

**A GLOBAL/LOCAL APPROACH TO  
CONFLICT RESOLUTION IN THE MINING SECTOR  
THE CASE OF THE TINTAYA DIALOGUE TABLE**

Master of Arts in Law and Diplomacy Thesis

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<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. TOWARD A MODEL OF PARTICIPATORY ENGAGEMENT .....</b>	<b>4</b>
<b>INDUSTRY OVERVIEW .....</b>	<b>4</b>
<b>MINING IMPACTS.....</b>	<b>7</b>
<b>DRIVERS OF CORPORATE-COMMUNITY ENGAGEMENT .....</b>	<b>8</b>
<b>MODES OF ENGAGEMENT .....</b>	<b>12</b>
<b>OBSTACLES TO PARTICIPATORY ENGAGEMENT.....</b>	<b>15</b>
<b>THE ROLE OF TRANSNATIONAL ADVOCACY COALITIONS IN FACILITATING     ENGAGEMENT.....</b>	<b>18</b>
<b>TOWARD A MODEL OF PARTICIPATORY ENGAGEMENT.....</b>	<b>20</b>
<b>3. THE DIALOGUE TABLE &amp; BHP BILLITON IN ESPINAR, PERU. 21</b>	
<b>FORGING NATIONAL AND INTERNATIONAL PARTNERSHIPS.....</b>	<b>24</b>
<b>OXFAM CAA &amp; BHP BILLITON: AN EVOLVING RELATIONSHIP.....</b>	<b>26</b>
<b>THE DYNAMICS OF SUCCESSFUL DIALOGUE .....</b>	<b>31</b>
<b>PRINCIPLES &amp; PROTOCOL OF THE DIALOGUE TABLE.....</b>	<b>34</b>
<i>Participation.....</i>	<i>34</i>
<i>Joint Fact-Finding.....</i>	<i>36</i>
<i>Confidentiality.....</i>	<i>37</i>
<b>TRUST-BUILDING AT THE TABLE.....</b>	<b>37</b>
<b>STRATEGIC POSITIONING AWAY FROM THE TABLE .....</b>	<b>40</b>
<b>CHALLENGES TO REACHING AGREEMENT.....</b>	<b>42</b>
<i>Impatience for Tangible Results .....</i>	<i>42</i>
<i>Communication Challenges.....</i>	<i>44</i>
<i>Lack of Negotiating and Dispute Resolution Experience .....</i>	<i>45</i>
<i>Negotiations with Outside Actors .....</i>	<i>46</i>
<b>A RETURN TO BILATERAL NEGOTIATIONS .....</b>	<b>48</b>
<b>REACHING AN AGREEMENT.....</b>	<b>49</b>
<b>4. ANALYSIS &amp; CONCLUSIONS .....</b>	<b>52</b>
<b>NEGOTIATION ANALYSIS .....</b>	<b>52</b>
<b>THE DIALOGUE TABLE AS PARTICIPATORY ENGAGEMENT? .....</b>	<b>54</b>
<b>THE DRIVERS OF PARTICIPATORY ENGAGEMENT .....</b>	<b>57</b>
<i>The Role of Managerial Values .....</i>	<i>57</i>
<i>The Need for a License to Operate.....</i>	<i>58</i>
<i>Creating a Reputational Threat.....</i>	<i>59</i>
<i>Stabilizing and Legitimizing the Dialogue Table.....</i>	<i>60</i>
<i>Promoting Power Balance.....</i>	<i>61</i>
<b>CONCLUSION .....</b>	<b>62</b>
<b>5. BIBLIOGRAPHY .....</b>	<b>63</b>

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## ABSTRACT

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Mining-related conflict has become a permanent feature of the political landscape in many developing countries, where encounters between mining companies and local communities are increasingly characterized by public protest, violent conflict and the notable absence of state intervention. Despite this trend, little research has been done to understand the factors that promote successful conflict resolution between mining companies and host communities. This paper investigates an innovative approach to corporate-community conflict resolution that uses transnational advocacy coalitions to support mining-affected communities at both the micro and macro levels. It analyzes the effectiveness of this global/local strategy in the context of recent stakeholder negotiations at Peru's Tintaya copper mine, and asks whether transnational advocacy coalitions can bring about the kind of participatory engagement that promotes rights-based development. The analysis finds that these coalitions, by pressuring companies in their home countries and empowering local communities through grassroots organizing and training, can effectively facilitate negotiations that build trust between the parties, reduce power asymmetries and lead to lasting agreements.

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## 1. INTRODUCTION

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Mining-related conflict has become a permanent feature of the political landscape in many developing countries, where encounters between mining companies and local communities are increasingly characterized by public protest, violent conflict and the notable absence of state intervention. Despite this trend, little research has been done to understand the factors that promote successful conflict resolution between mining companies and host communities. One promising line of research in this area relates to the role of *transnational advocacy coalitions* in facilitating mining company-community engagement. These coalitions, by pressuring companies through global campaigns and empowering local communities through grassroots organizing and training, can create the conditions for company-community negotiations that build trust between parties, reduce power asymmetries and lead to lasting agreements. This paper analyzes the effectiveness of this global/local strategy and asks whether transnational advocacy coalitions can facilitate the kind participatory engagement that promotes rights-based development.

These questions are examined in the context of mining giant BHP Billiton's recent experience with the Tintaya copper mine in Peru. The company's negotiation with five indigenous communities constitutes an exception in an otherwise discouraging panorama of Peruvian mining conflicts – conflicts typically characterized by iterative cycles of confrontation, failed engagement and renewed community protest. Located in the highland province of Espinar, the Tintaya mine has long been a source of intense conflict between local community members and mine operators. The mine – which was owned and managed first by the Peruvian state, and later by BHP Billiton – stands on

2,300 hectares of land expropriated from local subsistence farmers. In 2000, to contest this loss of land, extensive mining-related environmental degradation and allegations of human rights abuses, a coalition of five affected communities forged an alliance with a group of domestic and international NGOs to build their case against the BHP Billiton and pursue it directly with the company's Australian headquarters. The outcome of these efforts was the inception of a unique corporate-community negotiation process known as the Tintaya Dialogue Table. In December 2004, after three years of negotiation, BHP Billiton and the five communities signed an agreement compensating families for lost land and livelihoods and establishing a local environmental monitoring team and community development fund.

In this paper, I draw on documentary evidence and multiple in-person and telephone interviews with staff members of BHP Billiton and three of the NGOs – Oxfam CAA, Oxfam America and CooperAcción – party to the Dialogue Table process. Largely missing from this analysis, however, are the voices of local community members. Although their opinions and perceptions are often represented and interpreted by NGO and company staff, an in-depth study of community perceptions is a deserving subject of future research.

The paper is structured as follows. The first section reviews the current contours of the global mining industry and analyzes the drivers and obstacles of corporate social responsibility and corporate-community engagement in the industry. It then describes a model for facilitating participatory engagement through the formation of transnational advocacy coalitions. The second section is a case study of the events leading up to and including the Tintaya Dialogue Table process. The final section assesses the advances

made by the Dialogue Table to date, and analyzes both the factors that drove participatory engagement in this case and the transnational advocacy coalition's specific contribution to this process.

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## 2. TOWARD A MODEL OF PARTICIPATORY ENGAGEMENT

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In the past two decades, metals mining has been transformed from a fragmented industry characterized by small-scale operations to one dominated by a relatively concentrated group of multinational corporations (MNCs) managing massive operations in increasingly remote areas of the developing world. The growing scale and intensity of modern mining operations have not gone unnoticed by the communities that host them. These communities – often rural, indigenous and poor – are particularly vulnerable to the environmental and social impacts unique to large-scale mining. Today, even in the absence of significant government regulation, reputational and competitive pressures are forcing mining companies to address these impacts, although efforts to do so are often thwarted by communication failures, mistrust and power inequity

This section details a model of corporate-community engagement in the mining sector that increases community participation in stakeholder negotiations and promotes rights-based development. The model points to the power of transnational advocacy coalitions in supporting mining-affected communities at both the micro and macro levels. Partnerships between Northern advocacy organizations with global influence and Southern social movements and NGOs with strong local linkages and grassroots organizing skills can create external pressures for corporate-community engagement while ensuring that local communities have the resources and skills to actively participate in such a process.

### **Industry Overview**

The metals mining industry – which for the purposes of this paper I define as including firms that extract both precious and base metals – is characterized by high risk

and capital intensiveness. As purveyors of commodities whose prices are set by the world market, mining companies compete on the basis of cost, seeking to minimize the expenses of ore extraction and processing while investing heavily in exploration to secure access to new resources at a rate that outpaces depletion of current reserves.<sup>1</sup> In addition to securing a growing share of the world's mineral reserves, mining MNCs are under increasing pressure to maintain stable rates of production at current mine sites in order to meet their contracts and investor expectations.<sup>2</sup>

The mining sector's overall production, as measured by metric tons per year, has grown dramatically in the past two decades. In the copper sector alone, annual production of refined copper grew from approximately 9 million to 13 million tons between 1980 and 1997.<sup>3</sup> During the same period, the global geography of mining has also been transformed as multinational firms have shifted the locus of extraction activities from the developed to the developing world. While most mining MNCs are still headquartered in the North, their growing web of developing country subsidiaries has changed the nature of the mining sector. Today, the majority of all new mining operations are sited in remote regions of developing countries, and frequently on indigenous land.<sup>4</sup>

The drivers of this geographic expansion are both internal and external to the mining industry. At the industry level, improvements in ore extraction and processing

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<sup>1</sup> Darryl Reed, "Resource Extraction Industries in Developing Countries," *Journal of Business Ethics* 39, no. 3 (2002): 201.

<sup>2</sup> David Humphreys, "A Business Perspective on Community Relations in Mining," *Resources Policy* 26 (2000): 128.

<sup>3</sup> International Copper Study Group, "World Copper Production and Consumption"; available from: [http://www.icsg.org/Factbook/copper\\_world/production\\_consumption.htm](http://www.icsg.org/Factbook/copper_world/production_consumption.htm)

<sup>4</sup> Gail Whiteman and Katy Mamen, *Meaningful Consultation and Participation in the Mining Sector? A Review of the Consultation and Participation of Indigenous People within the International Mining Sector*, The North-South Institute (2002): 15; available from: [http://www.nsi-ins.ca/english/pdf/lit\\_rev/lit\\_rev\\_final.pdf](http://www.nsi-ins.ca/english/pdf/lit_rev/lit_rev_final.pdf)



technologies, as well as more efficient “just-in-time” inventory management systems, have dramatically cut the costs of mineral production, rendering once uneconomic mine sites both feasible and profitable. In the copper industry, for example, the break-even cash costs of production have decreased by 40 percent since the early 1980s.<sup>5</sup>

The second major driver of expansion has been the liberalization of investment regimes and the privatization of state-owned mining industries in developing countries. Largely at the behest of IMF-imposed structural adjustment programs, scores of developing countries liberalized their foreign investment frameworks and privatized state-owned mineral monopolies in the 1990s. These reforms aimed to increase foreign direct investment, ramp up export earnings and reduce balance of payments deficits. Mining MNCs quickly responded to the incentives offered by these liberalized investment regimes, dedicating the bulk of new investment to mineral rich countries in Latin America, Africa and the Asia Pacific region.<sup>6</sup>

Finally, demand cycles for raw metals that pushed prices to notable peaks in the mid-1980s and late 1990s have given rise to a new segment of entrepreneurial mining juniors focused on exploration. These small to medium-sized firms specialize in obtaining recovery rights to unexploited mineral reserves in far-flung regions of the world, and typically sell these rights to larger, extraction-focused mining MNCs.<sup>7</sup> By serving as path blazers for their mining major cousins, these firms have increased access

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<sup>5</sup> David Humphreys, “Mining in the Knowledge-Based Economy,” Paper presented at the Annual General Meeting of the Mining Association of Canada, Halifax, Nova Scotia (June 5-6, 2001): 15; available from: <http://www.mining.ca/english/publications/humphreys.pdf>

<sup>6</sup> Whiteman and Mamen, 13.

<sup>7</sup> Amy Rosenfeld Sweeting and Andrea Clarke, *Lightening the Lode: A Guide to Responsible Large-Scale Mining*, Conservation International (2000): 9; available from : [http://www.celb.org/ImageCache/CELB/content/energy\\_2dmining/lode\\_2epdf/v1/lode.pdf](http://www.celb.org/ImageCache/CELB/content/energy_2dmining/lode_2epdf/v1/lode.pdf)

to hitherto unknown ore deposits in some of the world's most pristine and untouched areas.

### **Mining Impacts**

As the mining industry's presence has grown in the developing world, so have the number of conflicts between mining companies and host communities. These conflicts are usually a response to three impacts often associated with mining operations: 1) loss of land and livelihood, 2) environmental degradation, and 3) human rights violations. In the developing world, host communities tend to be rural and poor, and their members – subsistence farmers, fishermen or ranchers – often depend on the natural environment for their livelihoods. For many local people, the arrival of a new mining operation means losing their land – either through government expropriation or company negotiations in which they have little bargaining power – and thus their primary source of income. Mining-related pollution that damages watersheds, rivers, lakes and related wildlife also fundamentally undermines the economic security and the health of local peoples. Finally, mining operations are sometimes associated with a range of human rights abuses and social ills. Company efforts to secure valuable mining equipment and minerals through the use of government or private security forces often leads to intimidation and violence against local people. The inflow of large numbers of male laborers to the host community can also bring with it higher rates of alcoholism, prostitution and violence against women.

