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# The Shady Side of Consultation and Compensation: 'Divide-and-Rule' Tactics in Bolivia's Extraction Sector

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## ABSTRACT

The rights to prior consultation and compensation have been established within the framework of international indigenous peoples' rights. However, in practice these processes have often gone hand in hand with adverse social consequences for local populations, such as the exacerbation of conflicts, the division of communities and the weakening of indigenous organizations. These phenomena have received little attention, despite their great relevance for these populations. This article sheds light on the use by the Bolivian state and extraction corporations of exclusionary participation and negotiation processes, on the one hand, and 'carrot-and-stick' techniques on the other, which have together accounted for negative social impacts on the ground. The article is based on recently conducted field research, focus group discussions and semi-structured interviews in Guaraní communities in Bolivia. The findings extend the existing literature by providing a fine-grained and systematic analysis of divisive undertakings and their sociocultural and socio-political consequences in neo-extractivist Bolivia. The broader implications of the study add to academic debates about participation in development, about 'divide-and-rule' tactics and about the practice of indigenous peoples' rights.

## INTRODUCTION

The further enhancement of extractivist and neo-extractivist development paths in the 21<sup>st</sup> century has attracted increasing academic and public

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attention, particularly from scholars of Latin America. In a neo-extractivist regime, the state maintains a style of development based on the appropriation of nature, albeit with a more active role for the state and an increasing share of revenues used to finance social policies (Burchardt and Dietz, 2014; Siegel, 2016; Veltmeyer and Petras, 2014). Gudynas (2010) argued that although neo-extractivism has enjoyed a greater legitimacy than traditional extractivism, due to the increased distribution of surplus to the population, it nevertheless replicates the negative environmental and social impacts of the old extractivism. These negative, or at least ambiguous, consequences of mining and hydrocarbon activities — such as the deterioration of local environments, an increasing scarcity of livelihoods available for local populations and the exacerbation of conflicts between states, corporations and local populations, including indigenous peoples — have been comprehensively discussed in the literature (see Bebbington, 2011; Bebbington and Bury, 2013; Haarstad, 2012; Li, 2015). There is also a sizeable body of work about the shift of Latin American countries like Bolivia, Ecuador and Venezuela from neoliberal to neo-extractivist regimes. In Bolivia, state discourses and the national development plan have indicated that a progressive form of neo-extractivism is to be established. This course of action is to include wealth redistribution, effective environmental policies and strong participatory rights, especially for indigenous peoples (see Andreucci and Radhuber, 2015; Postero, 2007; Schilling-Vacaflor, 2017a).

In this context, Bolivia began to implement prior consultation processes with indigenous and peasant communities in 2007. It thereby assumed a pioneering role in Latin America, where the great majority of states — with the exception of Colombia and Peru — have not complied with their legal obligation to fulfil indigenous peoples' right to prior consultation and to free, prior and informed consent (FPIC). The organization of state-led prior consultation processes had been a long-standing demand of Bolivia's indigenous lowland peoples, who previously negotiated directly with transnational corporations (Anthias, 2012; Hindery, 2013). The widespread expectation was that, by undertaking a mediating role in the relations between the indigenous peoples affected by resource extraction and the interested corporations, the state could help uphold indigenous and environmental rights and counterbalance the enormous power asymmetries that exist between the corporations and the communities.

However, during fieldwork in local settings, the authors of this article have been confronted with the severe negative social consequences of prior consultation and company-led negotiations over compensation for local populations such as the Guaraní in Bolivia's Chaco area. Looking more deeply into the lives of community members and participating in the assemblies of indigenous organizations, it becomes clear that what local actors refer to as *pasivos sociales* (social impacts) from extraction projects cannot be overlooked. Among the many negative social impacts, our study revealed divisions within and between communities; the weakening of indigenous

organizations; increased distrust on the part of the constituency vis-à-vis indigenous authorities; and the exacerbation of local conflicts. Nelly Romero, an experienced and well-respected indigenous leader, emphasized during a meeting of the national Assembly of Guaraní People (APG) that the most severe impacts that the Guaraní have suffered from the hydro-carbon industry have been the social ones (field notes, Camiri, 25 November 2014). While this phenomenon has received little attention in previous scholarly literature, we consider it to be of utmost importance. In the long run, fragmented organizations will have a diminished capacity to defend their claims, to organize collective action and, ultimately, to uphold their rights (see Bebbington et al., 2008; O'Faircheallaigh, 2008; Sawyer, 2004). The ethnographic methods we have applied in our study allow us to shed light on the micro-dynamics at play, including the concrete interactions between diverse actors. Hence, the questions that interest us here are the following: in what ways have indigenous communities and organizations been adversely affected, socioculturally and sociopolitically, by consultation and compensation practices? How are local divisions and conflicts exacerbated by state-led consultations and company-led negotiations over compensation?

Previous research into consultation practices in Bolivia has discussed its various shortcomings: the contested interpretation of consultation and consent rights, which has made it difficult to put these rights into practice; the large power asymmetries that have shaped these processes to the disadvantage of local populations; the biased and incomplete information that has been disseminated; and the participants' lack of influence on the design and execution of extraction projects (Bascopé Sanjines, 2010; Flemmer and Schilling-Vacaflor, 2016; Fontana and Grugel, 2016; Haarstad, 2014; Humphreys Bebbington, 2012). Embedded in their broader analyses, a few articles have also argued that consultation processes and the related compensation payments have exacerbated local conflicts (Humphreys Bebbington, 2012; Pellegrini and Ribera Arismendi, 2012; Schilling-Vacaflor, 2014). In this article we draw on this previous research but also aim to extend it in three respects. First, we disentangle and analyse in fine-grained detail the specific practices and mechanisms related to consultation and compensation practices — meant to empower indigenous peoples and protect their rights — which have led to negative social consequences for local populations. As part of this analysis, we also briefly illustrate the Guaraní strategies employed to counteract divisive practices and to maintain unity. Second, we discuss the existing literature on the divisive practices fostered by transnational extraction corporations in neoliberal regimes (Bell, 2014; Guzmán-Gallegos, 2012; Hindery, 2013; Sawyer, 2004; Warnaars, 2013; Watts, 2013) and explain how and why similar mechanisms have been at work in plurinational and neo-extractivist Bolivia. Hence, we not only scrutinize the interactions between companies and local populations, but also analyse the important role that the state has played within these encounters. Third, we discuss how

