

Indigenous Intermediaries in Prior Consultation Processes: Bridge Builders or Silenced Voices?

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R E S U M E N

El derecho a la consulta previa ejemplifica uno de los avances jurídicos más fundamentales en Latino América y específicamente el estado plurinacional de Bolivia. El sector hidrocarburífero en el Gran Chaco boliviano demuestra qué desafíos afrontamos hoy en día. Esta contribución busca iluminar un desafío en la aplicación de dicho derecho en particular, el rol de intermediarios indígenas, lo que es esencial para determinar el resultado del proceso. La función de dos actores se examinará en más detalle. Primeramente, líderes indígenas al nivel local, regional y nacional juegan un papel importante en influir los procesos de consulta previa y, por consiguiente, se encuentran en una situación más vulnerable frente a prácticas estatales o empresariales. Segundo, nuevos actores tales como asesores indígenas—incluyendo traductores, abogados e ingenieros—pueden tender puentes entre las comunidades y el estado. Se brindará una evaluación de estos dos grupos para demostrar cómo afectan los procesos de consulta y qué rol asumen hacia las comunidades y el estado. [Bolivia, derechos humanos, economías extractivas, pueblos indígenas, intermediarios, consulta previa, vernacularización]

A B S T R A C T

While the right to prior consultation has recently been introduced into national legislation in Latin America, Bolivia provides its Andean neighbors with lessons learned on implementation issues. The hydrocarbon sector in the Bolivian Great Chaco region in particular provides evidence of significant challenges. This article aims to illuminate one specific implementation challenge: the role of indigenous intermediaries must be recognized as significant in terms of the outcome of such processes. As part of this work, two key players are analyzed. First, indigenous leaders who represent their communities in decision-making processes with the state: they are affected by state and

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corporate practices in consultation processes. Second, new actors such as indigenous advisors, including translators, lawyers, and engineers: they have the potential to act as bridge-builders between communities and the state. A detailed assessment of these two groups illustrates how they shape consultation processes and what roles they assume vis-à-vis communities and the state. [Bolivia, extractive industries, indigenous peoples, intermediaries, prior consultation, vernacularization]

Indigenous peoples' rights are one of the most recent developments in international human rights standards, yet such standards only gain significance in practice: that is, whenever they are appropriated, contested, or vernacularized (Merry 2007). Ultimately, rights should be reflected culturally and politically and only gain significance in social practice (Goodale 2007). The right to prior consultation—with the objective of obtaining free, prior, and informed consent (FPIC)—is a key element in the process of vernacularization, which ascertains how collective identities relate to land and natural resource issues (Postero 2007). Global norms gain particular significance in this prior consultation context, as do economic pressures: it is important to recognize that neoliberal market influence and the forces behind capital accumulation have a significant local impact (Pred and Watts 1992). These neoliberal tendencies, increasing demands for natural resources, and the resultant high prices, explain the exceptionally elevated levels of resource extraction in indigenous territories (Hinojosa et al. 2015).

The present article adds to existing debate on the meaningfulness of participation by consultation and its depoliticizing function: it provides an example of "mundane, everyday statecraft" and evidences "mundane performances of bureaucratic action" in Bolivia (McNeish 2013; Perreault 2015). The article also contributes to a contextual understanding of natural resource extraction and economic forces in the Bolivian lowlands, and focuses on tensions arising from cultural differences and the racialized patterns of oppression that underlie such extraction (Fabricant and Postero 2015). This becomes apparent in consultation processes in relation to the linguistic, cultural, and ethnic divides among Quechua–Aymara–mestizo representatives of the state and indigenous lowland groups. Importantly, in this context, the "process of change" proclaimed repeatedly by Evo Morales initiated both "transformative constitutionalism" (Clavero 2010) and "plurinational constitutionalism" (Yrigoyen Fajardo 2011), materializing in peoples' rights to economic, social, judicial, political and cultural pluralism as stipulated in the Constitution. However, such developments have recently been reversed by policies that consolidate an extractivist model, which dispossesses the affected populations.

This work goes beyond understanding consultation and consent as "discussions of legal procedures" and attempts to identify asymmetries and the interplay between relevant groups (Rodríguez-Garavito 2011). While general concerns have been raised about the quality and effectiveness (Agrawal and Gibson 1999; Fontana and Grugel 2016)—as well as about the issue of genuine representation (Kuper 2003; Thede 2011)—of local indigenous institutions, this piece disentangles the roles of specific players in the process. More precisely, the article looks at the "interior" of prior consultation processes, examining the actors, their positions, power, interactions, and dynamics—all of which play key roles in determining the outcome of the decisions taken at the end of the process. This exploration was made possible with the help of two groups of indigenous players and shows how power is exerted by means of their appointment and dismissal, and their general attitude toward both external players and local interests.

