under the 2014 Mining Law this is no longer permitted, however contracts made prior to the new legislation are still recognized.

The negotiations with the Ayllu Jesus de Machaca took many years and were not without conflict and many delays. An independent NGO with a history of supporting Indigenous rights programs in Bolivia supported the Ayllu through the process. The NGO was integral in supporting the Ayllu to negotiate the Plan and the associated economic remuneration. Manquiri engaged the same NGO and external independent consultants to facilitate the Plan, based on the needs and priorities of each community. The Plan is for 10 years and the amount negotiated was $1,650,000 to fund projects designed by each community. A management committee that represents the mining company, the Ayllu, and the municipality oversees the technical and financial implementation of the Plan.

The success of the implementation of the Plan seems to rely heavily upon which community leaders are on the committee and their commitment to the Plan. There is a strong focus on alternative economic development projects such as eco-tourism cabins and restaurants, trout farming and clothing manufacturing. There are also infrastructure projects including schools, toilets and houses, as well as ad hoc funding given to things like presents, football jerseys and vaccinations. To date, there have been no external evaluations of the success of the Plan or the implementation of the projects.

The Indigenous Development Plan was originally designed in isolation from the Municipal Development Plan developed by the local municipality. Although there has been some collaboration with the municipality on certain projects, there is no formal link to the municipal planning process. The mining company has sought to supplement its funding with additional funding from other NGOs, and there has been some collaboration with the European Union. The Ayllu itself is not empowered to seek funding or to advocate basic service provision from the municipality and there has been no capacity strengthening in this regard to date.

Manquiri also maintains service delivery contracts with the Ayllu. Currently, community members provide the transport service for the mining employees and there is a community business, ECOMUL, of which 65 percent of the population of the Ayllu are shareholders. Manquiri also contracts ECOMUL for construction and clearing works. There are also two families who are directly contracted to provide constructions works, which arose from negotiations that preceded the formation of ECOMUL. While the business model is viewed as a success, it has been a source of some conflict due to perceptions of unfair control that certain families exercise over ECOMUL.

Some households feel they were not properly consulted during the planning process. Other families who are closer to the location of the mine expressed concern over environmental contamination of their lands and the loss of animals. Nonetheless, the majority of the Ayllu appeared to be in favour of the mining company presence and they supported the Indigenous Development Plan.
2 Findings and Discussion

This section summarises the findings of the study based on the national and provincial level interviews, supported by the local case studies of Amayapampa and San Bartolome, where appropriate. We discuss the results in relation to our overall research question on how mining affects Indigenous governance.

The findings from the interviews are grouped thematically to discuss (1) the politics of mining policy and legislation; (2) Indigenous territorial management and visions of development; (3) and approaches to Indigenous community engagement and sustainable development in practice.

2.1 Politics of Mining Policy and Legislation

Finding 1: The 2014 Mining Law is favourable to foreign mining companies, in that it provides more certainty and more protection from the state for foreign investment.

The key messages from interviews with the Ministry of Mining is that the 2014 legislation frames a new relationship between the state and foreign companies. As one Ministry of Mining employee reported, “we are partners now, they are not our bosses”. Other interviews with the Ministry of Mining expressed a clear shift from a “nationalisation” discourse to creating and protecting joint ventures with international companies.

However, the threat of nationalisation remains latent, with Morales Government very recently threatening to nationalise two of the biggest transnational mines Japanese San Cristobal and Canadian San Vicente as part of its strategy to strengthen the mining industry in 2015. Whether this remains a threat or is carried out remains to be seen.

In order to protect foreign investment, the new Mining Law contains provisions for easing requirements for consultation processes. It also criminalises opposition to mining operations, and applies penalties and sanctions for the illegal occupation of mine sites. While the protection of foreign investment is fundamental for companies to operate, the methods proposed by the current government were widely held by those interviewed as being counterproductive to peaceful resolutions with communities.

Bolivia has a history of taking state intervention to the extreme, culminating in excessive force, violence and retaliation, as occurred in the ‘Christmas massacre’ in Amayapampa in 1996.

Although to a much lesser extent, violence returned to mining in Bolivia in 2012 when police intervened in the high profile case of a Canadian mining company South American Silver and its mining operation in Malku Khota. In this case, the state responded to local opposition to the mining company by ‘militarizing’ the situation and sending in 50 police to restore order. This led to casualties, the taking of hostages and criminal prosecution of the leader of the national Indigenous body CONAMAQ. Although it led the intervention, the Government ended the matter by nationalizing the mine, blaming South American Silver for failing to attend to the demands of communities, and pitting community members against each other.

However, the initial police actions strongly implicated the Government in the outcome. As expressed by an Indigenous leader interviewed, “if the Ayllu reacts against the mining company, the government reacts with the military.”

The 2013 expulsion of IBIS, a Danish rights-based INGO, and the passing of the 2014 Mining Law marked a change in the relationship between the state and Indigenous communities. As one analyst put it, “in the last six years the relationship has shifted from autonomy and co-operation to co-optation, submission and in the

44 http://www.la-razon.com/economia/Presidente-nacionalizara-San-Cristobal-Vicente_0_2187981255.html
45 Ley de Minería y Metalurgia, No.535, articles 207 - 216, 99.
case of TIPNIS, elimination of Indigenous political leadership”. The Unity Pact has come under serious pressure with a split along Indigenous/campesino lines. National and provincial (departmental) organic peak representative bodies have struggled for lack of government support. The government facilitated the formation of parallel organisations more amenable to their policies and legislation. Moreover, many Indigenous leaders have distanced themselves from the government, adopting a more critical standpoint and questioning the government’s record of protecting and advancing Indigenous rights. Several interviewees argued that the government is now advancing an agenda at the expense of Indigenous territorial and self-determination rights, effectively moving away from the reforms it initiated. In this context, they felt that foreign mining companies are more free to operate to minimum standards and with less regard to the specific needs and decision-making structures of Indigenous communities, leaving them less empowered to participate in the decisions that affect them.

Finding 2: The new Mining Law continues to favour mining cooperatives and they will enjoy continued dominance over Indigenous forms of governance.

Politically, cooperative miners constitute a critical support base for the Morales Government and their appeasement in the mining legislation was key to securing their vote in the 2014 elections. According to one analyst, “the cooperatives have emerged as a new bourgeois with a populist background – they have become economically and politically empowered in the last few years”. Over the past decade, concession areas granted to mining cooperatives have increased seven fold and the sector now generates 88 percent of all mining employment.

While growing in number and political force, the economic contribution of the cooperatives to the state is low due to an exemption from paying taxes and reduced royalty rates. As cooperatives are not for-profit, they are given a special status compared to foreign mining companies. However, according to interviewees there is little ‘not for profit’ about the cooperatives. Most cooperatives operate as private enterprises (some highly lucrative) and profits are not redistributed equally, nor are labour and environmental standards necessarily upheld.

To protect their autonomy and income, the cooperatives oppose nationalisation and state regulation, and they strongly exert their influence over the state. The cooperatives and in particular their peak organisational body, the National Federation of Cooperatives of Bolivia (FENCOMIN), are viewed as supporting the Morales Government. As an interviewee noted, "they have such a big voting weight, there are about 100,000 of them, and then think about how this number multiplies with their families.” FENCOMIN acknowledges this alliance and also makes clear its power, as publically stated by its President: “just as FENCOMIN and all of the cooperatives of the country ensured that Evo would be the president of Bolivia, just as easily we can bring him down”.

Until recently, some of Bolivia’s largest mines have operated as partnerships between private companies and local mining cooperatives. For example, the case study of San Bartolomé represents a partnership between Manquiri and ten cooperatives who work on the Cerro Rico. Although the recent Mining Law prevents private mining companies from partnering with such cooperatives, it respects pre-existing agreements, many of which will still be valid for several decades. One of the comments repeated from the people interviewed

49 Fundacion UNIR, ibid, pg.25
was how foreign mining companies operating in Bolivia used cooperatives to distance themselves from international standards of good practice.