the processes analysed have been shaped by and are in turn transforming sociocultural patterns within the indigenous Guaraní communities involved in our study. To do this, we embed our findings in the broader ethno-historical context of Bolivia's Guaraní people. Finally, we discuss the broader implications of our study with regard to collective rights, indigenous politics and natural resource extraction.

Both authors of this article have carried out extensive field research on prior consultation processes in Guaraní communities in Bolivia's hydrocarbon-rich department of Santa Cruz. The first author carried out field research for a total of 12 months during different research stays between September 2013 and November 2015, including one of approximately three months in the Guaraní Parapitiguasu captaincy.<sup>1</sup> The second author carried out approximately 12 months of fieldwork (April 2014 to April 2015), including six months of field research in the Guaraní captaincy of Alto Parapeti. We both participated as observers in consultation processes and internal assemblies of the APG and conducted a total of 120 semi-structured interviews and several focus group discussions with local actors, and with representatives from the central state and from private and public hydrocarbon corporations. As a consequence of conflicts surrounding consultation and compensation, some communities from Alto Parapeti split and founded the new captaincy, Ñembuite, and some communities from Parapitiguasu split and founded the new captaincy, Boyuibe. Field research was therefore also conducted in these newly founded captaincies. In order to enhance inclusiveness, interviews were conducted in both Spanish and Guaraní, depending on community members' personal preference. While this study is based on insights from Bolivia, many case studies from other countries both within and outside of Latin America indicate that the practices discussed here are of much broader relevance.

The remainder of the article begins with a short outline of our theoretical framework; the following section then provides information about gas projects, consultation and compensation in Guaraní territories in Bolivia. Thereafter, we discuss the two main 'divide-and-rule' tactics used by the Bolivian state and extraction corporations: (1) exclusive state-led participatory processes and company–community negotiations over compensation payments; and (2) 'carrot-and-stick' techniques. We also briefly present different initiatives introduced by the Guaraní to counteract divisive practices and maintain unity. In a subsequent analytical section we reflect upon our findings and their broader implications regarding the practice of indigenous rights in the context of natural resource extraction.

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1. The term 'captaincy' (*capitanía*) is a legacy from the colonial period (Combès and Lowrey, 2006). Captaincies are composed of local Guaraní communities that affiliate with and form a larger subnational political-territorial entity.

## INDIGENOUS PARTICIPATORY RIGHTS

Indigenous peoples and other land-connected groups have suffered disproportionately from the negative consequences that extraction projects have had on their environment and livelihoods (Anaya, 2015; Bebbington and Bury, 2013; Haller et al., 2007). The particular vulnerability of indigenous peoples has largely been due to these groups' historically marginalized position in society and their close relationship with ancestral lands and territories, as a source both of survival and of their distinctive cultural identity. As a consequence of the weak bargaining position of many indigenous groups, their lands and resources have often been appropriated or severely affected without meaningful consultation or consent.

Against this background, indigenous peoples' right to prior consultation and to free, prior and informed consent (FPIC), as well as their rights to be compensated for adverse impacts from extraction projects and to receive a share of the benefits whenever possible, have been conceived of as safeguards for protecting the rights that might be at stake for local populations. Interestingly, these safeguards began to emerge at a time when the World Bank was promoting the privatization of hydrocarbons and mining industries in numerous developing countries (Anthias and Radcliffe, 2015: 259). Hence, critical scholars argued that indigenous rights have not only been established to support indigenous peoples, but also to ensure the governability of extraction and foster the legitimacy of the neoliberal development model (Anthias and Radcliffe, 2015; Goodale, 2016; Hale, 2002).

In theory, consultation processes do not involve the granting of decision-making authority to participants, while consent involves sharing or transferring authority (Szablowski, 2010). As a consequence, FPIC can be used by affected communities as leverage to shape decision making, including to avoid projects that present them with more risks than benefits. In practice, however, it can be difficult to clearly distinguish between consultation and consent regimes, because the interpretation of consultation and consent rights has often been contested and formal requirements tend to be ambiguous or a hybrid.<sup>2</sup> When speaking of the right in general, we will use the term 'right to prior consultation and FPIC', while when analysing concrete consultation practices in Bolivia we will speak of 'prior consultation processes', because in our opinion these latter practices do not qualify as FPIC processes.

International standards about the right to prior consultation and FPIC — such as the International Labour Organization Convention 169 (ILO C169)

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2. In addition, the right to free, prior and informed consent (FPIC) — *consentimiento previo, libre e informado* (CPLI) in Spanish — is sometimes wrongly reported as *consulta previa* (prior consultation), and *consulta previa* is sometimes confused with *consulta pública* (public consultation according to Bolivia's environmental legislation), all of which further add to the confusion between these concepts and rights.

and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) — have established that these processes should be carried out in good faith<sup>3</sup> prior to any planned measure affecting indigenous peoples, should involve the representative persons and institutions of affected communities, and should be based on an intercultural dialogue. They have also stipulated that the participants should be given complete and non-biased information about the measures at stake (Rodríguez Garavito et al., 2010). These processes should either conclude with a binding agreement or achieve the consent (or withholding of consent) of the participants. Increasing numbers of transnational extraction companies, international finance institutions and international organizations — such as the International Council on Mining and Metals, the International Finance Corporation, the Organization for Economic Cooperation and Development and the World Bank — have expressed their commitment to respect the principle of prior consultation or FPIC. However, no monitoring bodies have been established within the corporate social responsibility (CSR) sector, and legally binding norms are still absent. The state duties and corporation commitments have usually not been implemented in practice. Where prior consultation processes have been carried out, as in Bolivia, these processes have usually been characterized by serious shortcomings such as those mentioned above.