A particular role in vernacularization processes is attributed to "people in the middle" or translators who transmit international legal standards, discourses, and institutions to specific situations and people (Merry 2006). They can thus be powerful players, in mastering the language of both sides; however, translators are also vulnerable to wealth and power—the language of the state and of corporations. While the focus on intermediaries traditionally is associated with human rights activists, NGOs, representatives of development agencies, lawyers and court staff, or academics (see, e.g., Anandhi 2002; Mayaram 2002; Pigg 1997), this article sheds light upon indigenous peoples' own representatives and their roles in such processes.

This case study relates to legal and political issues in the Bolivian context. Insights are offered into a specific consultation process with Guaraní peoples in relation to the hydrocarbon sector. Despite the particularities of the local and national contexts, the observed internal dynamics of this process provide a yardstick to assess such processes elsewhere. This research explores power dynamics and the asymmetries evident among the stakeholders, as well as the challenges of participatory processes in the context of extractive processes in relation to indigenous peoples' territories. Existing case studies around the world indicate high levels of tension and conflict among the players involved in prior consultation regarding natural resource extraction.¹ The present work thus sheds lights upon one piece of the puzzle of multiplayer dynamics, namely, the position of indigenous intermediaries in such processes. Finally, the article also enhances our understanding of legitimacy and representation among indigenous organizations, institutions, and leaders.

The article begins with the background and methodology used in this research, followed by a discussion of the current Bolivian legal and political context in which consultation processes occur. It illustrates how this context has developed over the last decade and changed the setup of prior consultation mechanisms with

indigenous peoples. I argue that this changed context has resulted in ostensible participation, highlighting the conflicts inherent in the various social and economic dimensions involved. Subsequently, questions of legitimacy and representation are analyzed, revealing the conceptual and interpretative dilemmas that have arisen. I explore participatory mechanisms (as stipulated in legal documents) that presuppose uniform positions in indigenous communities without disentangling individual positions and local complexities. This is followed by two ethnographic sections on indigenous leaders and consultants, which focus on their role in the process observed. These two groups are further examined to enable insights into microdynamics and to trace the challenges that negotiators encounter in a complex web of state, company, community, and individual interests. These observations also shape the debate about legitimate and representative decision-making bodies. This research shows that there are profound hidden complexities with respect to the panoply of players and respective interests that influence collective decision-making mechanisms. The article ends with a discussion of the ambiguous role of indigenous intermediaries in prior consultation processes, highlighting both challenges and opportunities.

Case Study and Research Approach

This article is based on a one-year ethnographic field trip to the Bolivian lowlands including Guaraní and Chiquitano communities from April 2014 to April 2015. As a visiting researcher at the Center for Legal Studies and Social Research (CEJIS) in Santa Cruz, Bolivia, I assumed the role of observer of a prior consultation process in the indigenous communal territories (*Tierras Comunitarias de Origen*, TCOs) Asenapi and Amaki, which took place in 2014 in Gasolia, in the Santa Cruz Department of Bolivia. This included mostly one- or two-day meetings with representatives of the Ministry of Hydrocarbons and Energy (MHE, *Ministerio de Hidrocarburos y Energía de Bolivia*) and YPFB (*Yacimientos Petrolíferos Fiscales Bolivianos*), a state-owned oil and gas company. On behalf of indigenous peoples, local leaders, and zonal leaders representing indigenous organizations, so-called captaincies (*capitanías*, in this case Asenapi and Amaki) participated, as well as the indigenous umbrella organization, the Kalari People's Assembly (KPA). The process was supported by four indigenous advisors in the fields of law, engineering, and translation who received temporary contracts for the duration of the consultation process.

In the aftermath of the process in 2014, I visited four of the eighteen communities that were affected by the project; the two-week stay in the communities was coordinated with local leaders. I went with two Guaraní native-speaking research assistants, Mariela Baroenda and Maria Santos who had undergone a

research methodology course and practical training with me prior to the field trip. They had grown up in Guaraní Ioseño communities close to Paraguay and moved with their families to Santa Cruz in their late teens, and were now studying sociology at a university in Bolivia. With their help we were able to conduct about half of the interviews in Guaraní. We conducted forty in-depth interviews and held eight focus groups with community members and two semi-structured interviews with advisors to the process. My analysis was complemented by participant observation at meetings as well as numerous informal conversations with stakeholders and indigenous peoples during all phases of the consultation process. Informal conversations with community members during the day-long field inspection walks significantly enriched my understanding of internal tensions, power dynamics, and the roles played by individual members in the consultation process.

