



Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso

*Proposed hydrocarbons exploration project in San Isidro Block
Santa Cruz, Bolivia*

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1. Executive Summary

This year the Bolivian Ministry of Hydrocarbons and Energy (MHE) coordinated a highly successful consultation process around a proposed hydrocarbon exploration project in the indigenous territory of Charagua Norte and Isozo, located in the Santa Cruz region. Ultimately, the process resulted in a signed agreement between the Bolivian government and the Guaraní Peoples Assembly of Charagua Norte and Isozo (APG for the Spanish acronym) documenting community consent prior to the initiation of exploration activities by the Argentine company Pluspetrol. The consultation process reached a positive outcome thanks largely to the willingness of the MHE to respect the use of traditional Guaraní institutions and systems.

A few of the key lessons learned through the successful application of the Free Prior and Informed Consent (FPIC) principle in this case include the following:

- **Governments should provide indigenous communities with complete, truthful, and adequate information prior to consultation.** In the first consultations that MHE implemented, the APG found the information presented to be inadequate. For example, the Ministry failed to provide communities with updated maps and information on areas that would likely be impacted. However, ultimately MHE addressed the APG's concerns and later in the consultation process it collaborated closely with the APG and the local NGO CEJIS (Center for Legal Studies and Social Research) in order to document particularly sensitive areas through field inspections.
- **Governments should respect the traditional forms of participation and decision making of indigenous peoples.** MHE's consultation incorporated representatives of the APG at both the local and national levels. Importantly, stakeholders in the consultation reached consensus at each phase of the consultation process prior to moving forward to the next phase.
- **Agencies implementing consultations should get planning right at the outset.** As noted above, indigenous leaders were not satisfied with initial consultations, which failed to respect traditional forms of participation. As a result, the MHE had to redirect its approach regarding the case, which delayed the FPIC process. Early consultation regarding processes and adequate compliance with national law might have prevented this duplication of efforts. Ultimately, the timeline for conducting the consultations was revised based on comments from the APG and community monitors in order to facilitate better planning and increase community participation.
- **Government agencies responsible for consultations must operate with openness and good faith.** The MHE General Office of Socio-Environmental Management recognized the flaws in the initial consultation process and as a result was able to redirect the process. The office's openness and receptivity to indigenous concerns enabled a positive conclusion to the process.
- **Governments should support indigenous capacity building to promote productive consultation processes.** It was helpful that communities had formed local monitoring networks which had been incorporated into the Charagua Norte APG prior to the consultation process. Governments should proactively build indigenous capacity on issues related to monitoring social and environmental impacts of large extractive industry projects.

The agreements reached between Guaraní communities and the MHE at the end of this consultation process represent a milestone of great significance for Bolivia. Importantly, the process began with the demands and proposals of the indigenous communities themselves and guaranteed FPIC for affected communities. The Bolivian government carried out this consultation process in a manner that respects collective rights, intercultural dialogue, transparency, environmental sustainability, and equitable participation.

2. Background

a. Location and Description of Project

According to this project's Public Information Document, a resource developed by the government which provides an overview of project plans and expected impacts, the project is located in Cordillera Province in the Municipality of Charagua in the Department of Santa Cruz within the ancestral territories (TCOs)¹ of the Guaraní people of Charagua Norte and Isoso. The area of direct influence of the project includes 20 communities from the 33 that make up the TCO, and one peasant farming territory called Aldea Uno.

The Public Information Document indicates that 90% of the seismic lines (a hydrocarbon exploration activity that uses equipment to gather information about subsurface geology) are located inside the Charagua Norte TCO and the remaining 10% are in the Isoso TCO. The communities that are the closest to the seismic lines are: Tacobo (1.5 km), El Carmen del Espino (1.1 km), Guariri (0.5 km), Masavi (1.0 km), Aimiri (1.1 km), Takuru (0.9 km), San Isidro (1.0 km), and Taputa (0.1 km). However, the document leaves out several communities that are part of the Charagua Norte TCO, and these communities could also be affected by the project because of its magnitude and reach inside the indigenous territory.

b. Legal framework

- Bolivian Constitution
- Hydrocarbons Law No. 3058
- Supreme Decree No. 29033, which regulates consultation and participation with indigenous peoples and peasant communities around hydrocarbons activities
- Convention 169 of the International Labor Organization (ratified by the Bolivian Congress)
- United Nations Declaration on the Rights of Indigenous Peoples (ratified by the Bolivian Congress)
- Other international instruments pertaining to indigenous peoples rights

c. Stakeholders in the consultation process

- General Office on Socio-environmental Management at the Ministry of Hydrocarbons and Energy, the agency responsible for implementing consultation processes
- Ministry of Water and the Environment, the relevant environmental agency in Bolivia
- *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB), Bolivia's national oil company
- Secretariat for Natural Resources and the Environment of the National APG
- Council of the Captaincy² for the Charagua Norte APG
- Socio-environmental Monitoring Unit of Charagua Norte (made up of Guaraní community monitors)
- Council of the Captaincy for the Upper and Lower Isoso APG
- Community captains (Guaraní authorities)

¹ TCOs are indigenous territorial areas recognized by the Bolivian Constitution.