In this article we argue that consultation processes have in many cases also contributed to adverse sociopolitical and sociocultural impacts in local contexts and to disempowering groups that were already in a disadvantaged position among local populations. Our insights connect to previous findings from scholars of participatory development. Research into citizen participation has discussed the deficiencies of many participation processes, such as their frequently top-down character or the participants' lack of ownership and actual influence (Akbulut, 2012; Cooke and Kothari, 2001). There has also been criticism of the fact that, within participatory approaches, 'communities' are all too often treated as fixed and unproblematic homogeneous entities, thereby contributing to 'draw[ing] a veil over repressive structures (of gender, class, caste and ethnicity) operating at the micro-scale' (Williams, 2004: 562; see also Hickey and Mohan, 2004). Research has shown that the failure to take local power asymmetries into account in participatory processes often leads to the exacerbation of inequality and conflict at the local level. This has in many cases contributed to benefit-capture on the part of local elites and the further marginalization of vulnerable subgroups (Agarwal, 2001; Akbulut, 2012; Bottazzi et al., 2014; Dill, 2009; Masaki, 2009; Mompoti and Prinsen, 2000).

We additionally argue that in the Bolivian cases studied here, the enhancement of exclusionary participation or negotiation and the privileging

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3. For example, the Inter-American jurisprudence has specified that bribing community leaders or negotiating with individual community members would be regarded as violating the principle of good faith (Inter-American Court of Human Rights, 2012).

of local leaders and elites was not just an unintended consequence of participatory exercises that did not sufficiently take local complexity into account. We demonstrate how divide-and-rule tactics were applied intentionally by both the participating state entities and extraction companies as a governing technique. Posner et al. (2010: 450) argue that 'divide and conquer is an attractive solution [for imperial and colonial powers], because it is cheaper to set factions within the latent opposition to fighting among themselves, and if necessary to defeat them piecemeal, than it is to defeat them as a unified enemy'. Posner et al. stipulate two conditions that are essential to any divide-and-conquer mechanism: (1) a unitary actor bargaining with or competing against a set of multiple actors; and (2) the unitary actor following an intentional strategy of exploiting problems of coordination or collective action among the multiple actors. Posner et al. distinguish between different divide-and-conquer tactics; the most important for our analysis here is limiting the frequency or duration of interaction among the dominated actors, sowing the seeds of distrust, paying bribes and imposing penalties. To this we could add co-optation strategies, which 'are brought into play when individual movement leaders are offered rewards that advance them as individuals while ignoring the collective goals of the movement' (Miller, 1999: 305). This form of dominance was widely used in the colonial era (Hill, 2004; Mamdani, 2012). Many recent studies (see above) and media articles (e.g. Allicock, 2014; IWGIA, 2014) suggest that contemporary forms of corporate conduct in different world regions have also often included such dividing tactics. In the following we shed light on the divide-and-rule tactics used by the Bolivian state and extraction corporations in the context of consultation and compensation exercises and discuss the broader implications of our study.

### **GAS PROJECTS, CONSULTATION AND COMPENSATION IN GUARANÍ TERRITORIES**

The extractive industries, already active in all Latin American countries, have seen further expansion in the 21<sup>st</sup> century. In Bolivia, the production of gas tripled between 2000 and 2008, and in 2011 the country's exports of primary commodities accounted for almost 96 per cent of its total exports (Veltmeyer, 2014: 84). As a consequence of the nationalization of the hydrocarbon sector in 2005, the Bolivian state's revenues have increased considerably, and these revenues have been used in part to enhance public corporations and expand social policies (Kohl and Farthing, 2012). The increased role of the state in the country's economy, coupled with measures to enhance social welfare, enjoys wide support and legitimacy among Bolivia's citizens (Gustafson, 2013a; Kohl and Farthing, 2012; Postero, 2007).

At the same time, under the government of President Evo Morales, Bolivia has become the world leader in the recognition of indigenous peoples' rights

(see Schavelzon, 2012; Tapia, 2010). In November 2007, Bolivia became the first — and to date the only — country to adopt the UNDRIP as domestic law (Law 3760). In 2009, Bolivia adopted its new constitution, which declares that the state is plurinational. The new constitution contains many elements which move the country away from neoliberalism and establish instead a progressive form of neo-extractivism, including strong participatory, indigenous and environmental rights.