Prior Consultation Mechanisms in the Current Bolivian Context

The changing political scenery and legal developments over the course of Evo Morales' three terms in office have had a demonstrable impact on the recognition of indigenous peoples' rights in the Bolivian context. The right to prior consultation in the extractive sector serves as the most telling example of such changing attitudes. As early as 1991, Bolivia ratified International Labor Organization Convention 169 (Bolivian Law 1257, 1991), which establishes an international legal obligation to consult indigenous peoples prior to undertaking activities that could have an impact on their territories. More than a decade later, Bolivia became internationally known as a role model regarding the constitutional recognition of indigenous peoples' rights. Most notably, the new Bolivian Constitution (2009) established a comprehensive indigenous peoples' rights catalog, including the right to prior consultation (articles 30 and 403) with the objective of obtaining FPIC. In addition, Bolivia also became the first and only state in the world to incorporate the UN Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007) into the national legal order (Bolivian Law 3760, 2007). This presumed a legal obligation to obtain indigenous peoples' consent in the context of forced relocation, storage or disposal of hazardous materials, or military activities on their lands or in their territories (Articles 10, 29(2), and 30). In a similar manner, albeit in a somewhat less far-reaching way, the Bolivian Law on Hydrocarbons (Bolivian Law No. 3058 2005) and respective regulations (Bolivian Supreme Decree No. 29033 2007) outline the steps to be taken in consulting indigenous peoples regarding exploratory or exploitative hydrocarbon activities. However, the objective of gaining indigenous peoples' consent is limited by the law: a negative result would come to an end in a conciliation process, which would eventually be decided by the MHE in the

state's "national interest" ("en el mejor interés nacional," Art. 116; Bolivian Law No. 3058 2005).

Morales' second and third terms in office have shown a steady movement away from commitments to and recognition of Bolivia's indigenous peoples, while also revealing violations of constitutional provisions and previously adopted legal standards. The recently adopted Bolivian Mining Law (Bolivian Law No. 1777 2014) illustrates the considerable influence of the corporate sector in the drafting of legislation. While it supersedes the broad wording of the 1997 Mining Law, the new code significantly compromises the essence of prior consultation mechanisms. The said Mining Law and the recently adopted "Granting and Extinction of" Mining Rights Regulation (2015) set a new framework for extractive mining activities and consultation procedures, which is minimal at best, and violates rights at worst. For instance, prior consultation mechanisms are further limited, prior consultation ahead of exploration activities is no longer required (Art.207(II)), and consent has been compromised by unilateral decisions made by the Mining and Metallurgic Productive Development Vice Ministry (Ministerial Resolution 2015).

Similar legislative and policy changes in the hydrocarbon sector have occurred during Morales' current term of office. Four presidential decrees (PDs) have introduced a new era of degradation of indigenous peoples' rights. All the decrees in some way limit the right to prior consultation and compensation payments for the negative impacts of hydrocarbon projects, thereby modifying previously adopted laws and regulations. The first decree reduces the maximum duration of the prior consultation process from sixty to forty-five days (PD No. 2298, adopted in 2015). Morales unequivocally regards current consultation processes in the hydrocarbon sector as a waste of time (Los Tiempos 2015). The second decree declares hydrocarbon projects to be in the national interest irrespective of the various interests on the ground, and thus this overrides consultation processes (PD No. 2400, adopted in 2015). The third decree permits hydrocarbon projects in natural reserves without prior consultation (PD No. 2366, adopted in 2015), and the fourth limits compensation payments for local populations to 0.5–1.5 percent of the total amount of investment depending on the project scale (PD No. 2195, adopted in 2014).

Such legislative changes have caused significant reactions and contestations among affected people, particularly among Guaraní lowland communities in eastern Bolivia, where 83 percent of national natural gas reserves are located (Perreault 2008). In this context, KPA convened an emergency meeting; they vetoed attempted access to their territories by companies and any initiatives to implement prior consultation under the new rules (Erbol 2015a). KPA also drafted a counterproposal to the latest decrees on natural reserves (Erbol 2015b), although it was unsuccessful. Similarly, protest arose in the context of the TIPNIS (Isiboro-Sécure Indigenous Territory and National Park) conflict, which showed how lowland people are undermined by a political regime that determines the way development is understood

(Postero 2017). This project deals with the construction of a highway in the Bolivian Amazon area, which crosses indigenous territories and adversely affects livelihoods. In short, in Morales' ten years of administration, the government has developed an extractivist model that no longer upholds its initial promises toward Mother Earth, indigenous collective rights, and a plural economy (Wanderley 2015). The local context and the role of individual representatives illustrate how power politics around resource extraction—in terms of international trade relations and across Bolivian ministries—are formed and transmitted to key decision makers. The following empirical section demonstrates how the adverse impact of macroeconomic developments materializes in interactions among negotiators who assume responsibility for balancing sociocultural and economic dimensions in their communities. In a second, albeit related, way, focusing on the representatives' position in consultation processes provides insights into the way political and legal processes are vernacularized in specific situations, and how participatory mechanisms may be reinvented and reconstructed (or not) under the influence of specific individuals.