² Captaincies represent territorial and political jurisdictions within the organizational structure of the Guaraní peoples.

- *Centro de Estudios Jurídicos e Investigación Social (CEJIS)*, the Center for Legal Studies and Social Research, a non-governmental organization that provides technical assistance and support to communities.

3. Initial Failures and Redirection of the Consultation Process

On December 16, 2009, indigenous leaders from project-affected communities held a preliminary meeting with the MHE to discuss the scope of the project and develop a preliminary proposal for implementing the prior consultation process. This led to the signing of a statement of understanding on January 22, 2010. The statement was meant to launch the consultation process, which was to be realized through two informational workshops and a meeting to validate agreements.

The MHE conducted one workshop in February and another in March, in line with the timetable agreed upon in the statement of understanding. However, these were conducted in just four communities and therefore did not include adequate community representation. Further, the workshops were limited to providing information about some of the technical measures of the project. Workshops consisted of a PowerPoint slide show which essentially summarized an informational pamphlet created by Pluspetrol Bolivia Corporation, the private oil company that hoped to explore the area. The MHE itself acknowledged that indigenous communities received only partial information, which did not include up-to-date maps of the communities, areas of possible impact, socio-environmental prevention and mitigation measures, or information on planning for the consultation process.

In addition, the MHE had not developed its timetable for specific activities in coordination with the APG (national organization). Therefore, indigenous leaders requested that the timetable be revised and that new planning be conducted to improve coordination and broaden participation with communities. In response to this request, MHE redirected the consultation process in a manner consistent with the traditional forms of decision-making and participation of the Guaraní indigenous people.

4. Consultation Method

After MHE's inadequate effort to gain the prior consent of the Guaraní people through quick and essentially administrative processes, the Guaraní people proposed methodological guidelines for redirecting the consultation process in line with their traditional forms of organization and decision making. Held on April 29 and 30, the first indigenous assembly for consultation and participation aimed to achieve consensus and validation of the new planning and consultation process proposed by indigenous leaders of the Charagua Norte APG. Assembly participants reached agreement on the following points:

- Stakeholders must reach consensus at each phase of the consultation process in order to achieve "prior consent", and processes must all be in line with Bolivia's current legal framework.
- The consultation process must respect the territorial integrity, institutional structures, norms and procedures, collective rights, and self-determination of the Guaraní people.
- The consultation process must generate a space for broad democratic participation through inter-cultural dialogue.
- The consultation process must be reprogrammed with new activities and budget to make it feasible to carry out its phases with respect for the rights of the indigenous peoples (APG).

On May 8 and 9, the second indigenous assembly for consultation and participation was held, and focused on topics of coordination and improving information. With this assembly, participants preliminarily identified possible socio-environmental impacts of exploration activities. Guaraní indigenous leaders incorporated information obtained through earlier work done by the Socio-environmental Monitoring Network of Charagua Norte, a local Guaraní community monitoring network established prior to the initiation of this consultation. On May 20 and 21, the field inspection work began. The Socio-environmental Monitoring Network of Charagua Norte, MHE, and CEJIS led this work, which consisted of observation and analysis of possible negative impacts that could result from Pluspetrol's exploratory activities. The work led to the development of a registry of information for areas with higher levels of socio-environmental sensitivity.

Finally, on June 23 and 24, the third indigenous assembly was held in order to reach agreements between the MHE and Guaraní people of Charagua Norte and Isoso. This event facilitated the prior consent of the Guaraní people in written agreement, through a process which respected the right of the Guaraní to make decisions regarding the use of their land and natural resources (self-determination) and in a context whereby the Bolivian government demonstrated respect for their rights and organizational structures.

5. Lessons Learned

Indigenous peoples must have access to complete, truthful, and appropriate information

From the moment when the consultation began to incorporate indigenous perspectives and concrete information from community monitors (who previously identified sensitive areas and socio-environmental impacts in their territory), the content and scope of the consultation improved noticeably. Without the active and effective participation of the communities, extractive industry activities are more likely to have negative effects on the environment and on the rights of indigenous peoples, and companies may tend towards assessing negative impacts in purely monetary terms.