However, recent scholarly literature has drawn attention to the limitations of Bolivia's plurinational state and neo-extractivist regime. Scholars have argued that the nationalization process has been limited and that many neoliberal elements still persist within the state (Andreucci and Radhuber, 2015; Kaup, 2010; Veltmeyer, 2014). In addition, it has been convincingly shown that the Bolivian government has clearly prioritized the expansion of the extractive industries, while the enhancement of a plurinational state with strong indigenous rights, participatory rights and the protection of 'mother earth' have remained subordinate objectives (Anthias and Radcliffe, 2015; Bebbington and Humphreys Bebbington, 2011; Haarstad, 2014; Hindery, 2013). State actors have increasingly aligned with the interests of the extractive industries. In this context, many domestic laws and decrees that severely restrict indigenous rights, for example regarding indigenous autonomies (Tockman and Cameron, 2014), mining (Andreucci and Radhuber, 2015) and the right to prior consultation and FPIC (Schilling-Vacaflor, 2017b), have been adopted in the past few years.<sup>4</sup>

The expansion of projects to explore, exploit and transport gas has seriously affected the Guaraní, one of Bolivia's 34 constitutionally recognized indigenous lowland peoples. It is estimated that approximately 85 per cent of the country's gas reserves lie in Bolivia's Chaco area in the departments Tarija, Santa Cruz and Chuquisaca, and many hydrocarbon projects overlap with territories inhabited by the Guaraní (Hinojosa, 2012: 31). Today the Guaraní represent approximately 25 per cent of the Chaco region's 300,000 people (Gustafson, 2013b). The Guaraní — also referred to as Chiriguano in the ethnohistorical literature — consist of a not-always-harmonious fusion of Guaraní from Paraguay, who immigrated to Bolivia in pre-Hispanic times, and Bolivian autochthonous Chané (Arawak) groups (Saignes, 2007). They were colonized relatively late, in the course of the 19<sup>th</sup> century.

Anthropologists have emphasized that the Guaraní culture has been characterized by the absence of a division between rulers and subordinates, and

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4. In the recent past the Bolivian government has released four supreme decrees (SD) that are directly related to extraction projects and indigenous rights, all of which have been vehemently opposed by the APG. SD 2195, from November 2014, established upper limits between 0.3 and 1.5 per cent of the investment sums of hydrocarbon projects for compensation payments to the inhabitants of collective lands according to different project types. SD 2298 states that prior consultation processes should not surpass a maximum duration of 45 days; SD 2366 authorizes hydrocarbon activities in protected areas; and SD 2368 declares that gas ducts are of national interest. These three latter decrees were adopted in May 2015.



the rejection of the imposition of a strong leader vis-à-vis other members of the group (Hirsch, 1999; Saignes, 2007: 18). However, research has shown that the self-governing system of the Guaraní has in practice very often diverged from the ideal of an egalitarian system. Different reasons have been suggested for these divergences. It has been argued that first colonial forces and thereafter the national state — which has become increasingly powerful in the past few centuries — intentionally used divide-and-rule tactics, whereby the role of indigenous leaders was strengthened and internal disputes among the Guaraní exacerbated (Postero, 2007; Saignes, 2007). For example, the Swedish anthropologist Nordenskiöld remarked in 1909: 'Unfortunately, in the combat between the conquistadors and the Indios, some chiefs have almost always fought on the side of the enemies of their own tribe' (Nordenskiöld, 1912/2002: 215). The other side of this argument is that Guaraní leaders have often seized any opportunities to increase their own or their extended families' economic and political power (see Albó, 1990). For example, during the 1950s many Guaraní authorities worked as labour recruiters for large landowners and often mismanaged the salaries of Guaraní workers (Hirsch, 1999: 69). In addition, Combès and Lowrey (2006) argue that there have been important differences between the political systems of the Chané and the Guaraní: indigenous leadership in the Chané model has been hereditary and relatively authoritarian, while the Guaraní model has been more egalitarian and consensus-based. These authors argue that the fusion between the Guaraní and Chané groups has led to problems and tensions due to the competition between these two political traditions within contemporary Guaraní organizations.

The Guaraní have played an important role in the Confederation of Indigenous Lowland Peoples in Bolivia (CIDOB), which has represented Bolivia's indigenous lowland peoples since its founding in 1982. In 1987 they founded their own national organization, APG (Assembly of Guaraní People), which represents the Guaraní from all three departments and all (currently 28) captaincies. Each captaincy is composed of its affiliated local communities. At each level — national, captaincy and local or community — Guaraní self-governing structures are in place, always including one president, a vice president and staff, who are responsible for specific issues like production, education, land and territory, gender, and natural resources. Non-indigenous persons who have been accepted as members of Guaraní communities can also be elected as mandate holders. According to the norms and procedures of the Guaraní, such as those codified in the captaincies' statutes, important decisions are usually taken in assemblies convened at the respective levels. It is worth noting at this stage that the affiliation of Guaraní communities at the captaincy and national levels, as well as the organizations' separation of tasks, are relatively recent inventions. They emerged in response to the new opportunities opened up by flourishing international development projects for indigenous people on the one hand, and increasing threats related to the expansion of agro-industrial businesses and gas projects and the movement

of highland immigrants into territories claimed by the Guaraní, on the other (see Postero, 2007).

The Guaraní are the indigenous group that has had the most experience with hydrocarbon activities in Bolivia. They have also fought to incorporate indigenous rights in Bolivia's sector-specific legislation. As a consequence, the new Hydrocarbon Law 3058 of 2005 included indigenous rights to prior consultation, compensation and indemnity payments for the first time. In 2007, under President Evo Morales, the Guaraní successfully secured the adoption of Supreme Decree (SD) 29033, which regulates the right to prior consultation in Bolivia's hydrocarbon sector.

According to Bolivia's legislation, prior consultation processes are carried out under the umbrella of the Ministry of Hydrocarbons and Energy (MHE), by a team for socio-environmental affairs. This means that in contrast to Bolivia's neoliberal past, when affected populations negotiated directly with extraction companies, the state has been playing a more active role in recent years. Nevertheless, extraction corporations have strongly influenced consultation processes by providing one-sided pro-extraction information about the planned projects and their impacts, contained in environmental impact assessment studies (EIA), and through the use of informal means (for more on this, see Schilling-Vacaflor, 2017a). The financing of EIAs by corporations, resulting in documents that are shaped by 'corporate science' (Kirsch, 2014) and that minimize expected negative impacts, has been a common practice in Latin America and elsewhere (see Leifsen et al., 2017). However, it has contradicted the principle that the state, being the main duty bearer of rights, shall guarantee the provision of non-biased and complete information in prior consultation processes. According to SD 29033 the consultation processes should consist of the following phases: (a) coordination and information; (b) coordination and joint planning of the consultation; (c) execution of the consultation; and (d) conciliation. The consultation processes are to conclude with an agreement signed by both the MHE consultation team and the indigenous populations involved (on the final consultation agreements, see Schilling-Vacaflor, 2014).