Mining companies have traditionally justified the impacts of their operations through a cost-benefit analysis that finds the cost inflicted on host communities outweighed by the overall financial benefit received by the host country in terms of taxes, job creation and exports. In recent years, this cost-benefit rationale has been critiqued in

light of strong evidence suggesting that a country's dependence on resource extractive industries like mining is strongly correlated with economic underperformance and slow growth.<sup>8</sup> Called the "resource curse," this poor performance has been attributed to the ongoing decline in the terms of trade for primary commodities and the cycle of exchange rate appreciation and economic stagnation linked to commodity exports known as Dutch disease.<sup>9</sup> Ross points out that the resource curse is particularly pronounced among the world's 25 most mineral-rich states, 12 of which also count themselves among the world's most highly-indebted poor countries.<sup>10</sup>

Despite the deleterious impacts of mining, local communities are frequently powerless to prevent them. Indigenous land rights are often not formally recognized or enforced by the state.<sup>11</sup> Additionally, in most developing countries ultimate ownership and control of mineral resources is vested with the state, a legacy of the civil legal tradition. The state's eminent domain over mineral rights puts communities located above or near mineral deposits at risk of land expropriation, particularly when laws requiring local approval and consultation are weak or do not exist. Local communities often lack the right to prior informed consent and are therefore helpless to stop mining exploration or extraction on their lands through legal means.<sup>12</sup>

### **Drivers of Corporate-Community Engagement**

Under the banner of corporate social responsibility (CSR) many mining MNCs have taken voluntary steps to mitigate the negative impacts of their operations and

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<sup>8</sup> See Auty, 1993; Sachs & Warner, 1995; Ross, 1999.

<sup>9</sup> Michael Ross, "The Political Economy of the Resource Curse," *World Politics*, 51 (January 1999).

<sup>10</sup> Michael Ross, *Extractive Sectors and the Poor*, Oxfam America (2001): 7; available from: [http://www.oxfamamerica.org/newsandpublications/publications/research\\_reports/art2635.html/pdfs/eireport.pdf](http://www.oxfamamerica.org/newsandpublications/publications/research_reports/art2635.html/pdfs/eireport.pdf)

<sup>11</sup> Whiteman and Mamen, 13.

<sup>12</sup> Whiteman and Mamen, 5.

improve their responsiveness to the concerns of host communities in developing countries. Although the sincerity of these efforts is questioned by many anti-mining activists, there is broad agreement in the literature that many of the largest mining MNCs have made headway in efforts to incorporate environmental and social considerations into their business models.<sup>13</sup> The language of stakeholder consultation, environmental stewardship and sustainable development has penetrated the corporate annual reports and websites of industry leaders.<sup>14</sup> Many firms have adopted voluntary standards and codes of conduct regarding environmental and social practices and spend considerable sums on local philanthropic efforts, such as building schools and hospitals and funding programs to assist farmers and small business people.

The corporate social responsibility literature offers up a rich – if somewhat hodgepodge – assortment of theoretical explanations for this sea change in mining company behavior. Broadly speaking, the drivers of increased *voluntary* corporate citizenship fall into three categories: 1) reputational pressures, 2) the need for a social license, and 3) managerial values. As we will see, these drivers are inter-related and dynamic; a company's response to reputational threats can affect its relationships with local stakeholder groups and its ability to maintain its social license. Similarly, the values of upper management may dictate the degree to which a firm is sensitive to reputational pressures.

Safeguarding corporate reputation is, unsurprisingly, a major concern of the multinational mining manager. Because both profits and investor confidence hinge on a

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<sup>13</sup> See Hilson, 2001; Jenkins, 2004; Peck & Sinding, 2003.

<sup>14</sup> Gavin Hilson, "Putting Theory into Practice: How Has the Gold Mining Industry Interpreted the Concept of Sustainable Development?" *Journal of Mineral Resources Engineering* 10, no. 4 (2001).

firm's ability to secure access to a continuous stream of new mineral deposits, a corporate reputation besmirched by allegations of environmental and human rights abuses can profoundly influence the decisions of shareholders, financiers and insurers.

Attempts by activist groups and socially responsible investors to affect corporate policy through shareholder activism have a growing profile in the mining sector.

Shareholder resolutions to improve environmental and social practices have been issued at the annual general meetings of several large mining MNCs, including Newmont, Rio Tinto and Placer Dome. While these resolutions rarely pass, they frequently catch the notice of financial analysts – who are quickly alerted to potential “hot spots” of conflict (and poor earnings) in the company's portfolio – and the media, which often pick up the story and run with it.<sup>15</sup>

Reports of egregious environmental impact and human rights violations can also motivate political risk insurance providers like OPIC or MIGA and multilateral financiers like the IFC to either refuse or withdraw funds and guarantees. In 1995, OPIC declined to provide political risk insurance to Lihir Gold, a Papua New Guinea company partly owned by Rio Tinto, because of concerns about the company's plans for disposing of cyanide-contaminated waste water.<sup>16</sup> A similar fate befell Freeport McMoran's Indonesian subsidiary, a firm whose unsavory human rights and environmental record was widely publicized by activist groups throughout the late 1990s.<sup>17</sup>

Reputational pressures also have an important impact on the second driver of social responsibility in the mining industry: the need for a “social license.” This term is

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<sup>15</sup> Anastasia O'Rourke, “The New Politics of Engagement: Shareholder Activism for Corporate Responsibility,” *Business Strategy and the Environment* 12 (2003): 236.

<sup>16</sup> Maryanne Grieg-Gran, “Financial Institutions and the Greening of FDI in the Mining Sector,” OECD (2002); available from: <http://www.oecd.org/dataoecd/46/18/1819773.pdf>

<sup>17</sup> Al Gedicks, *Resource Rebels*, (Cambridge, MA: South End Press, 2001).

frequently used in the mining industry and refers to both the legal permissions needed from host governments and the “goodwill granted by communities based on perceptions of good citizenship.”<sup>18</sup> Thanks to the growth of the Internet and global activist networks, local NGOs and potential host communities – as well as national and local governments – are increasingly well-informed about the past misdeeds of mining MNCs. As a result, firms with cleaner reputations face less popular opposition to new projects and are better positioned to obtain the social license they seek. Lacking or losing such a license can have tremendous consequences for a firm’s financial performance. In 2003, opposition from local residents over an environmentally questionable proposal by the Canadian miner Meridian Gold to develop a gold deposit in Argentina led to protests and a community referendum against the mine. As a result of losing the project, the company saw its stock value and total market capitalization take a dive of nearly 50 percent in the first quarter of 2003.<sup>19</sup> In the end, the company lost over \$350 million in market capitalization and was forced to delay plans for developing the mine indefinitely.<sup>20</sup> In December 2004, protests and litigation against Newmont Gold in Peru and Indonesia by residents concerned about the company’s environmental impacts led to a seven percent plunge in the company’s share price in the midst of a bull market.<sup>21</sup>

The personal values of corporate managers also play an important role in shaping the CSR commitments of individual firms. While some theorists have argued that managers leave personal values at the door when making corporate decisions and act in a

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<sup>18</sup> Rory Sullivan and Peter Frankental, “Corporate Citizenship and the Mining Industry: Defining and Implementing Human Rights Norms,” *Journal of Corporate Citizenship*, 7 (2002).

<sup>19</sup> “Priced for Perfection,” *Gold Stock Analyst*, no. 107, April 2003; available from <http://www.goldstockanalyst.com/sample/Apr03.pdf>

<sup>20</sup> “Meridian Gushes Mea Culpas,” *Mineweb*, September 23, 2003; available from: <http://www.mineweb.net/events/conferences/2003/dgf/71317.htm>

<sup>21</sup> Michael Riley and Greg Griffin, “The High Price of Gold,” *The Denver Post*, December 13, 2004.

generally self-interested manner,<sup>22</sup> others make the case that individual values are a key variable in understanding a firm's overall approach to strategic decision-making. Spar and LaMure<sup>23</sup> argue that corporate reactions to NGO activism and other reputational threats cannot be understood solely on the basis of profit-maximization or cost-benefit calculations. Instead, many recent cases have shown that the values, worldviews and personal experience of top corporate leaders often color their decision-making on CSR issues.

Finally, it must be noted that these three drivers rarely operate in a parallel fashion at the level of both subsidiaries and parent companies. For example, the management of an operating subsidiary may be less sensitive to the reputational pressures faced by the parent corporation in its efforts to establish new ventures in other parts of the world. As a result, site-specific operating practices detrimental to the environment but viewed by local managers as contributing to the bottom line may be seen as a significant reputational liability at headquarters. Similarly, racial or class prejudices that may inform the interactions of local managers with host communities are likely to be deemed unacceptable by corporate managers more sensitized to international human rights norms and the expectations of Northern consumers and shareholders.

### **Modes of Engagement**

The drivers of corporate social responsibility described above are reshaping the ways that mining MNCs define their relationship with and responsibility to local communities. Traditional notions of community relations that emphasized restricting

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<sup>22</sup> Richard Dawkins, *The Selfish Gene*, (New York: Oxford University Press, 1976).

<sup>23</sup> Debora Spar and Lane LaMure, "The Power of Activism: Assessing the Impact of NGOs on Global Business," *California Management Review* 45, no. 3 (Spring 2003).

consultation to private meetings with “official” political leaders and stonewalling complaints of pollution and abuse appear to be yielding to more open approaches emphasizing stakeholder engagement. In a 2001 survey by PriceWaterhouseCooper on the “sustainability practices” of 32 leading mining companies, 47 percent reported that they formally “consult” with local communities.<sup>24</sup> Accounts of stakeholder engagement now pepper the annual sustainability reports of some of the largest mining MNCs including Newmont, BHP Billiton, Rio Tinto and Barrick Gold.

A review of the literature on stakeholder engagement reveals it to be a somewhat nebulous concept. Activities following under the “engagement” umbrella include interactions with local communities that range from consultation and dialogue to negotiation and joint decision-making. Stakeholder engagement has alternatively been defined as “a stance of mutual responsibility, information-sharing, open and respectful dialogue, and an ongoing commitment to joint problem solving”<sup>25</sup> and as a “[process] which aim[s] to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision-making) on a particular issue”<sup>26</sup> These definitions emphasize the voluntary nature of the interaction, with the implication that final decision-making power usually rests with the convener of the process (the company), rather than the stakeholders.

The fuzziness of the concept has led many NGO critics to dismiss stakeholder engagement as a form of tokenistic consultation inadequate to address the grievances and

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<sup>24</sup> PriceWaterhouseCoopers, “Mining & Minerals Sustainability Survey 2001,” 2001: 30; available from: [http://www.iiied.org/mmsd/mmsd\\_pdfs/baccp\\_mining\\_minerals\\_sustainability\\_survey\\_2001.pdf](http://www.iiied.org/mmsd/mmsd_pdfs/baccp_mining_minerals_sustainability_survey_2001.pdf)

<sup>25</sup> Anne Lawrence, “The Drivers of Stakeholder Engagement: Reflections on the Case of Royal Dutch/Shell,” *Journal of Corporate Citizenship* 6 (Summer 2002): 2

<sup>26</sup> Minu Hemmati, *Multistakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict* (London: Earthscan, 2002): 2.



guarantee the rights of local communities.<sup>27</sup> Many argue that true participation by local people is necessary to ensure that sustainable and just outcomes result from company-community interactions. Some attempts have been made to formulate a more nuanced understanding of the role of participation in stakeholder engagement. A model developed by Stewart Carter defines participation in a range of community-mining company interactions as a function of six factors.<sup>28</sup> These factors are 1) the *representativeness* of those community members that are involved (i.e. the degree to which participants represent community interests over private interests), 2) the *quantity* of activities community members engage in, 3) the *frequency* with which they participate in specific activities, 4) the *scope* of these activities in terms of their linkages with other stakeholder groups (both local, national and international), 5) the level of *control* that community members have in influencing an activity, and 6) the *quality* of the participation itself.<sup>29</sup>

The quality of participation is in turn a function of the technical and “psychological” understanding or empowerment enjoyed by community members.<sup>30</sup> Stewart Carter defines technical knowledge as specialist knowledge that requires professional training in fields as specific as engineering to those as general as public speaking and management. Possessing such knowledge facilitates participation and enables community members to expand the scope of their activities and create alliances with other groups. Psychological understanding, in contrast, is characterized “by such ambiguous qualities as increased confidence, clear thinking, [and] integrity in

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<sup>27</sup> Whiteman and Mamen, 38.

<sup>28</sup> Assheton Stewart Carter, “Community Participation as an Indicator of Social Performance at International Mining Projects,” MERN Working Paper #131, (Coventry, England: Warwick Business School, 1998): 14.

<sup>29</sup> Ibid, 15.

<sup>30</sup> Ibid.

relationships.”<sup>31</sup> Together, these two forms of knowledge build off each other and evolve in a self-reinforcing pattern that Stewart Carter calls the “learning cycle.”

### **Obstacles to Participatory Engagement**

Stewart Carter’s model of community participation is intended to serve as a basis for measuring participation at mine sites, but does little to elucidate the factors which shift the locus of control and decision-making from mining companies to local communities in the absence of state intervention. To some degree, this movement can be explained by the drivers of responsible corporate behavior previously described: reputational pressures, the need for a social license and the personal values of key decision makers. However, there is ample empirical evidence to show that these drivers are often weak or missing, and therefore fail to ensure participatory engagement.<sup>32</sup>

In some cases, mining MNCs may prove insensitive to reputational threats. A company’s sensitivity to reputational pressures can be understood as a function of the power of outside groups to inflict financial harm by generating negative publicity about the company’s activities. Spar argues that companies with highly visible consumer brands are particularly vulnerable to what she terms the “spotlight phenomenon.”<sup>33</sup> In contrast, extractive industries like mining, timber and gas are less sensitive to such threats, in large part because their products are anonymous commodities sold to the end consumer by other companies further down the value chain. Additionally, mining firms often find their interests closely aligned with those of governments, which generally own or have control

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<sup>31</sup> Ibid, 16.