Contracts between companies and cooperatives allow international companies to not only gain access to land owned by cooperatives, but also subcontract most of their labour through the cooperatives. While positive in terms of local employment and stimulating local enterprise development, this can lead to a range of negative impacts. In particular, the miners employed by cooperatives may not enjoy the same employment conditions as those directly employed by international mining companies. So if they were to sustain serious or even fatal injuries, for example, the mining company may not be liable to pay family members the same level of compensation. Intentionally or not, mining companies can thus avoid compliance with international standards and government regulations. This does not come to the company without risks, as it opens them up to local and potentially international critique that may affect local operations and their brand and reputation.

Overall, the future of mining in Bolivia will be heavily shaped by the power of the cooperatives. They are likely to continue to dominate the local governance of mining in Bolivia and limit the opportunities for more traditional Indigenous forms of governance.

Finding 3: Indigenous representative bodies and civil society organisations widely oppose the new Mining Law because it reduces their ability to participate in decisions that affect them and exercise their human rights (including the right to water) and rights to Free, Prior and Informed Consent.

The 2014 mining law signals not only how the extractive industry will be regulated, but how a range of Indigenous rights will be exercised: the right to Free, Prior and Informed Consent (FPIC); the right to participation in benefits of non-renewable resources; and the right to access and use of resources. Based on their reading of these signals, there was widespread consensus among the civil society organisations and Indigenous leaders interviewed that the new Mining Law threatens decades of progress related to Indigenous rights.

The two main representative Indigenous national bodies, CONAMAQ and CIDOB, have publicly expressed their opposition to the lack of inclusion and consultation regarding the drafting of the legislation and have rejected specific articles within the legislation.\(^52\) CONAMAQ put forth a statement that the new legislation “grants privileges to miners who will violate our rights related to environmental protection, agricultural livelihoods and use of water”.\(^53\) According to CONAMAQ leaders interviewed, a coalition is forming to lodge an appeal that will challenge the constitutionality of the new Law.

The new legislation defines a streamlined process for Free, Prior and Informed Consent (FPIC). A state entity called the Administrative Jurisdictional Mining Authority (AJAM) will facilitate three meetings with the mining company and affected population, limited to a maximum timeframe of four months. If agreement is not reached, AJAM will lead a process of mediation. If the parties still fail to reach an agreement, the Ministry of Mining can issue a ministerial resolution to approve the mining contract.\(^54\) This reduced process was highly contested in the interviews. As one academic commented, “it has been reduced to three meetings, where the state will tell you what they want – they think this type of quick consultation will accelerate the process, but it will have a negative effect.”

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\(^54\) Ley de Minería y Metalurgia, No. 535, 2014, Articles 210-216.
The legislation designates this consultation process to take place during the production stage, and not during the initial exploration stage. The legislation also repeats the previous legislation's failure to link the results of the consultation process to the government's decision to grant permission for exploration or a concession license. Through both public statements and in the interviews in this study, Indigenous leaders expressed concern that there was no avenue for them to deny consent to a mining operation, or seek redress if their rights were violated. As explained in one interview, “the law has given communities no option to defend their territories – the big companies might think this is good for them, but in fact it may leave communities feeling so disempowered that they may be more defensive and cause the opposite effect of more mobilisation.”

Another contentious aspect of the Mining Law involves the use of water. This was opposed not only by peak Indigenous groups like CONAMAQ and CIDOB, but also a variety of environmental civil society organisations and the National Association of Community Systems of Water. These environmental organisations argued that the new law limited public access to water sources for consumption and agricultural activities. Concerns about the potential implications for water use in the new legislation were repeatedly raised in the interviews, with uncertainty about who would be given priority use and with what limits. As one interviewee commented, “The law doesn't say anything about payment for water, about the treatment or return of water, there is nothing about the rivers, channels of irrigation or water used for agricultural production.”

Finding 4: The state does not effectively enforce environmental regulation, leading to ongoing community protest and environmental contamination from mining.

One of the main sources of protest related to mining in Bolivia is environmental contamination, particularly contamination of water sources. A World Bank study confirmed there were eleven water sources affected by the contamination from mining tailings in Bolivia. Water rights issues are also highly contested against competing demands for human consumption and agricultural activities. Past environmental impacts from mining have included erosion, leakage of toxic dust and cyanide, and soil contamination, which can adversely impact Indigenous groups due to their reliance on the environment for subsistence.

This environmental damage has led to a long history of countrywide social movements, community protest, blockades and activism by Indigenous organisations and NGOs, with many unifying to protect specific water sources. Conflict has occurred around failure of companies to comply with agreements about mitigation, and the failure to apply plans, programs and projects to prevent or to compensate for the effects of mining environmental contamination. An example of this raised during the interviews was the ongoing conflict between the communities and an American mining company Inti Raymi, which is undergoing closure. A recent accident caused by an Argentine company led to a national outcry when media reports revealed this company and the majority of mining operators did not have environmental licenses. As a former elected official stated, “there is an extractive mentality and no concern for the environment.” The lack of effective environmental control has led communities to confront the state, and individual companies to demand prevention, mitigation and reparation of negative environmental impacts.

56 Fundacion UNIR. La Veta de Conflicto, Ocho Miradas sobre Conflictividad en Bolivia, 2010-2014, p.56
58 Beauclerk et al. 1988. Ibid. pp. 41-43
While the role of the mining company is paramount to adhere to international and national environmental standards, it is ultimately the role of the state to oversee and regulate compliance. The majority of those interviewed supported the popular view that the state is not enforcing Environmental Law 1333 or the Mother Earth Law. In an assessment carried out by the Environmental Unit of the Ministry of Mining itself, one of the findings was “a weakness on the part of the state for the promotion and facilitation of environmental norms.” According to the interviews held, the lack of restrictions or lack of regulation by the state on the use of water at the Japanese San Cristobal mine has contributed to ongoing conflict between the community and the company, and confrontation in 2010.

While interviewees criticized certain international mining companies for environmental contamination, in general our interviewees suggested that national mining company COMIBOL and mining cooperatives were more likely to be operating without an environmental licence. There was reference to the fact that at least with foreign owned mining companies, international standards and sanctions could be used to hold them to account, whereas COMIBOL and the cooperatives were able to operate with relative impunity.

### 2.2 Indigenous Territorial Management and Visions of Development

**Finding 5: Free, prior and informed consultation and consent processes are not carried out by the state or companies in accordance with International conventions and guidelines**

According to the former special rapporteur on the rights of Indigenous Peoples, “principles of consultation and consent function as instrumental to rights of participation and self-determination”. The principle of Free, Prior and Informed Consent (FPIC) is one of the most debated and ambiguous areas of Indigenous rights in Bolivia. This is not for lack of legal recognition. Bolivia ratified the International Labour Organisation (ILO) Convention No. 169 and enshrined the UN Declaration on the Rights of Indigenous Peoples in national legislation in 1991 and 2007 respectively. According to Article 19 of the UN Declaration: “states shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them”.

Several articles in the Bolivian constitution refer to FPIC. Specific provisions are also made in a range of legislation relating to mining. GECOMIN, a regional mining conflict management network active in Latin America and the Caribbean, observed that “although Bolivia has ratified the right to FPIC there is no norm which steps out the process to carry it out, there is a judicial gap which leads to bad interpretations of how to put it in practice.”

According to Indigenous leaders interviewed, mining companies (rather than government) have typically taken responsibility for carrying out FPIC process. It has been up to the company's discretion how it is carried out, with whom and what happens as a consequence of an agreement or lack of agreement. Employees of the mining companies also shared in the interviews that there is little guidance from the

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government as to what constitutes an adequate process of consultation and requirements for achieving a Social License to Operate (SLTO) from the community. Community leaders also gave examples of mining companies that had not carried out appropriate processes of consultation. As one interviewee expressed in Amayapampa, in reference to the string of companies that have previously owned the mine, “the first foreign mining company came in, they did exploration but did not carry out a consultation with the owner of the land. They just did what they wanted; it was more or less an invasion of our land.”