Between 2007 and 2015, 58 prior consultation processes were concluded in Bolivia; 42 of them involved Guaraní communities. The final agreements that are the result of the consultation processes are eventually incorporated into an EIA. The corporation must provide compensation for those impacts classified as long term, direct and irreversible in the final consultation agreement, with the concrete sums involved being established during negotiations between the indigenous organizations and the corporation in question.

## **STATE AND COMPANY DIVIDE-AND-RULE TACTICS**

The ethnographic methods we used in our study allowed us to explore the specific practices and micro-dynamics at play in state-led consultation

processes and company-led negotiations over compensation payments. We found that in these processes the main objective of the state entity and the corporations involved is to get the 'social licence to operate' as quickly and easily as possible. To achieve this aim, they both use divisive tactics, which have had negative consequences for social relations within and between local communities and between indigenous leaders and their constituencies. However, we also show that divide-and-rule tactics have not always been successful and that in some cases Guaraní organizations have brought forward different initiatives to counteract divisive endeavours and to maintain their unity.

### **Exclusive Participation in State-led Consultation and Company-led Negotiations**

When carrying out prior consultation or negotiating the amount of compensation payments for irreparable damages, the state and the extraction companies have avoided encounters with the Guaraní in the kind of inclusive assemblies which play a key role for indigenous peoples such as the Guaraní. García Linera et al. (2005: 237) emphasized that especially for the APG, assemblies with a consensual form of decision making are of primordial importance for writing resolutions, making decisions about collective actions and for the construction of shared interpretative frameworks. Nevertheless, in disrespect of local norms and procedures, arenas of 'exclusive participation' (Agarwal, 2001) or negotiations with individual community leaders have been fostered by the Ministry of Hydrocarbons and Energy and the public and private extraction companies alike. The MHE has generally argued that more inclusive and more comprehensive consultations would be impossible because of time and budget constraints (field notes, prior consultation with Takovo Mora, 11 November 2013). It is, however, an important social fact that many community members doubt the sincerity of this justification, arguing that 'the reason behind is that the less we see and ask, the better for the company!'.<sup>5</sup>

Before prior consultations begin, the MHE and the local Guaraní organization establish a joint consultation plan. While the state generally tries to limit the entire procedure to narrow administrative formalities, the Guaraní have usually pressed for more comprehensive, more inclusive and more expensive participatory processes. Active participation has also been limited within the meetings themselves, as a result of the technical and legal language that has characterized these encounters. Specialized capacities on the part of local leaders or advisers have been required in order for communities to engage in an informed dialogue with MHE staff. This is especially the case because the drafts of the EIAs — highly technical documents that are difficult for lay-people to understand — form the basis for discussing the

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5. Interview, advisor from Alto Parapetí, Camiri, 11 October 2014.

project's anticipated impacts. Prior consultation has therefore become a dialogue between a few skilled individuals and the MHE, while participating community members have been relegated to the spectator benches (field notes, prior consultation processes with Takovo Mora and Alto Parapetí). Instead of changing the information used, or the methodology and the form of communication within prior consultations, the MHE has used the lack of active participation by most community members as an argument to justify the limited number of consultation participants.<sup>6</sup> The MHE has refused to finance any further internal meetings on the part of the local communities in which they could deliberate about the planned extraction projects affecting them.

The frequent state and company practice of negotiating with (and pressuring) individual leaders rather than engaging with inclusive assemblies suggests that these exclusive negotiations are undertaken intentionally. In several cases the MHE has approached individual leaders in order to obtain the 'social licence' more quickly and easily than would be the case when dealing with inclusive assemblies. Likewise, hydrocarbon corporations have often negotiated compensation payments behind closed doors with a few selected leaders, in a framework of secretive discussions (see Humphreys Bebbington, 2012: 64). The use and administration of compensation payments have also provoked serious conflicts and divisions at the local level, debilitating indigenous organizations and reducing the development impact of gas rents (see Hinojosa et al., 2015; Humphreys Bebbington, 2012). While individual interests have played a role, exclusive negotiation practices have further fuelled local redistributive conflicts.

The Alto Parapeti captaincy has already been involved in more than a dozen prior consultation processes. However, as its communities have only recently been liberated from contemporary forms of slavery and debt-bondage systems, their organizational structures are rather weak and vulnerable (Inter-American Commission on Human Rights, 2009). Most consultation processes with Alto Parapeti have taken place in the urban centre, Camiri, which has hindered the majority of community members from participating. As the overall budgets have been limited, only one or two persons per community have been able to participate. Since food, travel and living allowances are administered by a few individuals within indigenous organizations, it has mostly been the relatives of these persons who have been invited to participate.<sup>7</sup> The participation of women and the elderly — both groups that usually possess important traditional knowledge, for example on flora and fauna, which is decisive in determining the social and environmental impacts of extraction projects — has been limited.

Many of our interviewees remarked that in Alto Parapeti decision-making powers and the administration of funds were controlled by a few leaders,

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6. Interview, director of MHE consultation team, La Paz, 14 January 2014.

7. Interviews in Alto Parapeti.

some of whom no longer resided in the communities. One community, Karaparecito, stands out as particularly powerful: mandate holders in the captaincy usually originate from this community and tend to ensure that consultation and compensation benefits enrich their proximate environment. In the past, several private companies fostered Karaparecito's privileged position by allocating benefits to its community members and thereby excluding other communities that were also affected by the same projects. Geographically distant communities reacted by forming an oppositional movement in order to counter the exclusionary circulation of resources, eventually founding Ñembuite captaincy.