The Role of Indigenous Representatives in the Bolivian Context

As outlined above, consultation processes are clearly regulated in the Bolivian context, although they are being converted into increasingly weakened indigenous rights. This has resulted in about forty consultation processes in the hydrocarbon sector in Guaraní territories since the adoption of the gas regulation (Schilling-Vacaflor 2014) as well as extensive lessons learned (Bascopé Sanjinés 2010). At the same time, the Bolivian state has been subjected to severe criticism with regard to the way it interferes with, and attempts to influence the results of, consultation processes (Pellegrini and Ribera Arismendi 2012). However, the role of individual participants and local institutions in the consultation process remains unclear, in terms of both international standards and Bolivian laws, regulations, and constitutional provisions. In general terms, UNDRIP maintains that states need to consult and cooperate with indigenous peoples through their own representative institutions, which are chosen by themselves and comply with their own traditions, customs, and procedures (articles 18 and 32(2)). In the Bolivian context, such norms are directly translated into the national legal order. The Bolivian Constitution (CPE, *Constitución Política del Estado*) provides that consultations will be held with the affected populations, respecting their norms and procedures (Art. 352).

However, the role that individual representatives and institutions should play in this regard is not further specified, leaving it to the discretionary powers of the state and its representative institutions. This suggests that consultation processes build on an ideal perception of altruistic players who act in communities'

interests without outside interference, or, as Fontana and Grugel frame it, the "FPIC relies on local institutions working properly" (2016:257). However, consultation processes establish unmet expectations by isolating individual interests and private gain from such processes and separating them from the collective good (Masaki 2010). Indeed, local communities cannot generally be considered as representing a common good (Yashar 2007; Thede 2011), and individuals less so. For instance, the structure of the main Guaraní decision-making body, the KPA, exemplifies such complexities. Founded in 1987, the KPA represents Bolivian Guaraní people living in three departments (Chuquisaca, Santa Cruz, and Tarija) in different forums and departmental assemblies (Albó 1990); this representation encompasses more than 360 communities in the Bolivian Chaco region (Anzaldo García and Gutiérrez Galean 2014). At KPA (the "national") level, sectors are distributed among mandate holders encompassing inter alia education, health, gender, and natural resource mandates (Miller Castro 2013). The same organizational structure is translated to the captaincy level (TCO) where an appointed representative (mandate holder) of natural resources guides a prior consultation process alongside her or his colleague from KPA in the area of natural resources. Representatives or mandate holders from all sectors (education and health, for example) are appointed in official assemblies convened by KPA that include zonal leaders from the various TCOs. Similarly, mandate holders at TCO level are appointed to zonal assemblies that are composed of local community leaders.

Indigenous Intermediaries I

Indigenous Leaders: On Representation and Legitimacy

It was my second week as a visiting researcher at CEJIS when three *mburuvichereta* (Guaraní leaders) from Asenapi convened a meeting with the CEJIS director and head of the departmental program in Santa Cruz. I was invited to attend. Meetings between indigenous leaders and CEJIS were commonplace; supporting programs, advisory legal support in the field of land, territory, and natural resources, as well as vehicle use, were constantly renegotiated and adapted to the needs of the communities, or, more precisely, to the needs expressed by "zonal leaders" (*capitanes zonales*). This time, however, the concern was more pressing: a prior consultation process was about to start in Asenapi; MHE and YFPB representatives had announced a planning and methodology meeting that would take place only few days later in Gasolia. CEJIS usually provided advice and support in such situations; however, funding was limited and all programs severely understaffed. The current government not only threatened indigenous rights advocates, it uses a sophisticated strategy of not formally recognizing NGOs by not issuing the official registration documents on which they existentially depend.

All donors, particularly foreign aid and development agencies, required NGOs to be officially registered. As I was not involved in all NGO projects carried out at CEJIS, I was able to focus on and observe a specific prior consultation process.