In Amayapampa, one of the repeated comments of Indigenous representatives was the lack of a good faith in mining consultation process that respected their representative institutions. Instead of a process of mutually respectful dialogue, where participants were given the opportunity to influence the decision taken, interviewees described a process which involved co-opting leaders and rushing through agreements. This not only undermined Indigenous governance, it led to a lack of trust in the company that may fuel future tensions and conflict.

Beyond the two case study sites, interviewees described how community consultation by the mining companies generally did not occur during the exploration phase, but was rather initiated during the production phase, by which time the companies had already entered the territory of Indigenous communities. International best practice is for mining companies to consult from the project conception, in its planning stage, before its viability has been finalised and approved. Unfortunately, the new Mining Law calls for consultation to occur only during the production stage. When this occurred with the South American Silver Malku Khota mine, communities protested against the lack of consultation during exploration, setting a precedent for a similar backlash against other proposed mining operations.

Another important element of the consent process is consultation through representatives chosen by communities, through representative Indigenous organizations, as set out in the UN Declaration. In the Amayapampa case study, a regional Indigenous body speaks on behalf of all the Ayllus of Northern Potosi. The majority view among those interviewed was the mining companies involved saw this body as a threat to the negotiation process and proceeded instead to consult directly with community leaders selected at their discretion. In this particular case, this led to a feeling of distrust from the community towards the mining company. They claim that the mining company did not respect Indigenous hierarchy or well established decision-making structures or processes.

Should Indigenous Peoples withhold their consent, it was unclear to those interviewed, what the consequences would be. Among officials of the Mining Ministry, NGOs and Indigenous leaders who participated in this study, some asserted that there was a right to veto, and that if communities reached consensus they could actually stop the mine. Others commented that as long as a consultation aimed at achieving consent was carried out, this was sufficient, regardless of whether or not consent is obtained. An NGO representative interviewed observed: “the consultation is often done after exploration and it is more of a formality, than if it was done at the beginning; it is much more symbolic now – even if there is a negative response, they still go in.”

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71 The 2010 Electoral Regime Law on ‘intercultural democracy’ states in Art. 39 that the results of consultation are not binding, although the previous 2005 Hydrocarbons Law Art 115 says the results of consultation should be respected.
Finding 6: In Bolivia, Indigenous people see their territory as part of a whole political, social, economic and spiritual system, which can lead to a mismatch in understandings and expectations about land.

In Bolivia, as in many other Indigenous communities, land is not simply something physical or the property or possession of individuals or groups. As was evident in the interviews and the Indigenous Peoples literature more broadly, the use of concepts such as ‘territory’ or ‘country’ has a much wider meaning and includes a “special relationship more profoundly between geography and its inhabitants. It implies diverse forms of political control over a determined space, taking into account administration, use, benefits and conservation of territory and natural resources”. In Bolivia, for many Indigenous Peoples, territory is a necessary condition to exercise collective rights to development (economic, social, cultural, and environmental) and fundamentally the political rights of self-determination and autonomy.

After years of marches and social movements for recognition of ancestral connection and right to territory, the state formally recognised Indigenous territory through the 1993 Agrarian Reform Law. Under this law there was a nationwide granting of Traditional Communal Lands (TCO) titles. In 2009, the Bolivian Constitution further recognised collective ownership of land and territories and the right to autonomous Indigenous territorial management.

The majority of Indigenous leaders interviewed held that across the mining industry in Bolivia, mining companies do not fully understand the concept of ‘territory’. Where companies see payments to communities as compensation for land use, Indigenous people see political, social, economic, and spiritual implications of their territory and its management. As one interviewee explained, “Ayllus are old forms of organisation, they have a world view which is to maintain harmony with nature, and their authorities have the right to keep the Ayllu together, to consolidate collective rights, to fight for self-determination.”

In the two case studies, both mining companies were operating on TCO land, which revealed the mismatch in understandings and expectations about land. This was exacerbated by internal divisions within local groups between private and communal ownership and who are traditional owners. The complexity involved was evident in the Amayapampa case, where after many years of trying to negotiate land use, swaps and compensation, to date, there has been no resolution.

Finding 7: Indigenous Peoples have their own visions of development, and they are willing to work with mining companies toward sustainable development on mutually agreed terms.

Demands for recognition of Indigenous ownership of traditional communal lands, and the political struggle for territorial self-governance and the right to ‘manage territory’ go together. The UN Declaration for the Rights of Indigenous Peoples enshrines the right for Indigenous Peoples to pursue and make decisions on their own development priorities. Article 3 states: “Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

In Bolivia, Indigenous communities have translated this right into practice, and the concept of Indigenous Territorial Management is advanced compared to other countries in Latin America. For many years in Bolivia there has been support from multilaterals, INGOs and national Indigenous bodies to build the capacity of Indigenous communities to engage in territorial management. According to Herbis and Patino, this is "self determination of territory according to their own vision," and in effect, "the sum of practices and rules included in the functioning, protection and development of these territories in all areas (whether

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74 UN Declaration for Indigenous Rights, 2007, Article 3.
ecological, productive, social, cultural or spiritual) implemented from a social and political structure as determined by communities themselves”. 75

Starting with the recognition of communal land title, Indigenous territorial management has taken on many modalities in Bolivia, with different Indigenous groups consolidating their capacities to define their development priorities. For example, NGOs have worked with different communities to develop Indigenous territorial management plans or life plans. These are “more holistic and beyond economic development projects – they have a long term vision for communities which takes into account cultural, spiritual, social and political objectives”.76 As previously mentioned, eleven groups have attempted to convert into autonomous Indigenous municipalities (autonomies) under special legislation, although these efforts have to date been unsuccessful. Other communities have attempted to create special Indigenous districts within a municipality and have a separate development plan which is more aligned with their vision of development.

The Bartolomé case study presents good practice as to how a company can link to or help design an Indigenous development plan. In this case, a plan was developed with external facilitators to reflect the development needs and priorities of the Indigenous Ayllu. The company explained this intentional approach to generate ownership over the community development plan as, "instead of just saying I will give you this, a doctor, a school, electricity, the plan puts the projects in their hands – it is not doing it for them.” There was recognition that mining companies can strengthen Indigenous governance and self-determination by supporting and contributing to their development visions. As the Director commented, “it is a focus which moves from compensation to empowerment.” For the company, this builds greater stability in the community in which they operate, reducing the risk to disruption of mining activity, providing a more secure working environment, and likely ensuring that the local community have built skills and opportunities that will sustain them beyond the life of the mine.

According to the interviews held, the Bartolomé case is the exception in Bolivia. Many interviewees from the INGO and academia considered that Indigenous Peoples’ vision of development was incompatible with mining company interests. For example, an INGO stated that “the mining company is driven by its own interests, the Ayllu wants to preserve the land and mining companies want to exploit it, and there will never be agreement between the two.” Interviewees frequently mentioned how mining companies struggled to reconcile ‘Indigenous development plans’ with their interests, and their general lack of knowledge or appreciation of existing plans and in using existing planning mechanisms. As one local Indigenous leader said, “we hold meetings to reaffirm our culture, our organisation, and to strengthen our authorities. We talk about the development of the Ayllu, we talk about projects that the municipalities are doing and it is with all the communities, the cabildos of Ayllus and the other institutions that work in the Ayllus. But this does not happen with the mining companies, they isolate themselves and do not share their plans. This would help so we could all coordinate.” In the case of Amayapampa, the mining company representatives interviewed were unaware that an Indigenous district development plan existed.

Overall, the Indigenous leaders interviewed confirmed they were not against mining or foreign mining companies, they just wanted to be respected and have their environment protected. As one leader commented, “As the Ayllus, we want the mining company to work but we want them to protect our land, protect our water and ensure some of what they earn remains in projects which benefit the Ayllus.” They were not anti-development or anti-mining, but wanted development to proceed through mutually agreed terms.

76 Fundacion Construir. 2013. Ibid. p.33.
Finding 8: Mining companies who bypass Indigenous representative structures weaken Indigenous governance capability. The impact can be to disempower Indigenous communities in their own development and may leave them worse off than before the company arrived.