At the time of our fieldwork, Parapitiguasu captaincy had only participated in one prior consultation process, which took place in 2011 regarding a large seismic exploration. Its experiences with exclusionary consultation processes and the negotiation of compensation payments resemble those of Alto Parapeti. A community member from Parapitiguasu told us: 'The MHE invited us to a meeting. We met and took a consensual decision. Afterwards MHE staff approached the captaincy's directorate and the decision that we had taken beforehand was changed. . . . That was our weakness, that was the moment when we fell and we started to fight among ourselves'.<sup>8</sup> In this case, the captaincy's directorate was not only over-hasty in signing the final consultation agreement, but also subsequently accepted the company's offer of a compensation payment of approximately US\$ 140,000, despite the fact that — according to assembly decisions — the compensation should have been much higher. These compensation payments have been transferred to the captaincy's bank account and are administered by the Guaraní leaders.

The communities in the municipality of Boyuibe are located a few hours away from Parapitiguasu's centre, San Antonio, where the captaincy's office is located and where most assemblies and important meetings take place. The remote communities had very few representatives within the zone's directorate, and their members expressed the view that compensation payments disproportionately benefited the centre of the captaincy and the nearby communities.<sup>9</sup> The MHE initially did not invite the communities from Boyuibe municipality to the consultation meetings, which further exacerbated local tensions. When Boyuibe's communities learned that a new gas duct was to be built that would directly affect them, they split from Parapitiguasu and founded their own captaincy of Boyuibe. This allowed them to participate in the consultation process and the subsequent company–community negotiations over compensation payments exclusively, without the presence of the other communities from Parapitiguasu.

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8. Interview, community member, Parapitiguasu, 28 October 2013.

9. Interviews and field notes, Parapitiguasu and Boyuibe.

**Carrot-and-Stick Techniques**

So-called carrot-and-stick techniques have further complicated the picture. Companies have often preferred to negotiate with indigenous leaders and community members who show a certain ‘flexibility’ and who are more prone to accept their plans and ideas. To reward pro-extraction attitudes or to co-opt specific local leaders, they, as well as the state, have offered jobs, goods, money or other gifts. Side payments have been made for the granting of individual permits. The Bolivian state has divided representative organizations by favouring or including those sectors that are less critical towards the government and extraction activities and by repressing or excluding the more critical ones. Hence, local experiences and narratives point to the co-occurrence of carrot-and-stick techniques and exclusive negotiations.

In the Alto Parapeti captaincy, the local populations tried to reverse an environmental licence granted in 2007 to the company Total E&P, arguing, ‘The project got the green light, but it was under pressure, buying the conscience of the authorities of the indigenous representatives . . . . The communal authorities have been given good jobs’ (Giné and Villarroel, 2011: 46). In February 2014, the community mobilized, on the grounds that ‘the company has systematically misrecognized our rights and their functionaries have used diverse ploys to divide our community organizations’.<sup>10</sup> Not only did police forces combat the captaincy’s protest but, according to several interviews with community members, the company also bribed their leaders in order to get them to abstain from future collective action against the company.

In Parapitiguasu many of the local leaders who had engaged in exclusive negotiations with the MHE during the consultation process were subsequently employed as socio-environmental monitors by the state-owned hydrocarbon company Yacimientos Petrolíferos Fiscales Bolivianos (YPFB).<sup>11</sup> These pro-extraction leaders were employed, despite the fact that other individuals had already been elected to work on the communities’ behalf, monitoring the companies’ practices and holding the corporations accountable. These elections had been communicated to the extraction companies, in the expectation that they would be respected. In spite of this, however, in a number of cases the companies went ahead and employed leaders who had displayed pro-extraction attitudes, disregarding the community elections.<sup>12</sup> For the local populations in Bolivia — as for indigenous communities

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10. Public letter to Bolivia’s President Evo Morales, Caraparicito, 28 February 2014.

11. In 2007, a supreme decree about socio-environmental monitoring in the hydrocarbon sector (SD 29103), which was co-authored and strongly supported by the Guaraní, was released. It required that companies pay 0.5 per cent of each project’s total investment into a fund for sponsoring local monitors, in order to guarantee their independence in supervising the companies. However, many years have now passed and this decree has still not been implemented. It remains the companies’ decision to finance any local monitors.

12. Interviews in Parapitiguasu.

affected by resource extraction elsewhere (see Parlee, 2015) — the loss of their leaders to the extraction companies means that communities face shortages of skilled and knowledgeable community members able to defend their interests and represent their concerns. Additionally, the fact that they are being paid by the company has severely reduced the likelihood that those employed will be critical of company practices. In our interviews with 12 local socio-environmental monitors, the interviewees told us they were very cautious about criticizing the companies because they feared losing their jobs or not being employed again by an extraction company.<sup>13</sup> One national APG leader told us about his inner conflicts when working for a company: when there were debates between the company and the communities about the impact of a project, 'I was not able to say anything, because I was contracted by them, I was gagged. I could not argue against the company YPFB Andina that paid for my work, nor could I speak in favour of the APG. I felt like a circus clown balancing on a tightrope'.<sup>14</sup> In several consultation cases where parallel leadership structures have existed, the MHE has only signed final agreements with government-friendly and pro-extractive organizations, bypassing the more critical ones (Bascopé Sanjinés, 2010; Pellegrini and Ribera Arismendi, 2012). In doing so, the government has attempted to avoid long, difficult and expensive consultation processes.