The first official meeting took place in Gasolia, as did the following meetings that were part of the consultation process. When I arrived, I immediately recognized one of the leaders that had paid us a visit in Santa Cruz—referred to here as Joaquín Martínez. He was the official mandate holder for natural resource issues in the regional umbrella organization CAP (captaincy or *capitanía*), which represents lands, territories, and communities in Asenapi. Martínez was in charge of the consultation process, as was the representative for natural resources of the national equivalent of CAP, the KPA. As I did not have any acquaintances in the communities, and civil society actors were not present, I depended on his willingness to invite me to participate. As I observed later, dependencies conditioning participation were reflected in all stakeholder relationships among those present; Martínez was treated as the main negotiator by state and corporate representatives and, at the same time, led the indigenous people's assembly while enjoying both their legitimacy and accountability. This granted him considerable power over the communities, but also vis-à-vis external players, including state and corporate representatives, NGOs, and at local municipal levels. In essence, he influenced the way the consultation process was held with little interference from outside or within, creating a strong position in the meetings. Even though dissenting opinions were often voiced by community members and local leaders throughout the meetings, this would usually not result in boycotting or blocking the final agreements. At the end of exhausting negotiating sessions (some going on for sixteen hours), community representatives stamped the documents without complaint. The very institutionalization of the whole process facilitated the establishment and maintenance of power positions.

The most evident demonstration of this was Martínez's influence on participation on both sides. In a subsequent meeting in the village of Cuevo, a representative from a Santa Cruz-based environmental NGO attempted to participate in the meeting. Her visit did not last very long, however, because Martínez excluded her from the assembly based on her alleged inappropriate behavior. I observed this as a unilateral act on his part, as he first convened the assembly, described his observation of her alleged misbehavior and effected a rapid "collective" decision. During lunch time, I shared food with the leaders and Martínez explained how inconvenient environmentalists' claims could become in consultation processes by halting or slowing down the process. I slowly began to understand that final consent was not decisive in such processes; rather, the important issue was how and on what points the communities would be consulted. For the community representatives, it seemed, there was no reason to entirely reject a project. Instead, they

were keen to have a say in the negotiations, terms, and conditions of exploration and exploitation.

I then observed a further demonstration of power and asymmetrical relationships among indigenous representatives. Both Martínez and the representative of natural resources at the national level addressed the assembly in Spanish. This could have been attributed to the presence of non-Guaraní native speakers, that is, ministry and company representatives. On paper, the consultation followed the law and associated regulations, including translations of written documents on technical information into Guaraní, along with information about the socioenvironmental and cultural impact. Nevertheless, opinions voiced during assemblies were not taken up by the state or zonal leaders. This would have required strong convictions and resistance on the part of the leaders, while ministry representatives presented prewritten agreements summarizing the fulfilled tasks and results at each consultation activity, which were then rushed through in the last minutes of the meeting: the summaries were read out at speed and in sophisticated technical language. While zonal leaders did not explicitly support the wording, they encouraged all leaders present to put a stamp on the document. Essentially, everybody was tired—too tired to question anything.

It was not until the field inspection in the communities that I obtained a better grasp of how community members were genuinely involved in consultation processes. The field inspection had the purpose of assessing the socioenvironmental and cultural impacts of the exploration project. This activity was one of the most long-lasting and physically exhausting activities; it entailed five long days of ten-hour walking tours traversing forests and hilly areas and crossing rivers in order to follow the seismic line of the exploration project. Women were largely absent from this activity. In fact, only two of twenty-five participants were women, even though advisors had stressed the significance of their contributions based on their traditional knowledge of flora and fauna. Most importantly, however, high-level *mburivicha* largely stayed in the communities where we ate dinner and slept. This was met with incomprehension on the part of the walking group, which consisted of local *mburuvichereta* who complained about their higher level chiefs. In fact, zonal leaders had established stronger contacts with external players and were exposed to more diverse interests compared to local leaders. At the same time, zonal leaders had developed other interests and agendas compared to those at the local levels where extractive projects were perceived in a different way and their impact was certainly more direct and noticeable. Interestingly, the field inspection was the only activity in which local leaders exclusively spoke Guaraní in the absence of the chiefs at zonal and national levels.

The most striking part of those five days in Guaraní territories, however, was my witnessing of intercommunity tensions, which I grasped over the course of the lengthy walks. By chance, I was assigned to a group that was almost entirely made up

of representatives from neighboring communities. These communities had formed a recently established, yet not externally recognized, "shadow organization" called Amaki. Several members of their mother organization had been accused of personal enrichment—a frequent allegation among neighboring and sometimes competing communities. In most cases, this concerned payments and other benefits such as state allowances for food, accommodation, and transport, which apparently only reached some communities while leaving out others. Such practices were commonly termed a "stepping stone" (*nos utilizó como escalera*), referring to the use of high numbers of community members to justify large payments that would only benefit a few, thus using communities to enhance power and benefits for the local umbrella organization ACP, or specific communities, or creating asymmetrical power relationships among communities.

Indigenous Intermediaries II

Indigenous Advisors: Bridge Builders in Consultation Processes?