One of the biggest concerns expressed by the interviewees was the lack of recognition of the representative and hierarchal structure of the Ayllu and the roles of responsibility held by community leaders. In Bolivia, there are different organisational structures in the lowlands and the highlands. These structures are of fundamental importance to the effective governance and stability of the Ayllu. As one community leader stated, “when they understand how the communication works with the Ayllu maybe we can understand each other better. But acting in a way which does not respect our ways, there is no intercultural dialogue, nor respect for our organisational structures.”

Speaking generally beyond the two case study sites, some Indigenous leaders and NGOs expressed the negative view that there are poor performing mining companies that deliberately adopt a “divide and conquer” strategy to divide the Ayllus and co-opt leaders who will defend the company and provide stability for investment. As an Indigenous leader explained, “they use a strategy to weaken the structure of the Ayllus – they try to co-opt authorities who are easy to convince and they don’t respect the hierarchy of the authorities.” A politician elaborated, “it is in the mining company’s interest to have a weak Indigenous organisation; they don’t want a counterweight.” From a company perspective, however, this approach can also exacerbate risk to mining operations, if a weakened community becomes disaffected, withdrawing from negotiation processes and pursuing protest and conflict as an alternative mechanism. This usually results in an increased workload for the company in dealing with grievances and/or significant conflict resulting in costly operational downtime.

In the Ayllu structure, communication is via representative authorities, and there is a very specific process through community 'cabildos' (consultative forums) to reach consensus about different decisions for the Ayllu. The interviewees reported, however, that communication by mining companies is generally directed at individuals and private meetings are held which exclude the representative bodies. An NGO representative observed that “they don’t invite the Ayllu leadership structures to their meetings, less so the FAOINP, they communicate only with leaders who serve their interests.” Referring to the industry in general, another NGO commented that Ayllu leaders are "left out of official meetings about the project, or how consultation will be carried out, so they feel like foreigners in their own territory.” According to an Indigenous leader, mining companies in general

… negotiate directly with community members. This weakens the decision making of the Ayllu, the structure of leadership and the rules and practices we have. It means there are individuals who benefit, but there are not collective and community benefits.

This short-sighted approach can lead to greater inequality and conflict in the community which directly impacts the risk profile for the company, potentially reducing their performance and likely meaning their compliance with international standards is poor and open to criticism by activists and stakeholders.

By selecting their preferred community leaders to talk with, a mining company can also run the risk of causing or exacerbating tensions between different leaders in the community, thus effectively undermining Indigenous governance and cohesion. Some of the mining company officials interviewed had worked for a number of different companies over the years and they described their companies' attempts to benefit the community as having created groups of power and an inequitable distribution of benefits. As one interviewee commented, "we created division in the Ayllu, those who have had more opportunities and income and those who haven’t."

77 Federación de Ayllus Originarios Indígenas del Norte de Potosí (FAOINP) is the peak body that represent Ayllus in North Potosí.
A more positive example of practice was observed in the implementation arrangements introduced by Manquiri in the Bartolomé case, to oversee implementation, financial requirements and monitoring of projects under the Indigenous Development Plan. This involved an interesting accountability and co-responsibility mechanism with a management committee made up of representatives from the mining company and Ayllu.

2.3 Indigenous Community Engagement and Development in Practice

Finding 9: Corporate social responsibility is practiced by companies in Bolivia as a risk and compliance management strategy rather than as a meaningful way to generate social and business value.

The Corporate Social Responsibility (CSR) literature in mining records a spectrum of different approaches. While some companies genuinely look to promote sustainable development outcomes for communities, there continues to be a ‘checkbox’ justification of CSR as a risk and compliance management strategy and to prevent or appease conflict in communities. New private sector ideas of ‘shared value’ (see Guideline 5) are increasingly entering the strategies and policies of foreign mining companies working in Bolivia.

A significant number of interviewees held that CSR policies were more focused on risk management and minimising opposition to mining projects, rather than promoting community development. While overall, there seems to be an understanding of the content of internationally recognised Indigenous rights in Bolivia, there also seems to be a lack of discussion around good practice guidelines or innovations in corporate and social responsibility. For example, interviewees did not mention the UN Guiding Principles on Business and Human Rights, which is the industry standard for companies to respect universal human rights. Very few firms in Bolivia have incorporated ISO26000 (guidelines for social responsibility) or the sustainability reporting guidelines of the Global Reporting Initiative (an NGO initiative designed to formalise firm reporting). This may lead to superficial efforts to engage and collaborate with communities that can in fact exacerbate risk, if they do not enable a meaningful way for Indigenous communities to participate in the decisions that affect their own development.

Finding 10: There is a lack of transparency around the flow of royalty and discretionary funds, and benefits of royalties do not always reach the Indigenous communities most affected by mining.

The Bolivia Constitution grants Indigenous people the right to “participate in the benefits” from non-renewable natural resources extracted from their territory. Despite demands from Indigenous leaders to achieve a larger presence in the senior management structures, Indigenous groups (distinct from cooperatives and private companies, who do not identify as Indigenous) had not yet achieved significant control of their own extractive initiatives or gained ownership interests in foreign mining companies. Currently the distribution of benefits to Indigenous communities is restricted to compulsory royalty payments and discretionary amounts assigned by companies to community development projects. According to the new Mining Law, 85% of the royalties are allocated to the provincial (departmental) government and

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15% to the municipalities where the mine is located.\textsuperscript{81} The provincial royalties are supposed to guarantee the right of priority participation of Indigenous nations in the regions, and at a municipal level, the royalties are meant to be designated to local development projects. However, in practice, there is a lack of transparency about the allocation of these funds, and expenditures are hard to monitor. This remains despite the establishment of in 2009 of the Department for Institutional Transparency and Struggle Against Corruption and some engagement in multi-stakeholder initiatives such as the Extractives Industry Transparency Initiative.\textsuperscript{82} The Open Budget Index ranks Bolivia the 12\textsuperscript{th} least transparent country based on annual government budget and financial activities.\textsuperscript{83}

Many of the interviewees questioned how poverty remains high in affected communities, despite high mineral earnings. There was widespread consensus from politicians and mining officials at the provincial (departmental) level that the new Mining Law is "centralist" and the benefits gained by the central government will be tightly controlled by the state.\textsuperscript{84} Assuming the royalties do reach the designated provinces (departments) and municipalities, their potential contribution to development is great. For example, in some municipalities, the contribution could contribute nearly one third of the current municipal budget.\textsuperscript{85} However, there is no guidance or mechanism in place to ensure these funds reach the communities most affected by the mining operations and translate into development projects or improvements in state-managed essential services and infrastructure.

Finding 11: Most mining companies in Bolivia tend to displace the services and functions of local government municipalities. There is also an unrealised opportunity to strengthen networks between Indigenous organisations and municipal governments, and thereby the local governance system.

As previously described, Indigenous governing structures are generally situated within and across the jurisdictions of local government municipalities.\textsuperscript{86} Thus, in efforts to implement development projects, mining companies must also work alongside and through local government municipalities; and in their efforts to strengthen Indigenous governance, there is an opportunity to strengthen networks and relationships with the municipality.

Since municipalities gained powers and responsibilities through the 1994 Law of Popular Participation, communities have been involved in the development and monitoring of 5-year municipal development plans and annual budgets. From the interviews, it is evident that there are few links between development initiatives funded by mining companies and the services and functions of municipalities. In fact, the mining companies tended to run projects in parallel to the municipal governments, or have displaced and replicated the services and functions of the municipality in certain areas. In one interview, a mining company official described how the company had “taken over” basic service provision of the municipality and provided essential services like electricity and garbage collection for years. While many mining companies assume they can provide “better and more efficient” services to communities than government, this approach is not equitable or sustainable. Direct provision of services makes it difficult for the mining company to close operations sustainably, which exacerbates the impact once the mining company leaves.