On some occasions, the companies and state entities have even issued threats against or sanctioned critical local leaders or confrontational communities. For example, when the local communities from Parapitiguasu captaincy mobilized against gas activities in their territory in 2012, they were confronted not only with security forces, but also with the reduction of social investment funds paid by the public company YPFB.<sup>15</sup> The communities from Alto Parapeti were sanctioned by the MHE when they decided to block an ongoing consultation process: the MHE refused to pay the agreed daily allowance for the consultation participants, including the travel allowances for the participants to return to their communities.

### **Contesting Divide-and-Rule from Below**

As many Guaraní captaincies have been affected by divide-and-rule tactics like those described above, some of them — especially those that are stronger and more unified — have developed countervailing strategies. At the national level, the APG has, in its assemblies, comprehensively discussed the divisions and frictions that have emerged within the captaincies in relation to hydrocarbon activities and stated that '[t]he accumulated experience

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13. Interviews in Parapitiguasu and Takovo Mora; interviews, national APG staff, Camiri, November 2013.

14. Interview, national APG leader, Camiri, 7 November 2013.

15. Interviews in Parapitiguasu.

of the Guaraní people with extraction companies has revealed that they generate ruptures in our own organic structures, . . . generate conflicts within our organizations and they promote corruption by fostering individual interests' (see MHE, 2010 [unpaged]).

These discussions have manifested in the formulation of specific provisions in the APG's proposal for a law on prior consultation, aimed at counteracting divisive practices (APG, 2013; on the drafting of such a law see Fontana and Grugel, 2016; Schilling-Vacaflor, 2017b). For instance, the APG's proposal foresees that indigenous representatives would establish a consultation plan with a sufficient budget for community activities, meetings, assemblies and other internal deliberative spaces to take joint decisions and to avoid exclusionary practices. To offset state and corporate carrot-and-stick techniques, the APG's law proposal specifies that prior consultation processes shall be carried out according to the indigenous peoples' own norms and procedures. Any final consultation agreement achieved by exercising or using pressure, intimidation, bribery, blackmail or violence shall be declared invalid. Unfortunately, these proposals have not been incorporated into the government's proposal for a law on prior consultation (VII Comisión Nacional, 2013).

In addition to such national initiatives to neutralize divisive practices, Charagua Norte captaincy (located close to Parapitiguasu), which is known for its unified and strong organizational capacity (Bascopé Sanjines, 2010), incorporated the following provision into the final consultation agreement about the perforation of new gas wells: '[When] carrying out any activities it is not sufficient to obtain the permit from the directly affected community. Rather the permit must always come from the Charagua Norte captaincy. This is important for avoiding internal conflicts, because all revenues and benefits we receive are the property of all 30 communities that are part of the captaincy' (MHE, 2011 [unpaged]).

In 2012, when the large gas plant Rio Grande was built close to the community of Iguazurenda in Takovo Mora captaincy — which together with Alto Parapeti has accumulated the most experience with consultation processes and the negotiation of compensation — the company tried to convince community leaders to negotiate the compensation without the presence of other captaincy members.<sup>16</sup> Interestingly, in this case the community resisted the temptation to achieve greater individual benefits by entering into an exclusive negotiation process. The zone's directorate had previously and repeatedly discussed the question, very openly, of how to maintain its unity in assemblies, thereby cementing the principle that every community has to benefit equally from compensation payments (*ibid.*).

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16. Interviews, ca. 30 community members and indigenous leaders, Takovo Mora, November 2014.



**UNDERMINING INDIGENOUS RIGHTS IN THE CONTEXT OF EXPANDING RESOURCE EXTRACTION**

The divide-and-rule tactics described above have been part of the broader shortcomings that have characterized consultation processes in Bolivia, which, in the words of Perreault (2015: 434–35) have been ‘intended not to foster meaningful participation, but rather to depoliticize extractive activities, defuse tensions, and enrol community members in state projects of resource extraction’.

Based on an ethnography of indigenous rights practices, we show that the exclusionary manner in which prior consultation processes and related negotiations over compensation are carried out in Bolivia bears the serious risk of enhancing the power of subnational elites while marginalizing other local voices, visions and claims. Simultaneously, the benefits related to participation in consultation processes and compensation have often been distributed very unequally; uneven constraints and incentives to participate have correlated with local inequalities and power asymmetries (see Akbulut, 2012: 1134). Women, the elderly, and people with low levels of education or people who only know an indigenous language have been clearly underrepresented in participation and negotiation processes (Eichler, 2016). Hence, by drawing on our findings we do not simply argue that, in practice, consultation and compensation rights represent ‘not a vehicle for the poor, but another means of their exclusion’ (Dill, 2009: 739). Rather, this article provides new insights about the fundamentally important question of who wins and who loses at the local level as a consequence of what Li (2014: 593) has called the ‘global land investment assemblage’.

While divisive practices and their effects are not new phenomena among the Guaraní, the engagement of individual Guaraní leaders by the hydrocarbon industry offers them previously unseen opportunities and goes hand in hand with new responsibilities. Guaraní leaders have previously mainly fulfilled the task of being spokespersons for their communities and captaincies. Now, many leaders administer large sums of money and take important decisions regarding employment opportunities for hydrocarbon corporations. However, they have often done this in a way that has not fostered the common good, but has primarily benefited their closer environment. Guaraní leaders have increasingly been criticized by their constituencies for having failed to consult with them before taking important decisions. According to Hirsch (1999: 72), this is one of the worst criticisms that can be made about a *Mburuvicha* (Guaraní leader).