Consultation processes must respect indigenous peoples' traditional forms of participation and decision-making

The broad participation of the communities of the Charagua Norte APG and of the regional and national levels of the APG made it possible to redirect the consultation process towards a positive outcome. Importantly, indigenous communities conditioned their participation in the consultation process on absolute respect for the territorial integrity, traditional decision making systems, indigenous rights, exercise of internal norms, and self-determination of indigenous peoples.

It is important to get planning right at the outset

This consultation process represents a significant evolution from previous processes in Bolivia, and once again highlights the need to continue to improve regulations and laws regarding consultation with indigenous peoples. The experience of Charagua Norte shows that flawed consultation processes have costly consequences. Sooner or later, communities generally demand that these processes be redirected to their legal and legitimate channels. In many cases, such deficiencies can also lead to polarization and increased distrust among the government, communities, and companies, which at times escalates to conflict.

Government agencies responsible for consultations must operate with openness and good faith.

In this case, the MHE General Office of Socio-Environmental Management understood the need to redirect the consultation process in Charagua Norte, which initially began with some flaws, as described

above. That office acted in a receptive, open, and proactive manner with indigenous leaders so that the consultation process could arrive at a positive conclusion. The case of Charagua Norte reinforces the need for government agencies to maintain an attitude of openness and respect towards indigenous peoples' demands for prior consultation and consent.

Governments should support indigenous capacity building to promote productive consultation processes

The Charagua Norte APG has been involved in a process of capacity-building in the area of consultation and socio-environmental monitoring since 2008. The Indigenous Monitoring Network of Charagua Norte includes 15 local indigenous monitors, and has been incorporated as part of the organizational structure of the Charagua Norte APG. The network is also working to expand indigenous monitoring work to the different communities of the TCO. The indigenous monitors have written reports identifying socio-environmental impacts and vulnerable sites in socio-economic and environmental terms. Several indigenous monitors are currently part of the new leadership council of the Charagua Norte APG, and the APG used information about their territory and natural resources as a basis for helping to transform the nature of the consultation process.

Strengthening the technical and political capacity of indigenous peoples is an essential prerequisite to developing an appropriate consultation process. Governments should assume a central role in building the capacity of indigenous peoples in the area of consultation and socio-environmental monitoring and must also create better mechanisms for transparency in the hydrocarbon sector.

Prior consultation must be aimed primarily at the prevention of social and environmental damages and impacts

As noted above, the Guaraní people of Charagua Norte had already gone through a process of developing their technical capacities before the government implemented its consultation. Therefore, the Guaraní Socio-environmental Monitoring Network and the indigenous leaders of the Charagua Norte APG were able to focus on preventing the potential negative impacts of Pluspetrol operations and making sure the company would assume its obligations and responsibilities regarding possible damage. Using the final agreement from the consultation as a binding document (as mandated by Bolivian law), competent authorities must now ensure that the company fulfills its obligations and responsibilities through socio-environmental prevention and mitigation measures, developed with Guaraní input.

An appropriate consultation process contributes to raising company standards for social and corporate responsibility

The successful Charagua Norte consultation has helped to change the rules of the game and to improve the relationship between the Charagua Norte APG and Pluspetrol (although monitoring compliance with the Consultation Agreement will remain critical). The consultation agreement reached establishes Pluspetrol's obligations in terms of issues such as transparency and information generation, respect for the organizational structure of Charagua Norte, the use of advanced technology in their operations to prevent socio-environmental damage, etc. Thus, the consultation process has contributed to changing the balance of power between the indigenous organization and Pluspetrol and improved conditions for the APG Charagua Norte as it works to promote indigenous rights in relation to the hydrocarbon activities in its territory.

6. Conclusion

In order to see lasting benefits from consultation processes around extractive industry projects, governments must concentrate their efforts on legal and legitimate processes. Governments must cast aside the idea of accelerating or evading consultation processes, and prioritize providing communities with access to full information and full participation in decision making. In the case of the Charagua Norte consultation described above, a participatory consultation process ultimately led to a binding agreement between the Guaraní organization of Charagua Norte and Isoso and the Bolivian government. This success demonstrates that effective consultations are possible in a context where both parties demonstrate good faith and openness.

Appropriate consultation with the Charagua Norte APG may also have prevented socio-environmental conflict. Not fulfilling the right to consultation would likely have led to violations of related rights, such as the right to a healthy environment, access to information, compensation, reparations, easements, as well as rights concerning sacred places, and other economic, environmental, cultural, and social rights. An appropriate consultation process also helps to prevent situations in which communities might be forced to seek administrative or legal measures at the national and/or international levels in defense of their rights. This case demonstrates that when a government implements a participatory and meaningful consultation process, the process may lead to positive outcomes both for the government itself and for project-affected indigenous communities.