The role of indigenous advisors is a recent "invention" in Bolivian consultation processes, even though different forms of consultancies have existed in the context of the titling process of TCOs since the 1990s. In the latter case, advisors had little experience, leaving experienced technical ministerial staff with considerable leeway in decision making (Inturias, Liz, and Ledezma Cáceres 2003). Conversely, advisors in current processes look back at many years of negotiations in land-related issues with ministries and companies. In fact, advisors have assisted mburuvichereta since the beginning of their mandates (Defensor del Pueblo and de Capitanes Guaraníes 2006) and have accompanied decision making of all kinds. Indeed, they have occupied central positions as *arakua iya* (knowledge owners), *ñee iya* (word owners), and *ivira iya* (case owners) to advise captains (Combès 2005). While case studies from elsewhere point to power asymmetries and selectivity in negotiations (O'Faircheallaigh 2016) based on a lack of experts who support indigenous communities, this cannot be said about the consultation in Asenapi. However, power asymmetries underlay this process in a more subtle manner. The way these advisors had to comply with standards, for instance, constituted one method of disempowerment and humiliation in some situations. A crucial difference between zonal leaders and advisors lies with the duration of their mandates. While captaincies have existed for decades and have become a focal point for external players, and have created institutionalized roles, other intermediaries such as advisors are purely temporary and are contracted for the duration of the consultation process. This severely limits advisors' sustainable support in the communities, particularly as they usually reside in cities; however, it also limits their potential for being informed about the current community situation and for becoming familiar

partners with state representatives. Advisors usually take jobs elsewhere, thereby distancing themselves from the communities, projects, internal dynamics, and new impacts caused by, for example, exploitative gas activities.

At the first meeting, the assembly and state representatives decided on budgetary issues including contracts for indigenous advisors. From the outset, appointments were severely limited, if not made impossible, by requirements determined by the state. Six advisors were to be contracted. They were required to originate from the TCO affected by the project, to have acquired a university degree, and to have obtained all official documents that would evidence this, including a *curriculum vitae*, which is problematic for most Bolivian graduates because of complicated administrative procedures at universities.² Additionally, such candidates were to be appointed within a few days after the meeting and all documents were to be sent by fax to La Paz. I was astonished at this level of bureaucratic detail and the rigidity of the criteria and agreements: none of the leaders or representatives present would have been able to meet these criteria. To my surprise, four advisors were found by the deadline, including two lawyers and one engineer were found. However, it was impossible to identify an academically recognized translator, which was probably the most significant role, particularly for translating debates in plenary assemblies into written agreements with the state. In the end, a veterinarian—hereafter Gerardo—took on the job of "translator." Gerardo was not only fluent in Guaraní and technical terms, he was proud of his language and did not hesitate to speak Guaraní when zonal leaders addressed the assembly in Spanish. While he was not appointed to lead the process, he regularly addressed the assembly in order to encourage people to talk. However, in the decisive phases, such as in the drafting of agreements at the end of the activity, zonal leaders took over because it was their role to chair the debates and assembly in the consultation process. Indeed, the formalities of the process attributed mainly advisory, complementary roles to the advisors in the consultation. Throughout, they did not take decisions of their own accord, but translated opinions voiced by participating local leaders to the assembly and chairs. Rather than shaping the substance of the process, they channeled positions back and forth in the endless debates. More powers and responsibilities would have created parallel leadership, violating indigenous peoples' organizational structures. Additionally, this benefitted state representatives, because they could deal with known and "reliable" partners without risking surprises or unwelcome checks and balances from new figures in the process.

Strict deadlines were imposed by the state regarding the submission of reports relating to the consultancies; noncompliance would result in the cessation of payments. This led to unrest and tension not only among the advisors, but also in the communities, where people felt betrayed by the state when some payments were halted without justification. These tensions culminated in the temporary

suspension of the consultation process when state representatives attempted to turn the assembly against one of the advisors who had allegedly not submitted a report before the deadline. This resulted in halting payments to all advisors because of a provision contained in the contract, which was not known to most of those present. On various occasions during that last consultation activity, state representatives tried to blame the respective advisor for not having submitted a report. He argued that this was not true, which was backed up by the national KPA representative for natural resources. I remember going through all contractual provisions with the advisor and KPA representative during one of the breaks; we had become friends during the meetings. Ministry representatives did not show any willingness to compromise, assuming that the assembly would eventually turn against the advisor. This was remarkable, since the final activity and agreement meant everything to the ministry, and as all activities seemed to be geared toward this final encounter with and consent from the Guaraní. That day, all ministerial representatives were present, including the head of the department, who constantly received telephone calls from La Paz, presumably to report on the ongoing negotiation. The meeting had an unequivocal title: "signing and validation of agreements of the consultation and participation process."