<sup>32</sup> See Oxfam America & Earthworks, 2004, for a review of current mining conflicts around the world.

<sup>33</sup> Debora Spar, “The Spotlight and the Bottom Line: How Multinationals Export Human Rights,” *Foreign Affairs* 77 (March/April 1998).

over the desired resource.<sup>34</sup> The state inevitably has an interest in profiting from the mine through export taxes and royalties, and as consequence, is less likely to be swayed by the petitions of international activists and local people.

Similarly, competitive pressures to maintain production levels and prevent work stoppages can be addressed by more expedient means than good community relations. On-site security forces are a tool commonly employed to ensure that unhappy neighbors do not block roads or interrupt production. Similarly, efforts to buy off and split communities through tokenistic and politically-targeted donations can also serve as a tool to avoid meaningful engagement.

Even when corporate will exists to improve community relations and reduce negative impacts, mining MNCs often face a number of structural obstacles to engaging with local communities. A survey of Canadian multinational firms regarding their experiences with community engagement in developing countries highlights some of the most common stumbling blocks to participatory engagement, many of which have particular relevance to the mining sector.<sup>35</sup>

**COMMON OBSTACLES TO COMMUNITY ENGAGEMENT AS REPORTED  
BY CANADIAN MULTINATIONALS**

- A lack of organization among local people and therefore, a diminished ability to negotiate
- Language, communication and cultural barriers
- Power differentials within and among stakeholder groups
- Difficulties sorting out hidden agendas and special interest groups
- Potential for abuse of process & “hijacking” of negotiations
- Insufficient time frames for consultation
- Insufficient access to support resources

*Source: “Engaging Stakeholders and Biz-NGO Partnerships in Developing Countries,” David Greenall & Darin Rovere, p 6-7.*

<sup>34</sup> Ibid, 60.

<sup>35</sup> David Greenall and Darin Rovere, “Engaging Stakeholders & Business-NGO Partnerships in Developing Countries,” The Centre for Innovation in Corporate Responsibility (1999): 6-7; available from: <http://www.triplebottomline.com/files/StakeholderEngagement.pdf>

The findings of the report provide important insights into both the practical problems and cultural complexities that MNC managers face when interacting with host communities. Managers report that language and cultural barriers make information-sharing and negotiation difficult, impeding a full exchange with community members over the company's project, proposals and intentions. Communities' negotiating abilities were frequently seen to suffer from a lack of organization and an inability to speak with a "common voice." The survey's respondents also pointed out the difficulties they faced in sorting out the interests and hidden agendas of different factions within communities. Such problems were further compounded by the potential for certain groups within a community to hijack negotiations by making unrealistic demands that derailed the process. Finally, managers also pointed out that the timeframes and resources established for consultation were frequently unrealistic and inadequate.

These obstacles to participatory engagement are clearly not one-sided, and the onus of identifying and neutralizing special interest groups and hidden agendas also lies with the community itself. From the perspective of the community, however, one of the biggest challenges to active engagement is the power differential that exists between themselves and the company. This power differential is derived from an inequitable distribution of resources, skills and experience between the two parties and often translates into a weak negotiating position for communities, helping to make protest a more appealing option than engagement. A lack of trust towards the company and its motives is another key source of friction.<sup>36</sup> Trust-building is a slow, difficult process that requires individuals with radically different world views to work cooperatively, maintain

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<sup>36</sup> Whiteman and Mamen, 75.

open and continuous communication and meet their respective commitments. Such a process is easily threatened when power asymmetries exist and when parties face clear incentives to cheat or renege on agreements.

### **The Role of Transnational Advocacy Coalitions in Facilitating Engagement**

Transnational coalitions of NGOs working at both the global and local levels are an important tool for addressing the obstacles to participatory engagement outlined above. By working in partnership, Northern advocacy organizations with global influence and Southern civil society actors skilled at grassroots organizing and skill-building can create external pressures for mining company-community engagement while providing local communities with the resources and know-how to actively participate in such a process.

According to Keck and Sikkink, coalitions of this type tend to emerge when the channels between civil society and government are blocked in developing countries.<sup>37</sup> Domestic groups that are seeking improvement in the social and environmental arena find that traditional means of pressing for change are impeded by governments that are neither responsive to protest nor susceptible to lobbying or persuasion. As a result, local NGOs use “boomerang” strategies by seeking out foreign partners with the clout and the resources to influence their government from without. This global/local advocacy strategy has applications that go beyond the realms of human rights and environment, two issue areas where North-South advocacy coalitions are most commonly found. In fact, the boomerang strategy is well-suited to advocacy groups seeking to change the practices of MNCs operating in developing countries in the absence of effective state regulation. In this scenario, transnational advocacy coalitions use campaigns and other techniques to

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<sup>37</sup> Margaret Keck and Kathryn Sikkink, *Activist Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998): 12.

impose financial costs on the company in its home country, with the hope that the company will respond by improving the operating practices of its developing country subsidiaries.

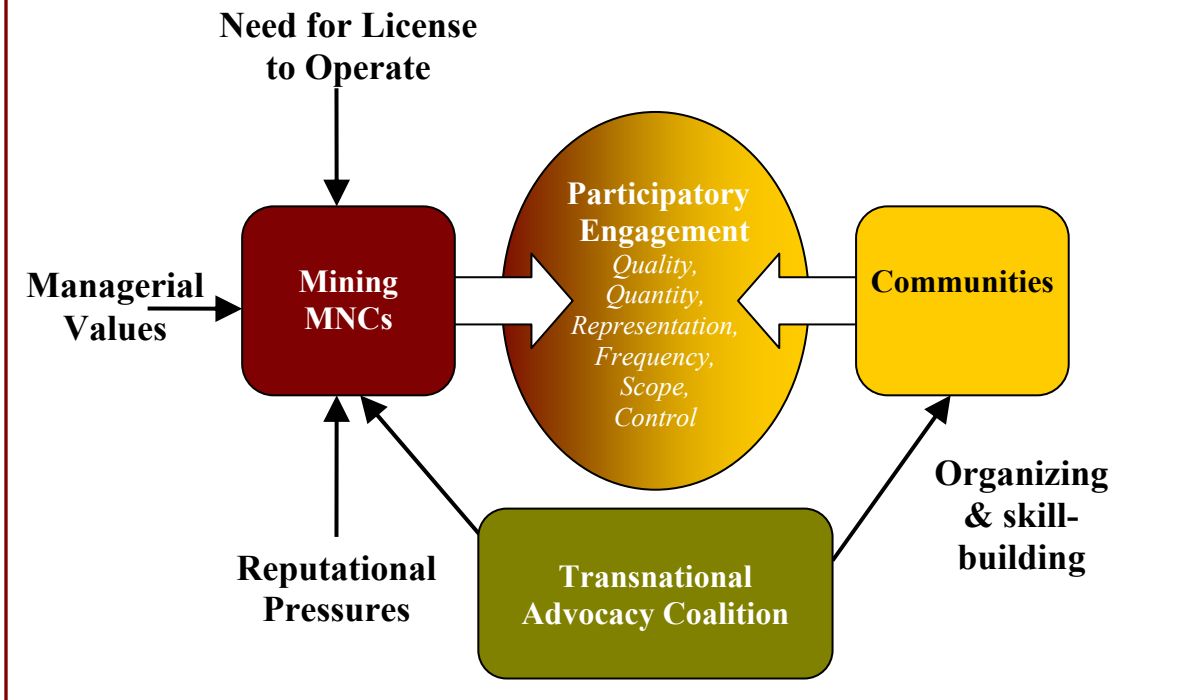
Northern members of such transnational coalitions are often well-positioned to pressure firms to come to the negotiating table and respond to community demands. By threatening corporate brands and share value through boycotts, media campaigns and shareholder resolutions, these groups can help foment the reputational pressures that drive MNCs to more responsible business practices.<sup>38</sup> The moral outrage that their campaigns provoke among the Northern public is particularly significant, because this public usually consists of the company's main shareholders. In cases when the Northern advocacy NGO and the multinational company hail from the same country, the NGO's power to shame the company is that much greater.

While Northern NGOs bring pressure for change from without, Southern civil society actors provide essential grassroots support and training to local communities. As players with a sustained presence at the local level, Southern NGOs are well positioned to serve both as monitors and organizers of corporate-community engagement, ensuring that such processes are transparent and participatory and that community members have the information and capacity to negotiate agreements that meet their interests.

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<sup>38</sup> David Murphey and Jem Bendell, "Getting Engaged: Business-NGO Relations on Sustainable Development" in *The Earthscan Reader on Business and Sustainable Development*, eds. Richard Welford and Richard Starkey (London: Earthscan, 2000).

## A MODEL OF PARTICIPATORY COMPANY-COMMUNITY ENGAGEMENT



### Toward a Model of Participatory Engagement

The case study that is the focus of this paper – a recent negotiation and dialogue process between BHP Billiton and five indigenous communities in Espinar, Peru – provides a fascinating example of the power of transnational advocacy coalitions to promote mining company-community engagement in a way that is consistent with the principles of rights-based development. It also exemplifies a model of participatory engagement that – while still largely unknown in countries plagued by mining-related conflict – is sorely needed. Perhaps more importantly, the case reveals a series of practical lessons about the unique challenges, pitfalls and opportunities that companies, NGOs and communities face when engaged in such a process.

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### 3. THE DIALOGUE TABLE & BHP BILLITON IN ESPINAR, PERU

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*“Here are people that lost their land because it was expropriated by the government and we are continuing to make a profit while they are living in unacceptable conditions...If that happens, they’re subsidizing us. Why should Peruvian mountain people at the lowest rung of the economic ladder subsidize BHP Billiton?”*

Paul Warner, Manager of Community Relations and Institutional Affairs, BHP Billiton<sup>39</sup>

Located near Cusco in Peru’s southern province of Espinar, the Tintaya copper mine has long been a source of intense friction between local Quechua-speaking community members and mine operators. Established in 1985 as a state-owned enterprise, the mine originally stood on 2,368 hectares of land expropriated from the communal holdings of Tintaya Marquiri, an indigenous farming community.<sup>40</sup> In return for the land, the Peruvian government offered farmers 10 *soles* per hectare (about \$3 for 2.45 acres) and the promise of mining jobs.<sup>41</sup> These jobs proved largely illusory, and the widespread loss of land soon plunged many local families into poverty.<sup>42</sup>

In 1994, as part of Peru’s structural adjustment program, the mine was privatized and sold to U.S.-based Magma Copper for \$215.7 million.<sup>43</sup> In 1996, Australia-based BHP Billiton (at the time, Broken Hill Proprietary or BHP) acquired Magma Copper and with it a 99 percent interest in the Tintaya copper mine. BHP Billiton subsequently expanded the mine, obtaining additional land throughout the late 1990s from Tintaya Marquiri and four adjacent communities – Alto Huancané, Bajo Huancané, Huano Huano

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<sup>39</sup> Interview with Paul Warner, January 14, 2005.

<sup>40</sup> Juan Aste, José de Echave and Manuel Glave, “Procesos Multi-Actores para la Cogestión de Impactos Mineros en Perú: Informe Final,” (Lima, Peru: La Iniciativa de Investigación Sobre Políticas Mineras, August 2003): 63; available from: [http://www.iipm-mpri.org/biblioteca/docs/procesos\\_multiactores\\_informe\\_final.pdf](http://www.iipm-mpri.org/biblioteca/docs/procesos_multiactores_informe_final.pdf)

<sup>41</sup> Oxfam America, “Tintaya Copper Mine”; available from: [http://www.oxfamamerica.org/whatwedo/where\\_we\\_work/south\\_america/news\\_publications/tintaya/art6242.html](http://www.oxfamamerica.org/whatwedo/where_we_work/south_america/news_publications/tintaya/art6242.html)

<sup>42</sup> Ibid.

<sup>43</sup> Aste et al, 62.



and Alto Huarca.—to increase the mine’s capacity and build a copper oxide plant and a new tailings dam.<sup>44</sup> As a result of these sales, Tintaya Marquiri – the community most intensely affected by the mine – came to control only 1 percent of its original communal land holdings.<sup>45</sup>

Community members contended that these land purchases had been conducted in ways that were both unethical and illegal.<sup>46</sup> In some cases, company representatives had negotiated with and purchased land from community agents who lacked the authority to sell communal land. In other cases, the company was accused of misrepresenting its power to expropriate the land in an attempt to weaken the bargaining power of property owners. Many local residents whose land had been purchased claimed that at the time of the sale they did not have full knowledge of their legal rights nor of the true value of their land.

In the early 1990s, community members also began experiencing the mine’s environmental impacts. Residents living near the company’s operations reported that waste water from the company’s processing plant had leaked into the local rivers and springs, contaminating pasture lands and rendering the water unfit for human and animal consumption.<sup>47</sup> Complaints of forced evictions, abuse by mine staff and rape of local women also grew. By the late 1990s, these negative impacts – and the growing perception that the mine was providing little local benefit in terms of jobs or economic development – led several communities to stage a series of small protests.