The Bartolomé case study presents an example of trying to create sustainable projects like a community tourism complex, petrol station and trout farms which will outlast the mine and provide employment. A

\begin{itemize}
\item \textsuperscript{81} Ley de Minería y Metalurgia, Article 223-337
\item \textsuperscript{82} http://www.resourcegovernance.org/countries/latin-america/bolivia/transparency-snapshot
\item \textsuperscript{83} http://www.obstracker.org/status/Bolivia
\item \textsuperscript{85} Fundacion UNIR. La Veta de Conflicto, Ocho Miradas sobre Conflictividad en Bolivia, 2010-2014, pg.41
\item \textsuperscript{86} As previously mentioned, attempts to convert into autonomous Indigenous municipalities (Autonomies) under special legislation have to date been unsuccessful.
\end{itemize}
community company has also been strengthened to provide construction and transport services and the company has established itself as competitive and offers its services to others. As the director of the company explained, “normally for CSR you have a curve which follows the mine cycle; you start off slow, increase CSR and then decrease as the mine closes. In this scenario you leave communities abandoned, we on the other hand want to leave social and economic impact.”

One of the lessons learnt from the Indigenous development plan in Bartolomé was the need to strengthen the Ayllu organisation so they could also link to municipality funding and planning processes. Yet the Indigenous development plan, while a sophisticated approach, still remained entirely funded by the mining company and sat entirely outside the municipal development plan.

The interviews revealed that relationships between mining companies and the local municipal government were almost non-existent, which was supported in the two case studies. Similarly, their knowledge of local or international NGOs working in the mining precinct was very limited. As supported in the case studies, mining companies tended to prefer a bilateral relationship with the community and started community projects which did not articulate or harmonise with existing municipal development plans. While to an extent they recognised or linked to existing Indigenous development plans, they typically avoided municipal planning processes.

**Finding 12: There is often a gap between company and Indigenous expectations about benefits and environmental impacts of mining that contributes to distrust and conflict.**

Although the state claims ownership of all sub-surface minerals, the 2009 Constitution grants Indigenous people the right to share in the profit from non-renewable natural resources extracted from their territory. As one interviewee commented, "Now the people think they are the owners of the deposits and the land.” In many cases, this has led to unrealistic expectations about the financial benefits they will receive. For their part, mining companies point out that while communities may be sitting on gold or silver, the companies invest significantly in equipment and provide access to international markets.

A strong finding from the interview responses was that conflict is commonly generated due to gaps in expectations about benefits, lack of clarity of the terms related to the extraction of the minerals, and non-compliance of agreements or promises made by the company. The Amayapampa case is a good example of unclear and ambiguous information and undertakings made by mining companies which generated distrust and anger from community members when they were not fulfilled. From the perspective of a local leader, "the mining company offers so many things but then at the end of the day says it does not have the money to carry out their promises and now the community does not trust the company.”

From their perspective, mining companies expressed frustration over “unreasonable and irrational” expectations of communities which were hard to satisfy. As a company representative reflected, “It is difficult, there is a culture of gifts, of handouts, for the first six months it was like we were Santa Claus.” Another noted that “one of the problems is the expectations; the costs they are asking for are too high.”

While gaps in expectations of benefits are a source of contention, in many cases this is due to a lack of clarity regarding what the benefits will be. For example, in Amayapampa, it was nearly impossible to ascertain which of the prior companies had made agreements with whom, and what had been followed up. Although a SLTO agreement had been attempted, there appeared to be numerous isolated agreements between different parties (at the exclusion of other parties), isolated payoffs, and very ambiguous and unmeasurable commitments. Most of the agreements excluded key stakeholders (e.g. Central Government, local municipal government) and were instead bilateral agreements between the mining company and community members.

Beyond the two case study sites, informants expressed widespread concerns about the general environmental impact of the mining industry in Bolivia. Poor communication and unclear terms related to potential
environmental impacts and plans for mitigation was a widespread issue, particularly when companies were not upfront about the potential for short term and long term environmental damage. As a legal organisation representing Indigenous rights stated, “the biggest issue with Indigenous communities and mining is the environment – this contamination affects their territorial management, it affects the possibilities of sustainable agriculture and it destroys their territories.” In addition to their holistic concerns for their ‘territory’, communities are highly reliant on water use for consumption and agriculture purposes. An Indigenous representative explained: “we don't want the mining company to contaminate our rivers, and our lands. If they didn't do this we wouldn’t have such a problem with them. They need to have a plan to protect where we live in the future when the mine goes.”

The expectations gap is exacerbated by culturally inappropriate communication about the mine process, the benefits and negative environmental impacts. Communication was described as not consistent enough; many community leaders referred to the need for more specific and less general information. They also expressed a demand for clear and honest communication. For example, an interviewee said that “there is little information from the company and this leads to speculation. The lack of information causes gossip, misinterpretations.” Information presented is often culturally inappropriate, not in the Indigenous language spoken, or too technical to be understood. For example, “we ask them about how much they will exploit and how, but they don't give us clear answers, just numbers and statistics and pure technical speak.”

There was also a demand for more spaces for free dialogue as opposed to only ‘negotiation’ events under pressure. In the Bartolomé case there is a good example of the creation of a complaints and suggestion (grievance) mechanism for community members to provide feedback. The mining company also created spaces for reflection and monthly meetings where they would together with the community go through what the company was doing and go through the projects. These were described as, “spaces where we can know more about the company and they can know more about us, we also have a way to make a complaint if there is a problem.” Overall, Bartolomé community members interviewed talked very positively about the openness of the company to meet with them to discuss progress or issues.
3 Practice Guidelines for Mining and Indigenous Peoples

A developmental approach requires the participation of a number of different stakeholders in mining-affected Indigenous communities. In addition to the communities themselves, mining companies must work effectively with government, civil society and the international community. Based on the findings of the study, the following guidelines are suggested for mining companies working with Indigenous organisations, and for INGOs that are partnering with mining companies and Indigenous organisations.

Guideline 1: Mining companies should create multi-stakeholder spaces involving the state, companies, INGOs and Indigenous organisations for them to engage in intercultural dialogue.

While the new Mining Law remains in force, with its provisions to curtail opposition to mining, there will be more protection for foreign investment and for companies. However, the structural causes of conflict related to a lack of consent, environmental impact, and the violation of Indigenous rights will remain unresolved and may well escalate. Companies and INGOs also have a role in encouraging the government to refrain from using excessive force or criminal persecution to solve conflict against mining and between competing local groups. Creating multi-actor spaces for intercultural dialogue involving the state, companies, Indigenous organisations and INGOs has the potential to lead to better outcome for all parties involved.

Mining companies are inescapably embroiled and themselves a force in this dynamic intercultural field of interaction. An intercultural approach to development goes beyond merely recognising the existence of different cultures to seeking exchange and reciprocity in a mutual relationship, with self-valuation and respect and of the other. Intercultural dialogue involves productive communication and interaction that overcome barriers between peoples of different value systems. Intercultural development implies that both western and Indigenous cultural knowledge systems should be practised with equal human, technological and financial resources, with spaces for exchange of knowledge, methodologies and practices that ensure the ongoing development of both systems.87

As argued by the former special rapporteur on the rights of Indigenous Peoples, “it cannot be assumed that the interests of extractive industries and Indigenous Peoples are entirely or always at odds with each other”.88 Companies can play a proactive role in creating dialogue that identifies emerging issues and addresses Indigenous community concerns and demands before conflict escalates. They should be prepared to deal with legacy issues, due to the prior actions of other mining companies. The creation of spaces for dialogue – including community visits and visits to the mine operations – will encourage Indigenous communities to share their vision and priorities for development, and for points of convergence to be identified. Of equal importance is for Indigenous organisations to understand the ‘vision’ of the company and their principles, operations and constraints.

Guideline 2: Mining companies should advance the human rights of Indigenous communities and follow international guidelines for social performance, including Free, Prior and Informed Consent.

Bolivia has a very complicated and contradictory legislative environment regarding Free, Prior and Informed Consent (FPIC). While possible in this environment, there is the potential for conflict with Indigenous communities if mining companies take shortcuts. It is in the company’s interest to ensure due diligence with human rights, independent of the requirements of the state. Companies should encourage the government, or if carrying out the process themselves, to carry out adequate consultation procedures that comply with international standards.