Contrary to such assumptions, however, the advisor was supported by the assembly. In fact, advisors enjoyed high esteem in the assembly and were appreciated because of their support for the consultation process. Gerardo in particular had become a key figure based on his presence, including during the field inspection where he took the lead in the absence of zonal leaders. During the inspection and the tiring walks, Gerardo had injured himself and yet continued the walk, still taking the lead. Community members clearly perceived his commitment to the process, which I also observed during the walks and meetings. He continued to assume these responsibilities despite the halt of payments by the ministry. When the process entered a critical period and ministry representatives incited the assembly against said advisor in the final meeting, Gerardo threatened to remove himself from the process and distanced himself from the assembly. As a result, the situation risked escalation and an urgent assembly meeting was held behind closed doors. As much as my knowledge of international law and Bolivian standards allowed, I contributed to the drafting of a resolution on the part of KPA and the captaincies, to temporarily stop the process. Under this resolution, the assembly officially suspended the process until payments to advisors were made. Interestingly, it also demanded payments for advisors in other consultation processes that were pending. The assembly also pronounced on the impact of such conduct, including jeopardizing the overall progress of the process, which ought to have been conducted in good faith: the violation of contractual obligations led to internal conflicts in indigenous organizations, and to insecurity and mistrust among leaders and advisors, discouraging them from continuing the process. The

ministry had no choice but to leave Gasolia, but it refused to make payments for travel allowances, which were vital for the leaders to be able to return to their communities. This had serious consequences for people who could not afford to travel back on their own account. The process was taken up again a few weeks later when the communities no longer dared to oppose the process, because they remembered the financial punishment of the last meeting. This time a final agreement was signed without much disagreement.

It could be argued that this refusal to pay expenses "smoothed" the process or "silenced" the communities in light of their recently lived experience: the meeting only lasted a few hours and ended in the communities' consent. A few months later, I traveled back to the communities. One of the captaincies had a new zonal *mburuvicha*—and it was Gerardo. Again, this demonstrated one of the few opportunities for local leaders to participate in complex processes, and showed how leaders could be dismissed or appointed according to local interests and motivations. In this way, power relations could be altered depending on the decisions expressed by local leaders.

Bridge Builders or Silenced Voices?

Given the contexts outlined above, it could be argued that prior consultation processes may be converted into participatory tools that do not do justice to indigenous peoples' collective expression of their free will, as strived for in international legal documents (e.g., UNDRIP, articles 3 and 4). This is because diverse local views are homogenized and unified rather than integrated into legal agreements. In this way, more powerful figures produce or enforce authority (Benda-Beckmann and Griffith 2009) over others, reflecting asymmetrical power relations among the communities and the players involved. In the limited periods of their mandates, zonal leaders often take advantage of their positions until they are ultimately replaced or impeached before their mandates end. This, in a way, represents one course of action for local leaders. In fact, local communities exert decision-making powers through zonal leaders in collective decision-making processes and can have little direct impact. Such leaders have thus acquired enormous power in such processes and largely determine their outcome.

However, considering zonal leaders as the only form of representation reflects an "oversimplification of local communities" (Fontana and Grugel 2016), and ignores local politics and intercommunity conflicts (Agrawal and Gibson 1999) while expecting people not to have individual interests in consultation processes (Masaki 2010). By contrast, my observations in the communities show how meso-level decision-making structures—including captaincies and zonal leaders in particular—are prone to misunderstanding and misrepresenting participating leaders' interests, turning the "participation gap" into a structural and hierarchical

dilemma. This can be exemplified by exploring the lengthy debates among leaders in the consultation process, which are not taken up in the agreements overseen by the ministry and zonal leaders. To what extent such opinions reflect a more genuine representation of local interests or, alternatively, whether such diverse interests could be captured in a limited space and time remains to be discussed. At the same time, the meso-level institution shows high levels of alienation from local community realities. In most cases, local leaders reflect their community members' will and individual needs in the context of extractive projects. Mandate holders for natural resources and zonal leaders are particularly exposed to bribery in the context of compensation payments and state allowances for accommodation, food, and transport.

The structure of Guaraní captaincies, including translators and consultants, as well as their positions, is being reinvented in current contexts. Traditional organizations were reestablished in the 1970s and helped to strengthen institutional processes that led to the foundation of KPA (Wahren 2012). Nevertheless, current Guaraní authority structures originate from leadership positions imposed by Spanish colonial authorities (Postero 2007), and captaincies were developed in response to threats to territories, political pressures and, later, in relation to government authorities and external players (Hirsch 1999). Later still, they were kept alive by NGO funding and development projects (Hirsch 2003). In the absence of the state on the ground, NGOs have filled the gap (Bebbington and Thiele 1993) in land-use projects, and in education and health initiatives. Ultimately, the division of lands into territorial units (TCOs) and the requirements of zonal representation further perpetuate such structures. Conversely, representation at the local level presents a different picture: traditionally, *mburuvichereta* are meant to act as leaders without exerting coercive authority and should act as spokespersons of their communities; their decision-making powers depend on consensus achieved in community assemblies (Hirsch 1999). In fact, inclusive and open assembly structures are the most prevailing form of decision making in indigenous communities, which are opposed to liberal ideas of decision making and representation structures (Mansbridge 1983; Van Cott 2005; Polletta 2015). It is through these externally imposed organizational structures that indigenous leaders are expected to negotiate and represent their communities. Thereby, "natural" checks and balances in community assemblies are circumvented and dissenting voices do not find expression in binding agreements.