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<sup>44</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2003*, 32; available from: <http://www.oxfam.org.au/campaigns/mining/ombudsman/2003/2003annualreport.pdf>

<sup>45</sup> Aste et al, 63.

<sup>46</sup> José de Echave, Karyn Keenan, María Kathia Romero and Ángela Tapia, *Los Procesos de Diálogo y la Administración de Conflictos en Territorios de Comunidades: El Caso de la Mina de Tintaya en el Perú*, (Lima, Peru: CooperAcción, 2005): 9.

<sup>47</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2001*; available from: <http://www.oxfam.org.au/campaigns/mining/ombudsman/2001/tintaya.html>

### MINING, REGULATION & LAND RIGHTS IN PERU

In the early 1990s, the Peruvian government led by President Alberto Fujimori undertook a series of reforms aimed at reducing the country's debt, increasing foreign investment and stabilizing its foreign exchange reserves. With the assistance of the World Bank, the country liberalized its foreign investment code and privatized the majority of state-owned enterprises. In the course of these reforms, the mining sector was radically restructured and a variety of laws were passed to promote foreign investment in mining through more favorable taxation, repatriation and foreign exchange policies.

The reforms had their intended effect. Foreign investment in Peru's mineral sector soon soared, with mineral exports more than doubling from \$1.5 billion to \$3.2 billion between 1990 and 2000.<sup>1</sup> By 1999, mining rights had been assigned to 12 percent of the country's territory.<sup>2</sup> Today, 39 percent of mining activity in Peru is conducted on indigenous land<sup>3</sup> and 3,200 of Peru's 5,660 indigenous communities are affected by mining operations.<sup>4</sup>

#### *Indigenous Land Rights*

Peru's 1979 Constitution strictly limited the sale of indigenous land to third parties, although state expropriation of land was permitted. In an effort to promote privatization of communal property, Peru's 1995 Land Law eliminated the state's right to expropriation and established a land transfer process called "easement" (*servidumbre*).<sup>5</sup> Under the new law, companies can appeal to the Ministry of Energy and Mines for an easement which, if granted, permits access to a landowner's property for the right of mineral extraction. Because landowners in Peru do not have sub-soil rights, the use of an easement is not considered expropriation, although it is tantamount to it. Landowners can lose access to their land for indefinite periods of time and the land itself is often destroyed through the mining process. The existence of the easement option has dramatically decreased the negotiating power of individuals living on mineral reserves, who now stand to lose their land without compensation if they refuse to sell to mining companies.

#### *Mineral Revenues & Local Communities*

Current efforts to redistribute federal government revenues from the mining sector take the form of a fund known as the Mineral Canon (*Canon Minero*). The Canon redistributes a portion of the federal government's annual income from mining sector taxation to regional, provincial and local governments for use in local development projects according to the amount of mining income generated in those areas. According to Ciudadanos al Día, a Peruvian public interest group, the Canon, since its establishment in 1993, has been a source of considerable controversy in Peru with federal and local governments frequently sparring over just how much mining revenue should be transferred to local governments.<sup>6</sup> This ongoing conflict is reflected in at least five changes in legislation related to the Canon over the past four years.<sup>7</sup> At the local level, the Canon is widely criticized for being inefficient, poorly supervised and slow in making payments. Perhaps most significant, many see the Canon – which distributes only 10 percent of its total resources to district governments – as inadequately addressing the needs of those communities most intensely affected by mining activities.

<sup>1</sup> Christian Aid, *Unearthing the Truth: Mining in Peru*, 2005, 8; available from [http://www.christian-aid.org.uk/indepth/502peru/peru\\_report.pdf](http://www.christian-aid.org.uk/indepth/502peru/peru_report.pdf)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 9.

<sup>4</sup> Oxfam America, "Tintaya Copper Mine"; available from [http://www.oxfamamerica.org/whatwedo/where\\_we\\_work/south\\_america/news\\_publications/tintaya/art6264.html](http://www.oxfamamerica.org/whatwedo/where_we_work/south_america/news_publications/tintaya/art6264.html)

<sup>5</sup> Christian Aid, 7.

<sup>6</sup> Ciudadanos al Día, *El Canon Minero en el Perú: Transparencia Fiscal*, July 2004, 2; available from [http://www.ciudadanosaldia.org/documents/informes/InformeCAD\\_31\\_Canon\\_Minero\\_16Julio04\\_13hrs.pdf](http://www.ciudadanosaldia.org/documents/informes/InformeCAD_31_Canon_Minero_16Julio04_13hrs.pdf)

<sup>7</sup> Ibid.

## Forging National and International Partnerships

In 1999, unsatisfied with the company's response to their protests and complaints, five Espinar communities allied themselves with the National Coordinating Body for Communities Affected by Mining in Peru (CONACAMI). A membership organization composed of 1,000 delegates from 13 mining-affected regions, CONACAMI was Peru's largest and most vociferous anti-mining social movement.<sup>48</sup> In 2000, CONACAMI's regional coordinating group for the Cusco area (CORECAMI-Cusco) began conducting advocacy training for Espinar community leaders. To strengthen the communities' case against BHP Billiton, CORECAMI enlisted the support of CooperAcción, a Lima-based NGO dedicated to helping local communities gain the information, skills and organization necessary to defend their rights.<sup>49</sup> CooperAcción systematically documented the communities' grievances by conducting a study of the land sale process, collecting quality of life indicators, and commissioning an assessment of the mine's environmental impacts.<sup>50</sup> Both CooperAcción's and CONACAMI's efforts in Espinar were funded by Oxfam America, a US-based NGO and a member of Oxfam International, a confederation of 12 NGOs working to create "lasting solutions to poverty, suffering and injustice."<sup>51</sup>

In November 2000, at Oxfam America's suggestion and armed with data that supported the communities' long-standing complaints regarding land expropriation and environmental degradation, the Peruvian NGOs sent a report to Oxfam Community Aid

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<sup>48</sup> CONACAMI website; available from: <http://www.conacami.org/quienessomos.htm>

<sup>49</sup> Karyn Keenan, José de Echave and Ken Traynor, *Mining and Communities: Poverty Amidst Wealth*, Paper presented at the International Conference on Natural Assets, January 8-11, 2003, Tagaytay City, Philippines, 8; available from: <http://www.umass.edu/peri/pdfs/CDP3.pdf>

<sup>50</sup> Ibid.

<sup>51</sup> Oxfam International website; available from: <http://www.oxfam.org/eng/about.htm>

Abroad (Oxfam CAA), Oxfam International's Australian member.<sup>52</sup> CONACAMI and CooperAcción hoped that Oxfam CAA's Mining Ombudsman – a recently established body that received and investigated complaints of abuses by Australian mining companies abroad – would publicly pressure BHP Billiton's Melbourne headquarters to address the actions taken by its Peruvian subsidiary.

The report outlined the communities' grievances with BHP Billiton. These included complaints related to 1) the company's land purchase and expropriation policies, 2) the direct environmental impacts of the mine's activities on local water sources, soil and livestock, and 3) human rights violations alleged to have been committed by mine staff, including rape of local women, forced evictions and harassment of mine laborers.<sup>53</sup> To address these grievances, the communities stipulated that the company comply with a list of demands that ranged from a revision of previous land negotiations to the dismissal of "corrupt" employees.<sup>54</sup>

**ESPINAR COMMUNITY DEMANDS PRESENTED TO THE MINING OMBUDSMAN  
NOVEMBER 2000**

1. A review of the negotiations regarding land affected by mining in the Marquiri community.
2. Direct negotiations between pasture users and the company.
3. Compensation in the form of sowing improved pasture land.
4. Dismissal of corrupt employees or staff in BHP Tintaya.
5. Re-location to the Pampas de Majes or elsewhere for those affected by land degradation.
6. Training provided to young people by the company, plus offers of employment.
7. Discontinuation of the pressure put on people for cheap labor in negotiations between the company and the community.
8. Provision of potable water for animal consumption and irrigation, and to each house for human consumption.
9. Compliance by the company with Peruvian environmental laws.
10. Installation of a water treatment plant and a health system.
11. The financing of sustainable projects by BHP Tintaya.

*Source: Oxfam Community Aid Abroad's Mining Ombudsman Annual Report 2001.*

<sup>52</sup> Oxfam Community Aid Abroad, 2003, 32.

<sup>53</sup> Oxfam Community Aid Abroad, 2001; available from:  
<http://www.oxfam.org.au/campaigns/mining/ombudsman/2001/tintaya.html>

<sup>54</sup> Ibid.

The Mining Ombudsman responded to the communities' request by writing a letter to BHP Billiton officials in Australia that outlined the Espinar communities' grievances and demanded a rapid response. BHP Billiton's reply came in the form of a letter that denied and contradicted many of the communities' claims.<sup>55</sup> Oxfam CAA subsequently published an account of the communities' allegations in the Mining Ombudsman's annual report, a publication that receives considerable attention from both the Australian mining industry and press.

In December 2001, the Mining Ombudsman, Ingrid Macdonald, undertook a field investigation in Peru in which she interviewed a range of involved parties including local NGO staff, provincial officials and over 100 community members.<sup>56</sup> At the end of the visit, she convoked a meeting in Lima of all the parties, including BHP Billiton headquarters and local staff. The outcome of this meeting was the creation of an ongoing stakeholder dialogue and negotiation process known as the "*Mesa de Diálogo*," or the Dialogue Table.

### **Oxfam CAA & BHP Billiton: An Evolving Relationship**

In March 2001, Australia-based BHP and U.K.-based Billiton merged to become the world's second-largest mining conglomerate.<sup>57</sup> Today, the combined company boasts annual revenues of \$24 billion, 100 operations in 20 countries and a checkered social and environmental record. BHP in particular has found itself at the center of several activist-led campaigns, most notably Oxfam CAA's 1995 Ok Tedi campaign. The campaign focused on evidence that BHP had dumped thousands of tons of toxic mining waste from

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<sup>55</sup> Oxfam Community Aid Abroad, 2001.

<sup>56</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2002*, 21; available from: <http://www.oxfam.org.au/campaigns/mining/ombudsman/2002/miningombudsmanreport01-02.pdf>

<sup>57</sup> Becky Gaylord and Suzanne Kapner, "Australians Hail Merger of 2 Miners," *The New York Times*, March 20, 2001, Section W, Business/Financial Desk, 1.

its Papua New Guinea mine into the local Ok Tedi river, rendering it “biologically dead” and devastating the livelihoods of local people.<sup>58</sup> Oxfam CAA’s efforts to shame the company – which were highly confrontational and well-publicized – culminated in Oxfam CAA staff dumping dead fish from the Ok Tedi river on the steps of BHP’s Melbourne headquarters.<sup>59</sup> The case soon became the “cause celebre”<sup>60</sup> of the international activist community, and by 2000 the World Bank was calling for the mine’s closure.<sup>61</sup> In light of the Ok Tedi mine’s ever-mounting social and environmental liabilities, BHP withdrew its ownership in 2002, writing off the investment and transferring its 52 percent equity stake to a local development trust.<sup>62</sup>

While Oxfam CAA continued to monitor BHP Billiton’s activities overseas, the organization’s approach to engagement with the company was evolving. In 2002, Oxfam CAA launched its Corporate Community Leadership Program in Orissa, India – a “reality tour” designed to expose and sensitize BHP Billiton and other multinational mining managers to the social impacts of large-scale infrastructure and mining projects. The goal of the program was to “[make] human development central to the agendas of companies with operations in the developing world” and to “improve [BHP Billiton’s] capacity to work with communities in a way that enhances the rights and livelihoods of communities

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<sup>58</sup> Aviva Imhof, “The Big, Ugly Australian Goes to Ok Tedi,” *Multinational Monitor*, 17, no. 3 (March 1996); available from: <http://multinationalmonitor.org/hyper/mm0396.05.html>

<sup>59</sup> Ruth Phillips, “Stakeholders on the Periphery of Citizenship in NGO/Corporate Engagement,” Paper presented at the Australian Social Policy Conference, July 9-11, 2003, 17; available from: <http://www.sprc.unsw.edu.au/ASPC2003/papers/Paper113.pdf>

<sup>60</sup> United Nations Development Programme, United Nations Environment Programme, World Bank, and World Resources Institute, *World Resources 2002-04: Decisions for the Earth: Balance, Voice and Power* (Washington, D.C: World Resources Institute, 2003); available from: [http://pubs.wri.org/pubs\\_pdf.cfm?PubID=3764189](http://pubs.wri.org/pubs_pdf.cfm?PubID=3764189)

<sup>61</sup> *Ibid.*, 195.

<sup>62</sup> *Ibid.*, 189.

affected by its operations.”<sup>63</sup> BHP Billiton managers were among the program’s first cadre of students and discussions between Oxfam CAA and BHP Billiton were already underway when the Mining Ombudsman was first contacted by the Espinar communities.

Despite this emerging partnership, BHP Billiton’s response to the Mining Ombudsman’s communication about the Tintaya case contradicted the personal testimonies of many community members and disputed the scientific basis of their claims.<sup>64</sup> In a subsequent meeting between Oxfam CAA and BHP Billiton staff at the company’s Melbourne headquarters, the company re-iterated its belief that the Espinar communities’ claims of environmental damage and improper land sales were unfounded.