88 Anaya, James, 2007, Ibid, p.3
Beyond the national government, mining companies can look to global standards for companies operating internationally, such as the UN Guiding Principles for Business and Human Rights, the Voluntary Principles on Security and Human Rights and where relevant the OECD Guidelines for Multi-National Enterprises. 

More specific to the mining industry, the International Council for Mining and Metals (ICMM), a peak body of its members, has issued good practice guidelines for working with Indigenous Peoples. In 2013, ICMM also updated its position statement on Indigenous Peoples and Mining. The statement calls on members to adopt a commitment to FPIC that ensures Indigenous Peoples are engaged in a process of good faith negotiation to give or withhold their consent for projects. It reflects the need to align negotiation approaches with traditional decision-making processes while respecting internationally recognized human rights.

Guideline 3: All mining companies should commission detailed studies to analyse the local social, cultural, governance and political context in Indigenous contexts, before entering into consultation.

It is important that mining companies understand the complexity of the Indigenous context, given that most mining operations will operate on or adjacent to Indigenous land in Bolivia. Indigenous contexts globally are typically complex, due to the extent of cultural differentiation, their relative disadvantage, and political context with the more dominant mainstream. High-performing mining companies typically commission detailed participatory studies to understand the culture, customs, history, legal status, social organisation, political economy and governance structures of the Indigenous communities. It is also crucial to understand the ways in which Indigenous communities are not only homogenous, but also heterogeneous, and the diversity and power struggles amongst groups. A sophisticated contextual analysis should include social network mapping, political economy analysis, and multi-stakeholder analysis, to elaborate the different worldview, structures, and power relationships between different groups and stakeholders. The study could

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91 Moran, M and G. Corpus. 2014. Ibid.
also provide valuable insight into community strengths, constraints, needs and priorities, on which to build development programs.

As well as conducting their own research, companies should capitalise on the existing literature as well as consulting with representatives of government agencies. In particular, there may be existing or prior Indigenous plans and proposals for development to draw on. Specialist skills may be required to undertake this analysis, or they may be available through partnering with an NGO or other organisation with sufficient experience to understand the local situation.

**Guideline 4: Community engagement should be carried out through Indigenous representative structures with respect for traditional decision-making processes. This engagement should seek to build cohesion in Indigenous governance, rather than be a source of division and inequality.**

Mining companies and INGOs should dedicate time to gaining an understanding of the complexity of governance and decision making structures and processes in Indigenous communities. The Indigenous governance structures in Bolivia tend to operate in parallel to state governance structures and can be considered as an additional tier of the Bolivian system of governance. Another major stakeholder at the local level is mining cooperatives. It is also important to understand that these governance structures are dynamic, contingent and evolving.

The very presence of the mine and its consultations will affect this dynamic. Even the possibility of a mine will seriously impact the political economy of the Indigenous community. Given the potential for royalties and benefits, mining consultations will become the object of political competition among Indigenous groups and leaders. Some people may even migrate or return to the area in anticipation of receiving a share of these benefits. Thus, the social fabric is typically in a state of flux, especially during the early stages of mining negotiations.

Any engagement or communication with Indigenous communities should begin with representative organisations at an Ayllu, provincial (departmental) and national level, generally in that order. These representative governance structures assume a heightened importance in Indigenous contexts, due to the history of organisation, protest and political struggle among Indigenous Peoples.

Companies and INGOs can also play a role in strengthening Indigenous representative structures at a national, provincial (departmental) and municipal level. Critical to the capability and longevity of Indigenous organisational capability is the extent to which organisations are networked, through different levels and nodes of governance. Mining companies can support the capacity of higher-level Indigenous organisations to in turn support more local Indigenous organisation in their mining precinct. Productive relationships with higher-level Indigenous organisations can also help to intervene or mediate in any disputes that may arise.

While it is unrealistic to assume that all Indigenous community members will universally respect existing Indigenous authorities, there are formalities involved in the election or appointment of representatives which should be respected. From the initial contact, officials from mining companies (with decision-making powers) should meet recognised Indigenous heads, as this sets the scene for a formal approach to consultation. While a respect for Indigenous governance structures is fundamental, companies should still remain sensitive to the more vulnerable groups of communities, such as women, young people and migrants to the area. Companies can lead and demand from other stakeholders, including Indigenous organisations if necessary, that decision-making processes are transparent and inclusive across all sections of the community.

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Guideline 5: For mining companies to shift from a ‘risk and compliance management’ to a ‘shared value’ approach to corporate social responsibility, they need to invest in their internal capabilities.

There are compelling reasons why mining companies in Bolivia should shift from a risk management approach, with its primary focus on check-box tasks and suppressing conflict. Engagement models based on conflict and risk management tend to be based on deficit and distrust. Companies might consider instead a ‘shared value’ approach, which involves creating business value in a way that also creates value for communities by addressing their needs and challenges. It could help companies to identify their role in contributing to sustainable development of communities while at the same time strengthening the economic viability of their project. A shift in focus from compensation to empowerment of Indigenous people can also help build long-term equal partners, rather than passive beneficiaries or potential opponents. It can also enhance the reputation of mining companies and reduce the risks to their mining operations.

To be effective, a ‘shared value’ approach to CSR must permeate the culture of the organisation, with strong commitment at an Executive level. It should not be limited to community relations team, or sub-contracted out to INGOs. It is also very important to have highly skilled staff working in the team or unit directly responsible for ‘community relations’, preferably with experience of development in complex Indigenous contexts. The mix of staff is critical. Local Indigenous staff who have a familiarisation of the context and local language are also essential, although perhaps not from the local community if this causes conflict with other community members. While non-Indigenous staff (wither national or foreign) are needed to bring insight and critical analysis of the institutional system, they may face distrust from the community due to the past history of colonialism, marginalisation and top down development.

Guideline 6: Mining companies should make public the royalties and funds they contribute (by project) to national governments and national governments should publish the funds they receive. Municipal and provincial (departmental) governments should make budget and expenditures information publicly available.

Mining royalties have great potential to contribute to improving poverty and sustainable development in affected Indigenous communities. While the percent of mining royalties the company is required to pay to the national and municipal government is dictated by legislation, there is no guidance or oversight on how government’s allocate and spend the funds. Because of the large sums they are otherwise paying the government in tax, mining companies are in the position to advocate to government for more transparency of allocation of resources, particularly at a municipal level. Affected communities should be able to see in ‘tangible projects’ where the mining royalties are spent.

INGOs also have a role to play in advocating for greater transparency and accountability for royalty funds, particularly at a municipal level where many already have more presence. Multi-stakeholder initiatives such as the Extractive Industries Transparency Initiative and Publish What You Pay are making progress toward increased transparency in other countries, yet little traction has been achieved as yet in Bolivia. INGOs can also play a role in strengthening the capability of municipal governments responsible for designing, implementing and monitoring their development plans and operating budgets, and in building citizens’ capacity to engage in these processes. INGOs can help build the technical capacity of municipal government officials to use the royalty funds to design development projects which further social development, and which can more equitably and sustainably benefit the affected Indigenous communities, such that they are left better off than before mining activities commenced.

**Guideline 7: Mining companies should negotiate community agreements to define and regulate Indigenous community support and environmental damage mitigation**

Beyond obligations for companies to seek FPIC and a Social License to Operate, mining companies and Indigenous organisations should negotiate agreements that clearly set out the benefits and the obligations of the different actors involved. The resulting agreement can outline financial payment arrangements, employment opportunities, environmental, social and cultural impact, and governance arrangements for managing the relationship between companies and Indigenous organisations. Having clear terms and conditions about the distribution of benefits and negative impacts can mitigate disputes and conflict during the life of the mine.

These types of agreements offer constructive channels for Indigenous organisations to participate in decisions about benefits, as well as minimising negative impacts on the community or environment. It builds trust when the Indigenous organisations are given the means to monitor the progress of the agreements and to seek redress if commitments are not followed through.