Indigenous advisors, by contrast, do not fit into this system of predetermined roles and positions in negotiations. While their mandates in this case embraced a wide range of tasks relating to the consultation process, their potential role as bridge builders was limited by the unsustainability of their work and, importantly, the administrative hurdles that came with it. These included tight deadlines, sophisticated recruitment processes, high-quality criteria for reports, and

collective punishment for individual breaches of contract. In all, there are limited powers to shape the drafting process of agreements, which fall short of transforming law into an "emancipatory tool for vulnerable people," or of being a "weapon of the weak" (Scott 1987). Indeed, bargaining power is a crucial component in determining the overall outcome of such negotiations (O'Faircheallaigh 2016), yet it only found limited expression in the process observed. In fact, bargaining power, responsibility, and accountability remained with indigenous zonal leaders. At the same time, indigenous advisors attempted to translate local voices to higher authorities, attributing legitimacy to their mandates. Conversely, the very nature of their roles, as "translators" or "intermediaries," did not allow for any further impact on the process, despite their "channeling" role. Translators' deeper involvement in the process is not foreseen by their mandates: fears might exist as to changing power dynamics in future processes that could jeopardize states' and companies' positions. In the end, the consultation process seemed to be entangled in a complex interplay of representation, legitimacy, accountability, and, ultimately, power.

Conclusion

Before the adoption of recent decrees, the Bolivian case promised prior consultation processes at the highest level in terms of sophistication and the implementation of international standards. However, some issues remained unclear, including the question of who might be regarded as "representative," or which institutions were to be recognized as negotiating partners in such processes. External players such as the state and corporate representatives, as well as NGOs, assume an important role in determining decision-making structures, and ultimately, in granting indigenous peoples' self-determination. In this case, the principle of and right to self-determination thereby gained a level of ambiguity: indigenous governance structures were accepted as long as they did not reflect views that were too diverse for the sake of process efficiency. Another factor that adds complexity is the role played by particular indigenous individuals. In this case, two figures have been examined closely, namely, indigenous leaders and advisors. While findings cannot be extended to all possible prior consultation processes, some tendencies stand out. Different positions in the power relationship between state and corporate authorities and indigenous peoples' intermediaries can be demonstrated by means of two groups of "people in the middle." Leaders in higher positions and with natural resource-related mandates tended to adopt positions that favored the extractive agenda promoted by the state and company concerned. Conversely, advisors tended to channel views rather than advocating particular interests and thereby influenced decisions to a less significant degree.

As the present case illustrates, prior consultation processes cannot wholly fulfill the expectations inherent in human rights instruments, including UN frameworks

and Bolivia's plurinational constitutionalism. While participatory rights are localized in indigenous communities, economic interests similarly undergo processes of vernacularization, which oppose existing human rights safeguards. "Discussing legal procedures" requires in-depth knowledge about economic and cultural dynamics alike, which enabled me to provide perspectives that usually go unmentioned or unobserved. "People in the middle" offer unique insights into power plays that are transmitted to local level politics while shaping decisions of global significance. By exploring the "interior" of such processes, I was able to disentangle individual interests in alleged collective, homogenous communities, which, in their own way, reinvent prior consultation processes in accordance with often contradictory agendas. The Bolivian constitutional promise to promote multiplicities on the ground has found its way into indigenous local politics where, some would argue, resource extraction is not considered an obstacle to community development.

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Notes

¹A recent comparative study of several Latin American states reveals the opportunities and challenges in such processes (Oxfam/DPLF 2015). Participatory mechanisms in the extractive sectors are discussed in Jahncke Benavente and Meza (2010). Significant studies of Bolivia's neighboring countries and around the world include, in the Peruvian context, Schilling-Vacaflor and Flemmer (2015); for the Ecuadorian case, see Vallejo (2014); on Bolivia, various case studies are discussed in Bascopé Sanjines (2010).

²The Planification and Budget Agreement signed in the first meeting established the key terms and conditions of the process. Accordingly, the three main consultants to the process were to be professionals who had received a university degree, while conditions for translators were slightly less rigid, allowing a college graduate to take the job. In the meetings, it was added that all advisors had to originate from the respective TCOs.

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