No subsequent action was taken by headquarters to address the problems in Tintaya until December 2001, when it was learned that Macdonald was going to be on the ground in Peru, interviewing community members and meeting with local NGOs and government officials. The company then sprang to action, contacting Macdonald and requesting a meeting. Macdonald agreed to a meeting in Lima on December 10, which was attended by BHP Billiton Tintaya’s general manager, deputy general manager and BHP Billiton’s regional community relations representative, as well as municipal government officials and representatives of CONACAMI, CORECAMI-Cusco, CooperAcción and Oxfam America. At the meeting, Macdonald reported on the findings of her field investigation and proposed

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<sup>63</sup> Oxfam Community Aid Abroad, *Oxfam Community Aid Abroad 2002 Annual Report*, 2003: 6; available from: [http://www.oxfam.org.au/about/annual\\_report/annualreport2002.pdf](http://www.oxfam.org.au/about/annual_report/annualreport2002.pdf)

<sup>64</sup> Oxfam Community Aid Abroad, 2001.

establishing a dialogue process to address the communities' long-standing grievances.<sup>65</sup>

#### **BHP BILLITON'S RESPONSE TO THE OMBUDSMAN'S LETTER**

BHP Billiton's June 1, 2001 reply to the Mining Ombudsman's letter contested many of the Espinar communities' allegations. With regards to the company's land purchase & eviction policies, the letter stated that:

"Since the mine's privatisation in 1995, all land purchases have been negotiated freely with individuals and communities where appropriate. The mutually agreed values paid have been significantly higher than market value. ... At no time during the negotiations did the BHP land purchasing team or others, apply process pressure, and the landowners were well aware of the market prices in the region...

In the case of the Tintaya Marquiri community, BHP's agreement with this community contains a clause that allows temporary grazing use of part of the previously purchased land so long as it does not interrupt the Tintaya mining operations. When it recently became necessary for BHP to enter its property for the operation's expansion, it was done with minimal disturbance and with substantial Company support towards the affected families, without disturbing or harming their animals or belongings in any fashion.

The alleged eviction of February 10th and 13th 2001 was in fact the relocation of people squatting on BHP land. This was done in order to start BHP's Oxide project. They had significant advanced warning as part of an ongoing program of communications with the community. Again this was accomplished with a minimum of disruption and carried out for the safety of the families in question. However the resistance by the landowners was due to a mix of misinformation and recommendations by others to resist the actions."

The company also disputed the results of the environmental evaluation commissioned by CooperAcción and conducted by EQUAS (a Peruvian environmental monitoring firm):

"The report cited ... is completely different from BHP and Ministry [of Mines and Energy] results. The fundamental problem is that the upstream/baseline EQUAS sample was taken far upstream, above the town of Palpaco that discharges raw sewage into the river. The second sample was taken below BHP, invalidating the results for the effect of the town. BHP's monitoring programs and audits confirm that the discharges from BHP's operations reflect levels well below those permissible under Peruvian law. BHP would welcome EQUAS or any other third party to conduct a comparative sampling program."

*Source: Oxfam Community Aid Abroad's Mining Ombudsman Annual Report 2001.*

<sup>65</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2002*: 23.



BHP Billiton officials agreed to Macdonald's proposal. After more than six months of attempting to stonewall and discredit the Ombudsman's claims, the company's quick acceptance of the proposal came as a surprise to many at the meeting. Looking back, participants attribute the shift in the company's stance to two factors. First, it had become clear to the company's corporate management that, if left unaddressed, the public relations dimension of the conflict in Espinar could soon spiral out of control. Thanks to her visit to Peru, the Mining Ombudsman now had the personal accounts and evidence needed to make a powerful case for the communities' allegations – a case that would quickly reach a public stage back in Australia.

According to a senior staff member at CooperAcción:

The company was worried about Oxfam's intervention. They were surprised that the communities had the capacity to find international allies and they realized that if they didn't try to resolve the problem in Peru, it would get much bigger. So at that point it became clear that there were two options: either all parties could engage in a process of dialogue, or Oxfam and the communities would continue to denounce the company publicly in Australia.<sup>66</sup>

Additionally, a fundamental disconnect between BHP Billiton's headquarters and its Peruvian subsidiary had been addressed. Prior to the Mining Ombudsman's involvement, Oxfam CAA staff believed that the Melbourne office had been strategically ignorant of the conflicts between the communities and BHP Billiton Tintaya.<sup>67</sup> According to Ingrid Macdonald, the Mining Ombudsman:

In so many of the cases that I deal with, the operational arm of the company doesn't necessarily tell the headquarters what's going on locally. At BHP Billiton, there may be standards and policies saying that they ought to be informed, but in the end, the headquarters just didn't want to know what was happening on the ground.<sup>68</sup>

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<sup>66</sup> Interview with José de Echave, January 14, 2005.

<sup>67</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2002*, 26.

<sup>68</sup> Interview with Ingrid Macdonald, April 5, 2005.

Once the threat of negative publicity over the case became imminent, corporate headquarters staff took steps to increase their oversight of the Peruvian operation. This increased oversight took the form of Paul Warner, BHP Billiton's Community Relations Representative for its Base Metals Division, who was seconded to the Tintaya operation for several months. Warner, who had gained credibility managing community relations at Peru's Antamina mine,<sup>69</sup> was directly accountable to corporate headquarters. His presence in Tintaya clearly signaled to local management that headquarters was committed to addressing the communities' complaints.

Warner's track record and participation in the December 10 meeting also influenced its outcome. A man known and respected by several of the NGO staff members in the meeting, Warner's presence reassured them that the company was taking the Mining Ombudsman seriously. Warner himself viewed the meeting as a success – one that hinged on BHP Billiton's own willingness to accept responsibility for the mine's environmental and social impacts. He recalled that:

One of the things about the Tintaya process was that it started out as an advocacy process, as a 'name and shame.' But as soon as we said, 'you're right, let's talk about it,' the organizations that had been in attack mode were able to shift to a 'let's find solutions' mode. It was the first time that a mining company had given them that opportunity.<sup>70</sup>

### **The Dynamics of Successful Dialogue**

In the months that followed the December 2001 meeting, BHP Billiton and the community-NGO coalition carefully prepared their respective positions, while working jointly to identify an outside facilitator for the first Dialogue Table meeting. The facilitator they eventually hired – Antonio Bernales, an independent Lima-based

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<sup>69</sup> BHP Billiton has a 33.75% stake in the Antamina copper and zinc mine, which is co-owned by Teck Cominco Limited, Mitsubishi Materials Corporation and Noranda, Inc.

<sup>70</sup> Interview with Paul Warner, January 14, 2005.

professional known and respected by both parties – would play a key role in laying the foundation for a successful dialogue process.

At the Dialogue Table’s inaugural meeting on February 6, 2002, Bernales led community members, NGO representatives, local government officials and BHP Billiton staff through an iterative and participatory issue identification process. At the end of the process, consensus was reached on the need to address four key issues of concern to the communities: loss of land, environmental impacts, human rights violations and sustainable development.

#### KEY ISSUES ADDRESSED BY THE DIALOGUE TABLE

*Loss of Land:* Several of the communities adjacent to the mine had seen both their individual and communal land-holdings diminish since the mine’s founding. The communities claimed that “they were pressed by the government and the company to give up their land under unfair conditions, and that negotiations regarding the land sales and compensation have not been fair and equitable.”<sup>1</sup> The lack of transparency regarding land sales resulted in several forced evictions as well as widespread poverty among community members who lost both their land and livelihoods.<sup>2</sup>

*Environmental Impacts:* Community members claimed that waste water from the mine contaminated local rivers and springs, making it unfit for both human and animal consumption, as well as polluting soil quality in nearby pasture land.<sup>3</sup> An analysis commissioned by CooperAcción in 2000 corroborated these claims, finding significant pollution of rivers, springs and grazing land – natural resources that served as essential economic assets for these agrarian communities.<sup>4</sup>

*Human Rights Violations:* A series of human rights abuse allegations had been leveled against the company’s local staff, including rape of local women, harassment of mine laborers and forced evictions.<sup>5</sup> Several villagers also reported that their land, homes and animals had been set fire by mine owners in the course of eviction.

*Sustainable Development:* Many community members had lost their land to the mine or believed they had suffered damage to their land and livestock through from mine-related pollution. Addressing these impacts through the provision of new land and improved environmental monitoring was seen as necessary, but not sufficient to address the lasting economic effects of the mine’s presence. Instead, community members wanted to develop other mechanisms for sustainable development in the area that would provide employment and livelihoods over the long-run.

<sup>1</sup> Oxfam Community Aid Abroad, 2001.

<sup>2</sup> Christian Aid, *Unearthing the Truth: Mining in Peru*, 2005, 17; available from [http://www.christian-aid.org.uk/indepth/502peru/peru\\_report.pdf](http://www.christian-aid.org.uk/indepth/502peru/peru_report.pdf)

<sup>3</sup> Ibid.

<sup>4</sup> S. A. Equas, *Evaluación Ambiental Aire, Agua, y Suelos: Área de Influencia de las Operaciones Mineras de BHP Tintaya S.A. Espinar – Cuzco*, December 2000.

<sup>5</sup> Oxfam Community Aid Abroad, 2001.

Dialogue Table participants agreed to form four working commissions to investigate grievances, formulate recommendations and implement changes in each of the four areas. Three of the four commissions – the Environment, Human Rights and Sustainable Development – were established as ongoing, permanent commissions, while the Land Commission would be dissolved once its duties were discharged. Each commission was composed of the communities’ elected leaders and interested residents, municipal and NGO representatives, and BHP Billiton corporate and local staff.<sup>71</sup> Commission members would meet privately on a frequent basis to review findings and formulate recommendations, and then periodically report back to all parties at regularly-scheduled plenary meetings facilitated by Bernales.

The respective roles of the Peruvian and international NGOs were also defined in this meeting. Representatives from CONACAMI, CORECAMI and CooperAcción would primarily serve an advisory role on the commissions, leveraging their technical knowledge and relationships with the communities to facilitate interactions within the commissions. Oxfam America’s Peruvian staff agreed to serve as observers to the dialogue, and the Mining Ombudsman was to play an ongoing monitoring role, providing regular updates on the Dialogue Table’s progress to both the general public and the company’s headquarters. Local government officials would also play a role, both as participants in the plenary meetings and as members of the Sustainable Development Commission.<sup>72</sup>

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<sup>71</sup> De Echave et al, 14.

<sup>72</sup> Municipal representatives, including Espinar’s mayor, were very active in the first year of the Dialogue Table’s existence. However, due to the election of a new mayor with different political priorities, the municipality’s participation was greatly diminished by the end of the process.

The question of the federal government's potential involvement in the dialogue process was also addressed. Community members insisted that Peru's Ministry of Energy and Mines be excluded. The communities held a deep distrust of the federal government, and they and their NGO supporters believed that the Ministry would be biased in favor of BHP Billiton. The company acquiesced to this condition, and the only government representation at the Dialogue Table was in the form of Espinar's municipal authorities.

The majority of the expenses associated with running the Dialogue Table and hiring outside experts were paid by BHP Billiton through an independent fund, which was jointly controlled and administered by all parties. According to a staff member at CooperAcción:

This was an issue that worried us from the beginning because we knew we were dealing with the second largest mining company in the world. However, the way the fund was structured, it didn't appear to belong to any one group, so when consultants that we had hired billed us, they were receiving money from the Tintaya Dialogue Table, not from BHP.<sup>73</sup>

### **Principles & Protocol of the Dialogue Table**

With the help of the facilitator, Dialogue Table participants identified several key principles and ground rules – participation, consensus-seeking, joint fact-finding and confidentiality – to guide their interactions.

#### Participation

Making the Dialogue Table a fully participatory process was a priority shared by all parties. As noted in the Dialogue Table's June 2002 progress report, the process would be "intensely participative and seek[ing] a harmonious long-term co-existence and mutual respect between the mining operation and the communities around it."<sup>74</sup> The motivations

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<sup>73</sup> Interview with José de Echave, January 14, 2005.

<sup>74</sup> Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2002*, 24.

for high participation were both principled and practical. As advocates for a rights-based approach to development, the Oxfam organizations sustained that the “right to be heard” was one of the fundamental rights of the community members affected by the mine.<sup>75</sup> The Mining Ombudsman was particularly concerned about the participation of women, a group traditionally “excluded from the economic benefits of mining and [that] bear[s] the burden of many of the negative social and environmental impacts.”<sup>76</sup> BHP Billiton management, taking a perspective informed by the practical difficulties of stakeholder negotiation, considered broad participation vital to heading off the emergence of new claims late in the process, which could slow or derail negotiations. However, despite the shared concerns of the company and the NGOs, there were a series of obstacles to translating the goal of participation into reality.

First, the technical and legal aspects of many of the issues – particularly those related to the work of the Land and Environment commissions – were inherently complex and often best understood by company officials. This imbalance was somewhat rectified by the presence of technical specialists from both CONACAMI and CooperAcción on the commissions, which ensured that the interests of community members were better represented and articulated. Despite NGO involvement, many of the official reports released by the commissions tended to be highly technical in nature, sometimes impeding adequate dissemination of the information among community members.

The equal participation of local women was also a challenge, given the fact that they tended to have lower levels of education, often did not speak Spanish, and were

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<sup>75</sup> Ibid, 4.

<sup>76</sup> Ingrid Macdonald and Claire Rowland, *Tunnel Vision: Women, Mining and Communities* (Victoria, Australia: Oxfam Community Aid Abroad, 2002): 3; available from <http://www.oxfam.org.au/campaigns/mining/women/tunnelvisionreport.pdf>

unaccustomed to participating in public forums. A number of measures were taken to address this issue, most notably a requirement that each working commission have at least one female member. Spanish-Quechua translation was also made available at Dialogue Table plenary meetings, although several participants have reported that the quality of this translation was often poor and incomplete.