Indigenous leaders will come to the table with knowledge of past negative experiences of mining impacts on the environment, damage mitigation and compensation provided. Companies can jointly carry out assessments of potential environmental damage with Indigenous organisations. In the case of water, for example, carrying out participatory assessments about the sources of water, uses of water and potential effects on water. It also provides an opportunity for Indigenous organisations to be involved in designing an environmental mitigation plan where they can be part of the monitoring of the plan and holding the company to account if it is not implemented appropriately.

INGOs can play a role in supporting Indigenous organisations to build their skills to negotiate agreements and to ensure that their rights are being respected in the terms and conditions. They are also able to support the design of monitoring and evaluation frameworks for the Indigenous organisations to monitor the implementation of the agreements, and compliance with the environmental mitigation plan.

**Guideline 8: Mining companies should utilise existing municipal and Indigenous development planning mechanisms as a means to collaborate and strengthen the local governance system.**

Mining companies should capitalise on opportunities to partner with municipal governments and Indigenous organisations and contribute to their existing development plans, as mechanisms to build collaboration and to strength the local governance system. As opposed to forming bilateral relationships with Indigenous communities and implementing isolated projects, companies can be part of a local network of actors working together for long-term development goals. According to a recent study in Bolivia regarding social licences, “local collaboration is more than a link between people, it is also a link between these people and the territory which they perceive as a common space, in which they co-construct an integral development.”

By investing in existing development planning mechanism, companies can ensure they are not displacing or duplicating municipal local government efforts to provide basic services. Mining companies as well as INGOs can link to municipal development planning processes, and facilitate Indigenous community members’ involvement to propose projects and to monitor project implementation. When municipal development processes are not participatory, they can strengthen and provide incentives to build this capability into municipal governments. These efforts will also ensure greater sustainability as the municipal government will remain after the mining company leaves. Channelling funds through a municipal development process also encourages greater co-responsibility and accountability by the municipal government for the implementation of the funds. It can also encourage Indigenous communities to more closely monitor the effectiveness of the local governance and project implementation arrangements.

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94 Campero, C. and Barton, J. 2014. Ibid, p.4
Indigenous organisations may have, or wish to initiate, their own separate but complementary Indigenous development planning process. In this case, the municipal government should be involved and the different plans well integrated.

**Guideline 9: Mining companies should work with INGOs or development specialists with expertise in design monitoring and evaluation frameworks, including adaptive programming approaches.**

As is also necessary in similarly complex development settings, designing and implementing projects in mining-affected Indigenous contexts requires heightened attention to adaptive design, monitoring and evaluation frameworks, with flexible, incremental and cyclic processes that permit continual learning, adaptation and improvement. A healthy measure of innovation and experimentation is desirable, which necessitates that assumptions be clearly specified at the onset and then tested as results emerge.

Monitoring and evaluation systems should include Indigenous-based indicators that capture their unique needs, aspirations and concepts of poverty and development. In addition to those set out under Millennium Development Goals, additional indicators are required which capture Indigenous perspectives on development and wellbeing. In terms of sequencing of programming, this requires an extended assessment/feasibility/design stage before implementation begins.

The types of projects chosen should be guided by long-term development goals and post-project sustainability. It is possible to leverage off the service needs of the mine, to build the technical capacity of Indigenous community members as employees and service providers. By creating opportunities which are not dependent on the mine – such as livelihood opportunities in agriculture – the mining company can build the economic capital and resilience of Indigenous communities and organisations for when the mine closes.

The centrality of culture to Indigenous worldviews and aspirations has led to calls for an ‘ethnodevelopment’ approach that builds “development with identity”, whereby culture is be integrated as a prerequisite and a basis for development projects. Consistent with their attachment to land, Indigenous livelihoods tend to be resource-based, whether subsistence (hunting, fishing, gathering), farming (agriculture, animal husbandry) or natural/cultural resource management. Social capital rests on collective custody of lands, resources and cultural heritage, with cultural values, activities and identity embedded at the community and group level, rather than individual. Drawing on these strengths, successful examples of sustainable livelihoods in Indigenous communities often include art and craft, cultural tourism, ranger programs, ecosystem services, and carbon and biodiversity market initiatives.

With knowledge of the context and often field presence, INGOs can also play a role in facilitating local collaboration and bringing together all the different actors to reach consensus over development. INGOs can also provide support not only in the design but also in facilitating participatory monitoring and evaluation processes to ensure the effective implementation and adjustments to the local plans. INGOs can also bring lessons learnt from elsewhere and best practice models to help guide better project design.

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96 UNPFII 2005, Ibid. p.5
Guideline 10: Communication about mining operations and impacts should be presented in a transparent manner that is culturally appropriate and accessible to all involved stakeholders.

Consistent with international principles for FPIC, companies should exchange information regularly with communities in a format that is easily understood. As many Indigenous people speak only local languages or feel more comfortable speaking their maternal tongue, it is generally best for companies to communicate in local language. Due to low literacy rates, it is also helpful to provide information in an appropriate audio visual medium. Companies should avoid using technical language and check frequently that the information that is being transmitted is understood. The emphasis should also be on not only presenting what the company has prepared, but also relaying community questions and concerns. Difficult topics should be communicated openly, such as company history including failure, the records of other company involvement, the company’s liquidity, benchmarks to be reached with mine feasibility, the possibility of selling to another company prior to production stage and any potentially negative socio-economic or environmental impacts.

The location and timing of meetings is also of fundamental importance. Companies should avoid private meetings with individuals, but instead use the already existing decision-making spaces in Indigenous communities (community assemblies, public plazas, etc.) to exchange information. Sufficient time is needed for authentic dialogue and information exchange processes, particularly when Indigenous communities follow traditional decision making processes based on consensus.

Communication between companies and Indigenous organisations also needs to include feedback loops and mechanisms for community members to express grievances, concerns or suggestions in a way that is safe and accessible. It is also important that these concerns are formally and transparently registered and followed up by the company.

Guideline 11: When working with Indigenous organisations, mining companies should endeavour to encourage and facilitate the meaningful participation of Indigenous women

While the political development of male Indigenous leaders has grown in Bolivia, there are still many barriers to women’s participation. In Indigenous communities, women traditionally take on representative roles, but they do so as wives, in partnership with their husbands. From marriage onwards, a couple can occupy posts of increasing levels of complexity and responsibility. However, in practice, decision making is dominated by men and targeted processes are necessary to ensure equal participation of women.

According to Oxfam, as endorsed by the ICMM, the direct benefits from mining tend to accrue more to men in the form of compensation payment, employment and business opportunities, creating new social issues that often leave women further marginalised and disadvantaged. This exacerbates gender inequality as the costs of social disruption and environmental change and degradation often fall predominantly on women. In extreme cases of environmental impact, women can be adversely impacted by their inability to migrate out of the mining effected area. Oxfam and ICMM have recommended a detailed gender impact analysis that determines the different roles of women and men within the Indigenous community, including the division of labour and the different rights and obligations within the household and the broader community. The analysis should include the impact on women as compared to men, including understanding power structures and the politics within women’s groups in communities, and society as a whole, so as to identify commonalities and differences around impacts and assess the potential for conflict within such groups.


98 ICMM 2010, Ibid, p.51
Guideline 12: Mining companies should work to improve state relations with Indigenous citizens.

Perceptions and understandings of citizenship can be a necessary and powerful pre-determinate to reaching shared understandings of mining company-Indigenous organisations and state relations. Indigenous people may primarily identify according to their culture, land and language group, with vague and at times conflicted notions of citizenship to their nation state. Mining companies and NGOs can facilitate a dialogue and training around citizenship rights and responsibilities, to assist Indigenous people to understand their role and rights in the nation state, and the benefits that can ensue from their active participation in it.

Whether for reasons of remoteness, discrimination or resistance, Indigenous Peoples tend to have disproportionately lower levels of identity documentation. Due largely to language barriers, they commonly have errors in their identity documents, which renders them useless. A document that verifies one’s legal identity – including name, birth date and identifying number – is fundamental for any citizen to be able to access rights, benefits, and services. In Bolivia, people without identity documents cannot obtain formal employment, own land or other property, or access credit. Unregistered Indigenous children are particularly at risk of falling victim to child trafficking and to those who exploit their vulnerability. Later in life, they will be unable to vote or stand for election, a crucial issue for ensuring Indigenous political representation. Mining companies could include programs that work on issuance of birth certificates and identity documents and correct those with errors, which have been shown to have a powerful development impact among Indigenous groups in Bolivia.