From an ethnohistoric perspective we could, moreover, interpret the current dynamics involving Bolivia's Guaraní as the strengthening of more hierarchical and authoritarian Chané political cultures relative to the Guaraní ideal of egalitarian political systems. While at the local level decision making within the APG has usually been more inclusive and consensus-based, and has seen many women in leadership roles, at the captaincy and at

the national level, a more authoritarian, male-dominated and self-interested leadership style has increasingly taken root. However, our study also shows that various internal contestations are at work and that initiatives have been established by Guaraní groups to strengthen or re-establish their unity and the downward accountability of their organizations. Such struggles are of fundamental importance, not only for the strength and legitimacy of the Guaraní's self-governing structures, but also with regard to the possibility of achieving their collective aims of self-determined development and the control of collective territories (see APG, 2008).

The original hope of indigenous peoples in Bolivia when they demanded the implementation of state-led consultation processes was that the state would act as an intermediary between them and the extraction corporations. The state was expected to tip the power balance in favour of indigenous peoples, thereby contributing to upholding indigenous rights and protecting local environments. Unfortunately, this expectation has been widely frustrated in practice, because the state entities involved have assumed pro-extraction attitudes in consultation processes (Humphreys Bebbington, 2012; Pellegrini and Arismendi, 2012; Schilling-Vacaflor, 2017a). Strikingly, this study shows that instead of being a guarantor of rights, the MHE consultation team has used divide-and-rule tactics in consultation processes. It also evinces the blurred lines between the state and the hydrocarbon corporations — especially the public one — in neo-extractivist Bolivia. Examples such as that from Parapitiguasu captaincy where leaders who assumed pro-extraction attitudes in prior consultation processes were rewarded with employment by YPFB are revealing in this regard.

Thus, even in a state like Bolivia, which has legally recognized particularly strong indigenous rights and which has been characterized by its recent shift towards post-neoliberalism and neo-extractivism, the state and capital have formed pro-extraction assemblages — political, legal and economic — that have exercised downward pressure on local communities (see Goodale, 2016). As in the cases covered in this article, such resource assemblages usually bring together the financial and political interests of extractive conglomerates with local 'micro-capitalists' (Goodale, 2016; Li, 2010). In such a disadvantageous context for putting indigenous rights into practice, 'hard' markers of indigenous rights promotion (Goodale, 2016) like territorial self-determination or co-decision making are severely constrained.

We have shown in detail how the indigenous rights to consultation and compensation, which are embedded in the larger power relations at play, have become skewed. These insights add to previous research into the practice of human and indigenous rights (see Goodale and Merry, 2007; Wilson, 1997). After decades of legally recognizing indigenous rights, much literature has been produced about the 'implementation gap' and about the ambiguous effects of indigenous rights in practice, especially in Latin America (Anthias and Radcliffe, 2015; Gustafson, 2002; Hale, 2002; McNeish, 2008; Sieder, 2016). For example, Anthias and Radcliffe (2015) discuss the ambiguous

nature of indigenous rights to land and territory, which should protect indigenous rights on the one hand, but which have also enhanced the governability of territories earmarked for extraction on the other. Goodale (2016) recently argued that there was a 'dramatic disconnect' between the symbolic-political accomplishments of recognizing indigenous rights on the one hand and the continuing political-economic assimilation and exploitation of indigenous peoples and territories on the other. In the same vein, Postero (2007: 8) has formulated the following, important question: '[w]hat does multiculturalism mean when "traditional indigenous" lifestyles are recognized by the constitution but swallowed up by the economic realities of rapid urbanization or resource exploitation?'

Against this backdrop, our study shines a light on the micropolitics that have undermined indigenous rights and have caused adverse sociopolitical and sociocultural impacts among indigenous populations affected by resource extraction. We have shown how indigenous territories and self-governing structures are 'swallowed up' by the economic realities of resource exploitation. Our findings are relevant not only for gaining a better understanding of the particular ways in which divide-and-rule tactics are tied to consultation and compensation processes, but also for establishing countervailing strategies against divisive practices and their adverse consequences.

## CONCLUSIONS

While the rights to prior consultation, FPIC and compensation are conceived of as tools for empowering indigenous peoples and enhancing their collective rights, our findings from concrete state-led consultation processes and company-led negotiations over compensation payments in Bolivia show that these practices have also had a shady side: they have caused serious adverse social consequences at the local level. Our study reveals that divide-and-rule tactics used by the state and extraction corporations alike have particularly exacerbated local conflicts, debilitated indigenous organizational structures and divided communities. The basis of this study consists of ethnographic insights and interviews about exclusionary participatory processes and the use of carrot-and-stick techniques in consultation processes and negotiations over compensation. Our findings speak to academic debates about participation in development and about the 'subterranean techniques' (Sawyer, 2003) that corporations have frequently applied in neoliberal contexts. In addition, our analysis adds to previous literature on the practice of human and indigenous rights, particularly with regard to the 'implementation gap' and the ambiguous effects of indigenous peoples' rights.

We have embedded our findings within the specific context of Bolivia — the state which has recognized indigenous rights to the greatest extent worldwide and which has recently shifted towards neo-extractivism — and have

contextualized our study within the ethnohistorical context of the country's Guaraní people. However, the broader implications of our study regarding indigenous rights and indigenous politics in the context of expanding natural resource extraction are likely to be of relevance well beyond the Bolivian borders. Since Bolivia has been one of the few countries to date to implement prior consultation processes in the extractive industries, experiences there contain important lessons for consultation and compensation practices yet to be implemented in other resource-rich countries and regions.

The article sheds light on the adverse sociocultural consequences of consultation and compensation processes for local populations affected by resource extraction — a topic of great practical relevance, but which has received little attention in previous academic debates. Both the question of how concrete divide-and-rule tactics and practices unfold in different local places, and the investigation into potential measures for overcoming them, merit more in-depth and comparative analysis. Indeed, this will be imperative in order to avoid the actual disempowerment of local populations, particularly their weakest constituents, by instruments of community engagement that should protect collective rights and lead to emancipatory transformation.

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