A final element that assisted participation was Bernales' facilitation style. He managed the plenary meetings in a manner that allowed for open and ample discussion by all community members, even if it meant meetings ran behind schedule. According to BHP Billiton's Paul Warner:

He had a style that made sure everybody got listened to. Everyone wanted to stand up and be heard and Antonio made sure that this was respected. So a meeting that was supposed to be three hours becomes eight hours.<sup>77</sup>

#### Consensus-Based Approach

Consensus-based decision-making was a second key principle of the Dialogue Table. All decisions made by the working commissions and at the plenary meetings were reached through consensus, rather than a voting procedure. The rationale for this choice lay in a shared belief that by reaching consensus over contentious issues, trust would be built between parties and a shared interpretation and joint vision of the conflict would be forged.<sup>78</sup> However, as the Dialogue Table participants soon realized, the use of this mechanism slowed decision-making considerably.

#### Joint Fact-Finding

From the outset, all Dialogue Table participants agree to jointly investigate community grievances and to implement the recommendations of all outside experts

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<sup>77</sup> Interview with Paul Warner, January 14, 2005.

<sup>78</sup> Aste et al, 65.

hired by the Dialogue Table. The working commissions contracted these experts through a consensus decision and asked them to provide independent assessments of many of the Dialogue Table's most hotly contested issues, including accusations of environmental degradation and human rights abuses. This commitment to a binding process limited the ability of either party to engage in "advocacy science"<sup>79</sup> – a phenomenon where disputing parties resort to repeated rounds of contesting and contradictory research to prove their case.

### Confidentiality

From the start, participants agreed to keep the Dialogue Table's proceedings confidential in order to minimize the risk of grandstanding and build trust between the parties. Representatives from CONACAMI were the first to suggest such a policy, as their experience with such dialogues had taught them that opposing parties often have incentives to strategically leak information to the media and outside groups to increase their bargaining power or disrupt discussions. Participants decided that public reports about the Dialogue Table – either via the Mining Ombudsman's reports or the company – would be vetted and approved by all parties before being released.

### **Trust-Building at the Table**

For both community members and BHP Billiton staff, a lack of confidence in the good will of the opposing party was a potentially devastating problem. Negative interactions with mine staff and repeated conflicts over land had hardened the attitudes of many community leaders. BHP Billiton's local staff, in turn, were skeptical about the communities' capacity to engage in constructive negotiation and resist the temptation to

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<sup>79</sup> Lawrence Susskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (United States: Basic Books, 1987): 29.



make wild demands. The Dialogue Table coped with this lack of trust through the use of several procedural mechanisms, such as the decision-making and funding instruments described above. However, the credibility and legitimacy of key individuals and organizations involved in the Dialogue Table were just as important.

Prior to the Dialogue Table, community mistrust of the mine's local management was fierce and deeply engrained. At the first Dialogue Table meeting, the active participation of several high-level BHP Billiton officials with links to the headquarters office played a role in mitigating this mistrust. The BHP Billiton delegation was led by Paul Warner, a man who, according to Javier Aroca, Oxfam America's Advocacy Officer in Peru, "clearly had power within the company to make good on his promises."<sup>80</sup> Participants interpreted his presence as a sign that the company was taking the communities' claims seriously. Tensions were further reduced by the fact that Warner and others at the initial meeting had no history at the Tintaya site, and thus were not associated with past conflicts.

Another factor that facilitated trust was the apparent personal transformation of a particular BHP Billiton Tintaya manager. This manager – a man long reviled by community leaders for his role in negotiating local land purchases – participated in Oxfam CAA's Corporate Leadership Program in Orissa, India in early 2002 and returned a different person. According to Warner:

He went on this trip and it was like Saul on the road to Damascus. He saw the light and he was under a lot of pressure to see the light, but he came back from India a changed man. Everything he did after that was like night and day.<sup>81</sup>

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<sup>80</sup> Interview with Javier Aroca, January 26, 2005.

<sup>81</sup> Interview with Paul Warner, January 14, 2005.

Other NGO staff corroborated this change, noting that the manager's "conversion" and newfound empathy for the communities played an important role in building confidence about the company's good will.

BHP Billiton Tintaya officials had their own doubts about the feasibility of the dialogue process and the communities' capacity to organize themselves. Warner recalled that:

There was an element at one point where [Tintaya management] thought, 'it's all political maneuvering, it's all outside agitating, we can't come to an agreement because they're not really arguing for things that are in their interests, or legitimate.' It took a while for Tintaya's management to buy into the idea that they were better off dealing with a strong community than a weak community.<sup>82</sup>

Eventually, local management came to the conclusion that the communities' alliances with local and international NGOs were a boon to the process. The local NGOs, by serving as advisors and advocates for the communities, bridged the cultural and economic chasm that had long separated the communities and the company and ensured that both parties were speaking the same language. Through their active involvement in the process, the NGOs also legitimized the Dialogue Table, lending it a credibility that similar consultations in Peru were often seen to lack. The involvement of CONACAMI in particular – a group widely seen as favoring protest over engagement – lent a large measure of legitimacy to the process. According to Oxfam America's Javier Aroca:

They were reassured by the presence of the NGOs as external parties that could guarantee the results and attest to the fact that the company wasn't just co-opting the community.<sup>83</sup>

Over time, and through repeated interactions at commission and plenary meetings, mutual understanding and respect between community leaders and BHP Billiton officials slowly grew. Many observers to the process saw this iterative learning process and

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<sup>82</sup> Interview with Paul Warner, January 21, 2005.

<sup>83</sup> Interview with Javier Aroca, January 26, 2005.

ongoing exchange of perspectives as an element that facilitated remarkable personal transformations on the part of both community members and company managers.

According to Ingrid Macdonald, the Mining Ombudsman:

Now it's like dealing with totally different people. On both sides, there is a willingness to listen to other people's point of view, to work together and to learn from each other. There is also a new confidence in the local people to stand up and express their views.<sup>84</sup>

### **Strategic Positioning Away from the Table**

While trust was being built at the table, the NGO coalition was actively engaged in strengthening the communities' bargaining position away from the table. With the assistance of CONACAMI and CooperAcción (who were in turn funded by Oxfam America), the five Espinar communities solidified their negotiating position by organizing themselves and negotiating their interests internally. Community leaders also received negotiation training and began forging alliances with indigenous groups affected by BHP Billiton's operations in other parts of the world.

CooperAcción played a key role in helping the communities identify their shared interests and formulate a common negotiating position early in the process. According to José de Echave, a senior manager at CooperAcción:

The impression people have if they don't know the communities well is that they're very homogenous. In reality, however, there are different private interests within them. Organizations like CooperAcción need to help them negotiate their position internally first, so that the interests they represent are of the group, rather than of private individuals.<sup>85</sup>

By conducting a series of workshops at both the community and regional level, CooperAcción and CONACAMI helped the community members reach consensus on the key issues they wanted addressed by the Dialogue Table. The NGOs also helped the communities arrive at an agreement over how to prioritize the claims of each community.

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<sup>84</sup> Interview with Ingrid Macdonald, April 5, 2005.

<sup>85</sup> Interview with José de Echave, January 14, 2005.

Throughout the process, CooperAcción, CONACAMI and Oxfam America staff served as both advisors and sounding boards, helping community representatives gauge the relative importance of their respective demands and better understand the company's negotiating position.

Within the first six months of the dialogue process, leaders from the five communities took part in a three-week training course on negotiation techniques. The training, which sought to familiarize participants with the tools of interest-based negotiation (rather than position-based bargaining) addressed a skill gap observed by many of the NGO partners, including Echave:

One problem we see is that communities often have the capacity to denounce, but not to negotiate or come up with the solutions. Their true objectives can often get lost in a discourse of denunciation.<sup>86</sup>

Finally, the Espinar communities, with the help of CooperAcción and others, engaged in a process of intelligence gathering about BHP Billiton's agreements with indigenous groups in other countries. Paul Warner remembered that:

At one of the first meetings with the communities, we got part way into the meeting and [the community president] said 'We want an impact and benefits agreement like the one you have at the Ekati mine in Canada.' We were in this tiny village with no electricity or running water, and yet he knew chapter and verse what had been agreed to at the Ekati diamond mine.<sup>87</sup>

As it turned out, the Espinar communities were well acquainted with the agreement negotiated between Canada's Ekati tribe and BHP Billiton thanks to CooperAcción's partnership with the Canadian Environmental Law Association (CELA).<sup>88</sup> With CELA's support, a representative from Espinar had visited the Northwest Territories and met with

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<sup>86</sup> Interview with José de Echave, January 14, 2005.

<sup>87</sup> Interview with Paul Warner, January 14, 2005.

<sup>88</sup> Keenan et al, 11.

Ekati tribal leaders, and a workshop was later held in Peru to disseminate the experiences of the Ekati tribe.<sup>89</sup>

### **Challenges to Reaching Agreement**

The Dialogue Table process was not without its problems. Over the course of nearly three years, progress towards a final agreement was impeded by a range of factors that slowed decision-making, weakened trust and de-motivated participants. These factors – 1) impatience for results, 2) poor communication, 3) unequal negotiating skills, and 4) the company’s negotiations with outside actors– all had the power to disrupt, and potentially, put an end to the dialogue process.

#### Impatience for Tangible Results

The support and participation of a broad coalition of national and international NGOs in the Dialogue Table inevitably raised the communities’ expectations, leading many to believe that compensation from the company would come quickly. After years of suffering the mine’s effects and seeing their poverty steadily deepen, many community members understandably felt that compensation – in the form of new land, livestock and other benefits – was an urgent concern calling for rapid resolution.

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<sup>89</sup> Ibid.

Several obstacles, however, stood in the way of reaching compensation agreements on the communities' claims. Chief among them was the consensus-based decision-making process adopted by the participants. This process entailed ongoing negotiations among commission members, sometimes requiring multiple meetings before agreement could be reached. Although some of the working commissions' decisions were made with relative speed (the appointment of outside experts, for example), decisions about compensation for lost land and human rights abuses were often hotly contested and slow to be resolved. By September 2004, the date of the Mining Ombudsman's fourth report on the Dialogue Table, no compensation or new land had been given to the communities, although promises to do so by the company were on the table.<sup>90</sup>

#### **THE HUMAN RIGHTS COMMISSION**

The Human Rights Commission was charged with investigating and addressing community claims of human rights violations by mine staff, including claims of verbal and physical abuse, violent land seizures and rape. In the course of its investigation, the commission identified 34 potential human rights violations which were turned over for further investigation to the Lima-based Legal Defense Institute (IDL), a well-regarded Peruvian human rights organization. Commission members agreed that they would respect and implement IDL's findings and recommendations on the cases.

After collecting and analyzing the testimonies and accounts of both alleged victims and perpetrators of abuse, IDL submitted a report of its findings to the Dialogue Table in December 2002. Of the 34 cases examined, IDL found four cases in which human rights abuses had definitely occurred and six cases where a violation might have occurred. Commission members addressed the cases of clear human rights violations by providing compensation in the form of land or other in-kind goods to the victims and their family members. Of those cases not deemed human rights abuses, many reflected incidents of verbal abuse by company officials, as well as cases of local women who had borne children to and were subsequently abandoned by mine employees. To address such cases, IDL recommended that BHP Billiton create local training programs to sensitize their staff and reduce the potential for future conflict with community members, as well as provide financial support to the abandoned mothers. To date, these recommendations have not yet been implemented.

Throughout the process, the Human Rights Commission suffered from low levels of participation by community members and their representatives. This weak participation has been attributed to the high priority that was assigned by many community members to the issue of land and the work of the Land Commission, as well as to overall disappointment with the Human Rights Commission's work, which was judged by many to be slow, incomplete and providing few tangible results.

*Source: De Echave, Keenan, Romero and Tapia. "Los Procesos de Diálogo y la Administración de Conflictos de Territorios de Comunidades: El Caso de la Mina de Tintaya en el Perú."*

<sup>90</sup> Oxfam Community Aid Abroad, *Mining Ombudsman 2004 Report*, 6, available from: <http://www.oxfam.org.au/campaigns/mining/ombudsman/2004/pdf/annualreport.pdf>

## Communication Challenges

The Dialogue Table's forward momentum was frequently challenged by poor communication between community leaders and their constituencies. At several points in the process, community leaders did not fully feedback to community members the decisions of the working commissions. This communication breakdown often led to a range of misunderstandings, and frequently delayed progress toward the Dialogue Table's key objectives. This problem was particularly pronounced in the work of the Human Rights and Environment Commissions, both of which suffered from community perceptions of inaction and ineffectiveness due to poor dissemination and communication by local leaders.

Some participants pinpointed these breaks in the communication loop to the traditional ways in which the Espinar communities conducted their business. According to BHP Billiton's Paul Warner:

The community assemblies meet once a month, are very formal and are really for decision-making purposes. They usually have over 100 participants and a full agenda. As a result, it's not the sort of meeting process where community members can reach a deep understanding of a complicated topic.<sup>91</sup>

Ingrid Macdonald, the Mining Ombudsman, echoed this observation and noted that:

We can't change the way the communities do their business. So that's why we needed to have the resources to get the information out to the people. And this information needed to be in the right form so that it can be understood and appreciated within the communities.<sup>92</sup>

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<sup>91</sup> Interview with Paul Warner, January 4, 2005.

<sup>92</sup> Interview with Ingrid Macdonald, January 5, 2005.