As major taxpayers, mining companies can also leverage basic government services in the municipalities in which they work. Mining companies and NGOs can identify the weaknesses of state services and work with them to address those weaknesses through knowledge sharing, support for planning, budgeting and infrastructure. They could leave mining-affected communities with improved government services and relations, which can persist beyond the mine closure.


102 UNPFII. 2009, Ibid, p.142
4 Conclusions

By drawing on perceptions from different actors across the mining sector in Bolivia, this study has revealed the considerable complexity and politicisation involved in mining-affected Indigenous contexts. A number of recent, prominent and violent conflicts between Indigenous communities and international mining companies have contributed to a very precarious and unpredictable environment. Indigenous organisations in Bolivia are well organised, easily mobilised and have a long history of conflict with state run mining companies, foreign mining companies and more recently cooperatives. Given the complexities, some mining companies seem to take the short-term view that it is easier to bypass Indigenous organisations, working instead directly with other local organisations, including mining cooperatives, businesses, particular families or preferred individuals. The study has demonstrated the negative impacts of this approach, both to the Indigenous communities involved, and ultimately to the mining operations themselves.

It is widely held in Bolivia that interventions by mining companies tend to weaken Indigenous governance, divide communities and fragment Indigenous representative structures. Whether inadvertent or intentional, these negative effects can undermine organised opposition to the company’s progress, or it can be a catalyst to protest leading to increased organised opposition to company progress. Even when acting with good policy and intentions, mining companies in Bolivia have often failed to understand the complexity of Indigenous governance and in particular to recognise the importance of horizontal relationships within Indigenous leadership structures and between different Indigenous organisations. They have also invested in development projects based on preconceived notions of effective development, which may differ from or exclude Indigenous people’s visions for their own development. Furthermore, community members and frontline staff often do not see how the significant sums that companies pay in government taxes and royalties are translated by the state into improved services for Indigenous people. There is the perception that when mining companies leave, in most cases, communities are worse off than they were before they arrived.

Bolivia appears to be locked in an unfortunate cycle of company-community engagement leading to problems and then state intervention. International precedents toward effective practice for mining with Indigenous Peoples exist within larger multinational mining companies and their peak bodies, including the International Council for Mining and Metals (ICMM). However, many of these larger mining operations tend to stay clear of Bolivia, due to its history of nationalism and uncertain risky political environment. This suggests that government has a role to stabilise the legislative environment, whereby risk and uncertainty is reduced sufficiently to allow for a higher standard of mining to operate in Bolivia. The new Mining Law appears to have set out to achieve this, but in so doing, it has signalled or threatened a loss of the rights of Indigenous Peoples. A solution is necessary which achieves both stability for mining operations, and procedural certainty for Indigenous groups and their rights.

Of all the possible unique attributes, the most challenging is the political relativities and complexities that arise through the interactions between Indigenous groups and a more dominant mainstream. The politics of mining-affected Indigenous contexts can be viewed through the interplay of three spheres of influence that are inseparably intertwined. One force is rooted in Indigenous culture, land, history and governance. The second is the state’s drive for economic development and maintaining security, and in the conditionality and accountability of government financial transfers. The third is driven by mining company needs for operational viability and the international standards to which they subscribe. No one in any of these three spheres of influence can claim the space in between as theirs. The intercultural problems faced in mining and Indigenous governance tend to be ‘wicked’ in nature; attempts to solve one aspect of a problem may reveal or create other problems. Mining operations inescapably alter the dynamic, long before they even begin operations. The system typically changes as a function of their attempts to work on it.

The challenges faced in mining-affected Indigenous contexts are not to be underestimated. As this study demonstrates, these contexts in Bolivia are highly intercultural, politicised and institutionally complex in nature. Relationships between mining companies and Indigenous communities are fraught with tension, exacerbated by asymmetry of power, poor policy and processes, and misaligned expectations. Far from coherent, local Indigenous governing structures themselves are typically fractured, competing and evolving. In Bolivia, this is exacerbated by the predominance of mining cooperatives and state-backed efforts to increase decentralisation to local government municipalities. Tensions are exacerbated by sub-optimal consultation and communication between stakeholders, environmental issues, human rights abuses, land access and use, and unmet economic expectations.

Given the complexities involved, the need for specialist development expertise is much heightened. INGOs in particular have an interstitial role to play, to build capability, to free up obstacles and join up the system encouraging greater effectiveness of relationship between community, company and other actors. INGOs can also bring best practice and professional rigour to DME (design, monitoring evaluation) frameworks, including adaptive programming approaches. Unfortunately, many INGOs shy away from working in mining companies, either because of perceived reputational risk and ideological compromise, or in the case of Bolivia, the threat of becoming embroiled in conflict and potentially expulsion.

Bolivia, like many other Latin American countries, is set to expand its extractive industry and this will mostly take place on the lands of Indigenous Peoples. As recommended by the former Special Rapporteur on the rights of Indigenous Peoples, “this increasing resource extraction and its mounting effects on Indigenous Peoples make it all the more imperative to reverse historical trends and secure Indigenous Peoples rights’. In Bolivia, there is an increasing demand and many opportunities for mining companies to undertake a more purposeful developmental approach when entering and essentially living alongside Indigenous communities. An intentional role can be taken up by mining companies to develop sustainable participatory relationships, to contribute to local sustainable development, and to complement, rather than displace or duplicate municipal government and INGO efforts. A number of proactive measures can be followed, including facilitating FPIC, community agreements, and Indigenous and municipal development planning processes. As external actors bringing considerable financial investment, foreign mining companies can be powerful agents for change. They can work strategically to improve relations between Indigenous groups and the nation state, especially through improved municipal services, transparency in governance and the role of women in development.

Given the legacy of prior mining practices, ways must be found to repair and rebuild relationships between Indigenous groups and mining industry, so they are more productively engaged in jointly advancing Indigenous governance and development. Protest and conflict do not need to be the ‘de facto’ means of communicating local development needs. Conditions can be created to ensure both successful mining operations while at the same time ensuring the respectful fulfilment of Indigenous rights and aspirations for development. It should not be assumed that Indigenous groups are anti-development or anti-mining, when they demand that development proceed on their terms, thus exercising their basic right to self-determination.

Appendix 1: Semi Structured Interview Guide

1. In general, to what extent are mining companies responsive or unresponsive to community views and needs here? Why are they this way? Examples?

2. To what extent do relations between mining companies and community organizations in Bolivia strengthen or weaken Indigenous governance? How? Why? Examples?

3. Why would mining companies have an interest in strengthening or weakening Indigenous governance? Examples

4. What type of interaction do mining companies have with communities? Who do they talk to and in what forums or ways? Why? Examples?

5. Could you tell me about [public meetings or other engagement] with the mining companies (in x location), who initiates these? Why are they held? Examples?

6. From the perspectives of the communities, how satisfied are they with the way public meetings (or other interactions with communities) are carried out, and the results. Why? Examples.

7. From the perspective of the mining companies how satisfied or unsatisfied are they with the way public meetings (or other interactions with the communities) are carried out, and the results, why or why not?

8. What about informal meetings, or private meetings with organisations or leaders, to mining companies have those? Why do they have them? Have you participated in any way? Why was it successful or not? Were you satisfied? Were they? Why?

9. A. [Mining company] How has your company worked successfully with others to fix a problem, or improve a condition in the community or elsewhere. Example. Why was it successful?

   B. [non Mining company] Has your agency/organisation worked with others (not a mining company) to fix a problem or improve a condition in the community or elsewhere. If so, how did that experience compare to the experience of dealing with mining companies?

10. What suggestions or advice do you have for mining companies or community representatives to strengthen Indigenous governance here. Any examples of what has worked well and why?