#### THE ENVIRONMENT COMMISSION

In April 2003, the Environment Commission presented the results of several outside assessments of the mine's environmental and health impacts. The studies found some water contamination attributable to the mine, and in particular, high levels of selenium and nitrates. Overall, however, the studies contradicted many of the findings of a previous study commissioned by CooperAcción in 2000 and found that actual contamination was much less than that perceived by most community members. Although skeptical, community leaders on the Environment Commission agreed to accept the findings. Many believed that results reflected the fact that the studies were conducted when the company's sulfide operations were closed and thus exerting minimal environmental impact.

Subsequent communication between community leaders and community members over the results of the study failed to alleviate community members' concerns. Months after the studies' findings had been released, community members continued to report new incidents of sick children and animals to the Dialogue Table. While some community members saw this as an indictment of the studies' quality, BHP Billiton officials and NGO representatives believed it reflected local residents' poor nutrition and general ill-health. Although poverty – rather than proximity to the mine – was likely the main cause of such problems, community leaders had not taken the steps to clearly communicate this to their constituencies.

In response, Dialogue Table participants launched a community-wide communication campaign to disseminate the study's findings. Over time, the work of the communication campaign – with the assurances of a newly established community environmental monitoring team guided by a new set of environmental quality standards – brought most community members to accept the studies' results.

#### Lack of Negotiating and Dispute Resolution Experience

The Espinar communities' lack of conflict-resolution and negotiating experience also affected the pace of the Dialogue Table's progress. According to Oxfam America's

Javier Aroca:

The communities really had no experience resolving conflicts with outside actors. Local leaders' experience in this area was limited to local conflicts, like land issues and domestic disputes. The communities generally looked to the state to resolve these kinds of problems and even to resolve problems between themselves. But in this case, it wasn't feasible to deal with this within the Peruvian legal system – it would have taken 15 years.<sup>93</sup>

Although a handful of community leaders did receive training in interest-based negotiation, this training was seen by some participants as insufficient. The small number of people trained and the annual rotation of leadership within the communities meant that the training had limited impact and that a bargaining approach to negotiation sometimes prevailed. This bargaining approach – characterized by escalating demands and a

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<sup>93</sup> Interview with Javier Aroca, January 26, 2005.



hardening of positions – tended to reduce the company’s trust of community leaders and slowed decisions within the working commissions.

#### THE LAND COMMISSION

The Dialogue Table’s Land Commission was charged with investigating community grievances related to the government and the company’s past land purchases and coming up with solutions to compensate former land owners. In the process of identifying and evaluating potential land packages for displaced community members, a group of Tintaya Marquiri residents, led by the community’s president, requested re-location to Pampas de Majes, a region outside of Espinar where farmers relied on intensified irrigation methods. The suggestion came as a surprise to the other commission members, who viewed relocation to such a distant and fundamentally different agricultural region as a risky undertaking. After commissioning an evaluation of the viability of the land, most commission members came to the conclusion that such a move was not viable and posed serious economic risks to the community. The debate that ensued delayed the Land Commission’s progress for eight months.

In mid-2003, a new president was elected in Tintaya Marquiri and, as a result, the Majes option was finally discarded and alternate land packages were evaluated. Eventually an agreement was reached that the company would compensate all displaced families by providing them with an amount of land equivalent to that which had been lost, plus an additional 25-50 percent, depending on the quality of the land itself. The company also agreed to help community members relocate and develop the new land and provide basic infrastructure (water, sanitation and roads).

The land purchase process continued slowly, however, due to difficulties finding adequate land in the Espinar province and a surge in land prices due to speculation. By the time the final Dialogue Table agreement was signed in December 2004, approximately 75 percent of the land needed to compensate community members had been purchased.

*Source: De Echave, Keenan, Romero and Tapia. “Los Procesos de Diálogo y la Administración de Conflictos de Territorios de Comunidades: El Caso de la Mina de Tintaya en el Perú.”*

#### Negotiations with Outside Actors

In early 2003, more than a 1000 people from several communities in Espinar’s Ccanipia river basin stormed the Tintaya mine site and briefly took the general manager hostage. The protestors (who came from communities that were not participants to the Dialogue Table) demanded that the general manager sign an agreement to stop the mine’s activity in their area and provide them with compensation.<sup>94</sup> The manager signed under duress, later repudiating the agreement after the protestors were off-site.

At the heart of the conflict lay the fact that the Ccanipia communities had been inadequately consulted about BHP Billiton’s construction of a new tailings dam. Many

<sup>94</sup> Oxfam Community Aid Abroad, 2003, 41.

believed that the dam – which would contain potentially toxic waste left over from the mine’s processing of copper ore – would pollute their land and hurt their livestock. Although the Mining Ombudsman and BHP Billiton asked the newly affected communities to join the Dialogue Table as a means of resolving the conflict, they refused to participate. The company eventually addressed the Ccanipia communities’ concerns by taking steps to improve the environmental safety of the dam. It also agreed to include them in a broader benefits agreement the company signed with the municipality in September 2003. The agreement established a municipal development fund to which the company would annually donate up to three percent of the mine’s income (before interest and taxes) or, alternatively, a minimum of \$1.5 million.<sup>95</sup>

The company’s decision to quickly cede to the Ccanipia communities’ demands destabilized the progress of the Dialogue Table and created resentment among participants. Some felt that the company’s reactive posture to the Ccanipia communities meant that their own peaceful efforts to reach a settlement weren’t being taken seriously. Paul Warner recalled that:

When we signed the agreement, the [Dialogue Table] participants were thinking ‘we’ve been peaceful, we didn’t storm your building and we still don’t have anything. Were we dummies to do this?’ There were serious doubts within the communities as to whether they were approaching us the right way.<sup>96</sup>

In light of the company’s new commitments to the Ccanipia communities, Dialogue Table participants were also concerned about BHP Billiton’s continued willingness to create a community development fund for the five Espinar communities. The prospects for such a fund—which had been developed and debated within the Sustainable Development commission for over a year – now seemed doubtful.

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<sup>95</sup> De Echave et al, 29.

<sup>96</sup> Interview with Paul Warner, January 21, 2005.

Company officials, while regretting the agreement's effect on the Dialogue Table, concluded that they had no choice. According to Warner:

They [local management] were reactive, but they were reacting to legitimate demands. It was an error for us to not address those issues earlier. The consultation process around that tailings dam in 2000 did not comply with our own standards. So if they had been making demands we didn't think were legitimate, and we caved in to them, than I'd be concerned. But the fact is that we only gave in to legitimate concerns – we were doing the right thing in the wrong way.<sup>97</sup>

#### **THE SUSTAINABLE DEVELOPMENT COMMISSION**

The Dialogue Table's Sustainable Development Commission was charged with articulating and implementing a shared vision of sustainable development between the communities and the company. It soon became clear that the concept of "sustainability" was subject to differing interpretations by community members and mine officials. For instance, there was marked disagreement between BHP Billiton and community members regarding whether or not the commission would deal with the issue of mine employment. Mine officials argued that the commission should be planning for a future that might not include the mine as an employer.

As a result of this disagreement, the commission's focus shifted to questions of long-term economic development in Espinar. To this end, the commission held several workshops in the communities to help them articulate their own long-term development needs and goals. CooperAcción then worked with community leaders to develop integrated development plans and outline specific development initiatives. Once completed, the plans were presented at community assemblies for discussion and vote.

The progress of the Sustainable Development Commission's work was waylaid by two key factors. First, because most potential development projects were agricultural in nature and inevitably hinged on the question of land, it was difficult to plan them in advance of the Land Commission's final decisions on land compensation packages. Additionally, the company's new agreement with the municipality over a separate community development fund also slowed progress. Many Dialogue Table participants interpreted this move as undermining the Sustainable Development Commission by taking decision-making power about sustainable development priorities out of the hands of community members.

Despite community pessimism about BHP Billiton's good will, the company approved the creation of a separate community development fund in the agreement reached by the Dialogue Table in December 2004. Over the next three years, the fund would dedicate a total of US\$900,000 for development projects chosen by each of the five Espinar communities.

*Source: De Echave, Keenan, Romero and Tapia. "Los Procesos de Diálogo y la Administración de Conflictos de Territorios de Comunidades: El Caso de la Mina de Tintaya en el Perú."*

### **A Return to Bilateral Negotiations**

Throughout 2004, successive attempts to draft and approve an agreement between the parties faltered. The main disagreement centered on the creation of the community development fund and the exact amount that the company would commit to it. The

<sup>97</sup> Interview with Paul Warner, January 21, 2005.

company circulated a draft proposal for agreement in January 2004, but failed to stipulate a specific amount that it would contribute to the fund. This vagueness frustrated and disappointed many community members, who linked BHP Billiton's lack of commitment on the issue to the company's recent agreement with the Ccanipia communities over the creation of a separate fund. Negotiations with the company over the amount dragged out throughout the first half of 2004 and soon reached what seemed like an insuperable impasse.

Finally, in an attempt to overcome this impasse, company officials proposed setting up individual negotiations with each community to determine the amount each would receive from the fund. CooperAcción and Oxfam America were wary of this suggestion, and CONACAMI voiced outright opposition, as this bilateral approach was reminiscent of the company's prior interactions with communities over land sales. Nevertheless, as the potential for a total breakdown of the Dialogue Table loomed, CooperAcción and Oxfam America agreed to the company's proposal, with the stipulation that their staff observe and monitor the individual negotiations. This compromise provoked CONACAMI to temporarily leave the Dialogue Table in protest. However, the organization continued to monitor the Dialogue Table's process and finally rejoined at the communities' request in late 2004.

### **Reaching an Agreement**

In the last six months of 2004, the company made considerable headway in acquiring new land and came to an agreement with each community over the amounts that would be dedicated to the community development fund. At this point, the idea of drafting a formal agreement was taken up once again, this time with success.

On December 21, 2004, an agreement between BHP Billiton and the five Espinar communities was signed. The agreement, which had been approved and ratified by each community's general assembly, represented more of a consolidation than a conclusion to the Dialogue Table's three-year negotiation. The agreement itself affirmed the Dialogue Table as a permanent space for discussion and conflict-resolution and a shared vehicle for promoting sustainable development in Espinar.

The central aspects of the agreement related to the acquisition of new land for community members, the management and development of this land, the creation of a community development fund, and the ongoing work of the Human Rights and Environment Commissions. It also affirmed that all future exploration and development activities by BHP Billiton would require the prior, informed consent of the community or individual property owners. Finally, Dialogue Table members agreed to accept the ongoing mediation of the Mining Ombudsman, who would continue to monitor the parties' compliance with the agreement.

#### **KEY POINTS OF THE DECEMBER 21, 2004 DIALOGUE TABLE AGREEMENT**

*Acquisition & Ownership of Land:* BHP Billiton reiterated its commitment to replace lost land by providing community members with land equivalent to the amount expropriated either by the company or the government, plus an additional 25-50 percent. The company also committed to begin procedures for the legal transfer of ownership of these lands once the agreement was signed.

*Technical Assistance for Resettlement:* The company agreed to provide technical assistance in the form of transport, training, and infrastructure for the settlement of community members for a period of two to three years.

*Sustainable Development & the Community Development Fund:* Dialogue Table participants recognized the importance of sustainable development for the communities, and affirmed the importance of the communities' role in determining their own development vision. As a tool for this vision, the participants approved the creation of a Community Development fund to which the company would donate \$300,000 annually for three years.

*Human Rights:* The participants reaffirmed their commitment to the findings of the Human Rights Commission and the company agreed to finish addressing those cases identified in the final report prepared by the Legal Defense Institute (IDL).

*Environment:* Participants affirmed their willingness to work together to protect the environment in accordance with the environmental quality standards adopted by the Dialogue Table. To do so, the Environment Commission committed itself to creating a system for the implementation of joint environmental assessments and a community-based environmental monitoring system.

*Future Exploration Activities by BHP Billiton:* Participants agreed that the company's future exploration activities on lands it does not own will require the prior consent of the community or individual property owners.

*Monitoring of the Agreement:* All participants agreed to accept the ongoing mediation of Oxfam CAA, whose Mining Ombudsman would monitor the parties' compliance with the agreement.

*Source:* "Tintaya Dialogue Table: Consolidation Agreement of Advances in the Dialogue Process." Oxfam America.

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#### 4. ANALYSIS & CONCLUSIONS

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Hailed by Oxfam America as “the first comprehensive agreement in Peru negotiated between communities and a major mine operation,”<sup>98</sup> the accord struck between BHP Billiton Tintaya and the five Espinar communities in December 2004 represents a remarkable deviation from the cycle of confrontation, failed engagement and renewed community protest that characterizes most mining-related conflicts in Peru. This section assesses the agreement and the advances made by the Dialogue Table to date in light of the interests and objectives of the Espinar communities. It then reflects on the nature of the negotiation itself and asks whether the Dialogue Table constitutes an example of participatory engagement. Finally, it analyzes the role of both the transnational advocacy coalition and BHP Billiton in promoting this engagement.

##### **Negotiation Analysis**

While the initial assessments of the Tintaya agreement made by members of the NGO coalition, BHP Billiton and the Peruvian and international media have been universally positive,<sup>99</sup> care must be taken to assess whether the agreement really delivered on community interests. The following analysis finds that although the agreement met the communities’ fundamental objective – compensation for lost land and livelihoods – it did not fully address their concerns about the company’s environmental and social impacts.

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<sup>98</sup> Oxfam America, “Unprecedented Agreement Between Communities and Mining Company in Peru,” January, 20, 2005; available from: [http://www.oxfamamerica.org/newsandpublications/news\\_updates/news\\_update.2005-01-20.5989312729/?searchterm=tintaya](http://www.oxfamamerica.org/newsandpublications/news_updates/news_update.2005-01-20.5989312729/?searchterm=tintaya)

<sup>99</sup> See *The Economist Magazine*, “Halting the Rush Against Gold,” February 3, 2005 & Rebecca Howard, “BHP Billiton Bucks Peru Protest Trend at Tintaya Mine,” *Dow Jones Newswires*, December 14, 2004.

A comparison of the communities' initial demands (as presented in their November 2000 communication to the Mining Ombudsman, see page 25) with the December 2004 agreement reveals that the Dialogue Table addressed many of their highest priorities, including the desire for new land and funding for sustainable development projects. Nevertheless, the Dialogue Table failed to deal with several of the communities' initial demands. For example, demands that the company dismiss specific "corrupt" employees and provide training and employment to young people were rejected by the company and never taken up by the Dialogue Table. In contrast, the grievances underlying other demands were addressed, but by means different than those originally proposed by the communities. For example, although the Land Commission rejected the requests of Tintaya Marquiri's leaders to be relocated to Pampas de Majes, alternate land and relocation packages were later provided to all affected community members.

Despite the fact that the agreement delivered on many of the communities' vital interests, questions persist regarding the Dialogue Table's effectiveness in dealing with grievances related to the environment and human rights abuses. Community anxiety about the mine's current and future environmental impact lingers, and while joint environmental monitoring teams are set to begin work in mid-2005, implementation of the new monitoring system is expected to be complex and time-consuming. The work of the Human Rights Commission also remains unfinished. The six cases of "probable" human rights abuses identified by the Legal Defense Institute (IDL) have not been addressed to date. There is also evidence that at the time of the IDL's report some cases of human rights abuses had not yet been identified and reported, and as a result, there are several outstanding allegations that require investigation. Finally, the company has yet to



implement the IDL's recommendation that it introduce sensitivity training for the mine's employees. Notwithstanding these concerns, most participants are hopeful about the full implementation of these recommendations and express optimism about the company's commitment to maintain higher environmental and human rights standards going forward. This optimism is further bolstered by the Mining Ombudsman's ongoing role in monitoring the agreement's implementation, which is widely seen as giving the company a strong incentive to comply.

BHP Billiton has also benefited considerably as a result of its participation in the Dialogue Table. Although the three-year negotiation process was costly and time-consuming, the company has effectively regained its social license to operate in Espinar and is positioned to continue, and possibly expand, its operations within a well-defined framework of mutual responsibility between itself and the communities. At the global level, the Dialogue Table process in Peru has garnered BHP Billiton positive publicity and is quickly becoming a referent point for productive community-company engagement in the mining industry.

### **The Dialogue Table as Participatory Engagement?**

Was the Dialogue Table process an example of participatory engagement that promoted rights-based development, or simply a case of tokenistic consultation? We can answer this question by analyzing the negotiation with respect to the six indicators of participation proposed by Stewart Carter. These indicators – community representation, the quantity, frequency and quality of interactions, the scope of alliances and the level of control exerted by communities – capture the multi-dimensional nature of participation and provide a baseline against which to assess company-community interactions.

Accounts from NGO and company staff reflect positively on the *representativeness* of the community leaders that took part in the Dialogue Table and suggest that – on the whole – they effectively prioritized community interests over private interests. Several factors facilitated this community focus. First, the communities’ representatives on the working commissions were usually the elected presidents of their respective communities, and thus were officially accountable to the community as a whole. Additionally, the open nature of the Dialogue Table meetings allowed community members to monitor the performance of their representatives. Finally, CooperAcción and CONACAMI’s efforts to help the communities forge a joint negotiating position limited the leeway community representatives had to push for their private interests. It should be noted that these factors did not fully restrain opportunistic behavior, nor did they guarantee that representatives maintained optimal communication with their constituencies about the Dialogue Table’s progress. In fact, both opportunism and poor communication reared their heads on several occasions, and were particularly detrimental to the negotiations over land packages and the community development fund. It must also be noted that women’s interests were poorly represented at the Dialogue Table, a consequence of the fact that nearly all community representatives sitting on commissions were men.

Both the *quantity* and *frequency* of interactions between community members and the company were high. Community representatives on the working commissions usually met once a month and larger numbers attended the town hall-style plenary meetings, which were held four to six times a year. These interactions were more or less constant over the course of nearly three years and were characterized by lengthy and intensive

discussion and debate. Here again, the intensity of women's participation was much lower than men's, despite the fact that efforts were made to encourage female participation by providing translation at meetings and by requiring that each working commission have at least one female member.

The *scope* of participation, best understood as the linkages between local, national and international stakeholder groups, was also significant. At the local level, the Espinar communities successfully forged an alliance among themselves – no small accomplishment in a Peruvian context where tensions between neighboring communities can often run high. In the early years of the Dialogue Table, the communities also garnered the support and involvement of key municipal officials. At the national level, the communities built a relationship with CONACAMI, a national membership organization and advocate for mining-affected communities, and the Lima-based development NGO CooperAcción. Finally, the communities' linkages with Northern advocacy organizations like Oxfam America and Oxfam CAA further widened the scope of the negotiation by incorporating two highly networked international participants.

The *quality* of participation – a concept that encompasses both the technical and psychological understanding (or empowerment) enjoyed by community members – progressed considerably over the course of the negotiation. Community members entered the negotiation with significantly less scientific, legal and financial expertise than their BHP Billiton counterparts. Nevertheless, the involvement of technical experts from CONACAMI and CooperAcción and the ongoing nature of negotiations facilitated learning among community members, building the confidence with which they interpreted and managed technical information. The drawn-out, iterative and consensus-

based nature of these interactions was particularly important because they provided ample opportunity for learning and self-reflection.

The level of *control* exerted by community members over the Dialogue Table was also relatively high, particularly when compared to the communities' resource position vis-à-vis the company. Certain points of procedure within the Dialogue Table such as consensus-based decision-making considerably leveled the playing field by giving each commission member (and thus each community representative) veto power. The communities also exerted control through their alliances with national and international civil society actors that served as their advocates and that wielded a reputational threat over the company. Nevertheless, it would be incorrect to assert that the communities achieved true joint control of the process. BHP Billiton's financial wherewithal, and in particular, its ability to grant or deny the compensation and other concessions sought by the communities, meant that ultimate control over the outcome of the negotiations rested with the company.

### **The Drivers of Participatory Engagement**

The three key drivers of mining company-community engagement – managerial values, the need for a license to operate and reputational threats – all played a role in bringing BHP Billiton to the negotiating table. These drivers – while necessary – were not sufficient by themselves to guarantee a participatory and stable negotiation process that delivered on community interests. To achieve this goal, members of the transnational advocacy coalition worked to stabilize and legitimize the negotiation while also redressing the power asymmetry between the parties.

#### The Role of Managerial Values

Much of the Dialogue Table's success can be attributed to the seriousness and dedication with which BHP Billiton's local and international managers committed themselves to the process. Under the leadership of Paul Warner, BHP Billiton's Manager of Community Relations and Institutional Affairs, the company's delegation to the Dialogue Table consistently played by the rules and dedicated a considerable amount of time and resources to winning back the company's social license to operate. The company also demonstrated a surprising amount of good will over the course of the negotiations by agreeing to compensate victims in cases of land expropriation and human rights abuses that had occurred before BHP Billiton's tenure in Tintaya. By accepting liability for past incidents, the company demonstrated its intent to build a groundwork for more positive community relations going forward.

While the company was strongly motivated by both the reputational threat posed by Oxfam CAA, the personal convictions of certain BHP Billiton staff were also a key driver. Warner's willingness to listen to the concerns of community members and NGO staff, as well as his frank acknowledgements of the company's past mistakes helped build confidence in the company's intentions and served to sustain the negotiation during its rockiest periods. The personal transformation of one of the company's local managers, a transformation largely due to his participation in Oxfam CAA's Corporate Leadership Program, also had a large impact on the Dialogue Table's trajectory by helping to ease tensions and build trust around the table.

#### The Need for a License to Operate

It can be argued that prior to the Mining Ombudsman's involvement, the company's local staff either did not understand or care that the company's social license

to operate was in jeopardy. Comments by company staff reveal that while they were aware of community displeasure with the mine, this discontent was not seen to pose an immediate threat to the viability of the company's operations, particularly since past community demonstrations had been small and largely peaceful. This perception, however, reflects a potential underestimation of the communities' determination to press for change. Indeed, had the company not agreed to negotiate, it may well have been confronted with a new round of better organized and more virulent protests. Nevertheless, over the course of the negotiation, BHP Billiton managers began to more clearly recognize the commercial importance of positive community relations, a lesson that the seizure of the mine site by the Ccanipia protestors and a rising swell of anti-mining protests across Peru vividly brought home.

#### Creating a Reputational Threat

In forging an alliance with Oxfam CAA, the Espinar communities and their supporters pursued a “boomerang” advocacy strategy that brought pressure on BHP Billiton via an advocacy group with clout in the company's home country. Oxfam CAA – an NGO with strong name recognition with the Australian public and a reputation as a well-informed critic of the mining sector – was perfectly positioned to play such a role. The reputational threat that Oxfam CAA posed for BHP Billiton was also a *credible* threat, as the advocacy organization had both the means – a strong campaigning arm embodied by the Mining Ombudsman – and the willingness – as proven by its past actions against BHP over Ok Tedi – to take action.

BHP Billiton's corporate management recognized the organization's influence within Australia and was sufficiently motivated by the Mining Ombudsman's

investigation of the Espinar communities' claims to agree to a negotiation. The Mining Ombudsman's frequent visits to Peru and reports on the Dialogue Table further strengthened the company's incentives to stay engaged. Indeed, as the Mining Ombudsman's annual reports began reflecting growing optimism about the Dialogue Table's progress, a situation that had been a serious reputational liability soon became a point of pride within the company.<sup>100</sup>

### Stabilizing and Legitimizing the Dialogue Table

While Oxfam CAA provided the reputational pressure necessary to bring BHP Billiton to the table, the other coalition members – by lending stability and legitimacy to the process – ensured the company stayed there. BHP Billiton's Peruvian managers were initially pessimistic about the communities' capacity to engage in constructive negotiation and to resist the temptation to make the kind of extreme demands that could derail talks. The NGOs addressed this concern by working with the five communities to forge a unified negotiating position and by serving as cultural and technical translators between the parties. Through this translator role, the NGOs effectively bridged the cultural chasm that had long divided the parties and helped catalyze a process of mutual learning and trust-building.

Through their active participation and strong commitment, the coalition members also legitimized the negotiation, lending it a credibility that the company's former bilateral negotiations with the communities had lacked. By serving as monitors to the process, the NGOs were able to credibly verify the company's efforts to make good on its commitments. The involvement of strong critics of the mining sector such as

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<sup>100</sup> See BHP Billiton, *Working Towards a Sustainable Future: 2004 Health, Safety, Environment and Community Report*, 2004, available from: [http://www.bhpbilliton.com/bbContentRepository/Reports/bhpb\\_full\\_hsec\\_report\\_04.pdf](http://www.bhpbilliton.com/bbContentRepository/Reports/bhpb_full_hsec_report_04.pdf)

CONACAMI also imparted a large measure of legitimacy to the process and reassured the company that it would not be accused of co-opting the communities.

### Promoting Power Balance

The transnational advocacy coalition helped address a fundamental barrier to participatory engagement: the vast power asymmetry between the parties. This power imbalance – characterized by an unequal distribution of information, negotiating skills and experience – typically reduces the ability of local communities to meet their interests through negotiation, thus making protest a more attractive option. At the same time, this power inequity can exacerbate mistrust between parties, generating a situation where neither side can make a credible commitment to the other. In this case, the transnational advocacy coalition helped the communities to marshal the evidence, knowledge and skills they needed to shift the power balance in their favor.

Coalition members played a vital role in rectifying the information asymmetry that existed between the communities and the company. After nearly 20 years of coexistence with the Tintaya copper mine, community members were highly cognizant of the mine's negative social, economic and environmental impacts. Nevertheless, prior to partnering with CONACAMI and CooperAcción, they did not have the resources to formally document and substantiate their claims. This process of information-collection lent credence to the communities' long-standing grievances and gave the Mining Ombudsman the ammunition she needed to credibly threaten the company.

Coalition members also helped communities expand their knowledge of BHP Billiton's policies and activities beyond Peru. Through an exchange with Canada's Ekati tribe arranged by CooperAcción, Espinar community leaders learned firsthand how the



company negotiated with indigenous people in other parts of the world. As a result, the Peruvian communities came to the table with a clear sense of what constituted an acceptable agreement and with renewed confidence about the company's ability to meet their demands.

Finally, the communities were able to present a strong front at the Dialogue Table thanks to the work done by coalition members to help them forge a unified stance and to train community leaders in the techniques of interest-based negotiation. These efforts, although imperfect, went a long way in strengthening the communities' negotiating position and building community confidence in participating in a conflict-resolution mechanism that was essentially foreign to them.

## **Conclusion**

The Tintaya Dialogue Table stands out as a bright light in an otherwise dismal landscape of mining-related conflict in Peru. A unique example of participatory engagement, this case clearly demonstrates that transnational coalitions of NGOs working at both the global and local levels are an important tool for resolving conflicts between mining companies and host communities in a way that promotes rights-based development. As such, it can serve as a valuable reference point for mining-affected communities and their civil society allies, as well as for mining MNCs seeking to resolve conflict and reach lasting agreements with their neighbors.

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