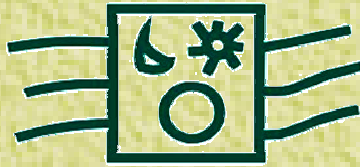


COOPERACCION



Acción Solidaria para el Desarrollo

**DIALOGUE AND MANAGEMENT
OF CONFLICTS
ON COMMUNITY LANDS:
THE CASE OF THE TINTAYA
MINE IN PERU**

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INTRODUCTION

This report on the dialogue between the BHP Billiton Tintaya mining company and the communities around the mine came about as part of the initiative to promote “Reflection on Challenges Facing Indigenous People,” sponsored by OXFAM America, the Ford Foundation and the Institute of the Common (*Instituto del Bien Común*).

In preparing the document, the authors reviewed all the information generated by the Tintaya Dialogue Table (*Mesa de Diálogo*) during three years of work. Visits were made to the province of Espinar and the mining operation’s direct area of influence for workshops and interviews with representatives of the various stakeholders directly involved in the process, including leaders of the five communities, regional and national organizations, local authorities, and managers of BHP Billiton Tintaya.

This enabled us to identify the most significant aspects of the Tintaya dialogue process: its characteristics and stages, its achievements and its contributions to the development of appropriate relationships in the area around the mine, so as to avoid any type of marginalization and reinforce strategies characterized by consensus and tolerance that promoted the informed participation of the local population. We were also able to identify the strengths and weaknesses of the stakeholders directly involved in the experience, particularly the communities and their allies.

The document is divided into the following sections: (1) background, which describes the characteristics of relationships between mining companies and communities in Peru and the specific case of Tintaya; (2) the development of the dialogue, its various stages and the roles of the participants; (3) considerations for evaluation of the process; and (4) conclusions.

This systematic documentation is not meant to be an official version of the Tintaya dialogue process. The authors have participated in the process, accompanying the communities and their organizations. Nevertheless, we have attempted to present the facts as objectively as possible, while proposing certain criteria for evaluation of the process.

Because this document is meant as a tool to help communities and their organizations reflect on and analyze their experience, we have tried to identify the main lessons to be learned from the process and the aspects that could be most useful to them. The Tintaya experience can provide insight into the various challenges facing communities in their efforts to manage conflicts related to extractive industries such as mining and the need to develop balanced relationships and foster respect for the rights of those involved.

I. BACKGROUND

1. Mining and communities: relationships of conflict

The principal social conflict that has confronted the mining industry in recent years has involved communities located near mines. This is not a new phenomenon in Peru, as history shows,¹ but in recent years it has become a global conflict that has been repeated with similar characteristics in various regions of the world.²

The struggle between mining companies and rural communities over control and management of natural resources has been a central element of the conflict. Communities have been seen as guardians of ecosystems in the face of incursions by external forces, in this case mining companies.³ In addition, in countries such as Peru, communities feel that mining operations have historically done very little to improve their living conditions and mitigate poverty.

While conflicts in the mining industry's area of influence involve diverse populations — peasant communities, rural populations in general, villages and even urban areas — a report by the World Bank, in which it reviews its policies in the extractive industry sector, puts special emphasis on the situation of indigenous peoples. This report notes that one of the principal threats to these populations today is the advance of extractive industry such as mining, against which they have no effective mechanisms for exercising control or defending their rights.

After several years of expansion in the mining sector, it is clear that many operations have started up without sufficient evaluation of their economic, social, environmental and cultural impact on the lands occupied by indigenous communities.⁴ Multicultural environments such as Peru pose additional challenges for the establishment of appropriate relationships among the various interest groups in mining areas, so as to avoid any form of marginalization and reinforce strategies marked by consensus and tolerance, encouraging informed participation by these populations.

¹ This occurred at the beginning of the last century, with the arrival of the U.S.-based Cerro de Pasco Corporation. Its acquisition of the largest mines in the central part of the country was followed by a significant change in the use of natural resources (land, water, etc.), which affected the owners of land being used for agriculture and livestock. A similar phenomenon occurred in the 1950s, during a new phase of mining expansion, both in the central highlands and in the southern part of the country.

² Through networking and a series of international conferences, CooperAcción has shared information and systematically documented conflicts in Asia, Africa and Latin America. The most significant include the cases of Tarkwa in Ghana, which involves Gold Fields; Bougainville in Papua New Guinea and BHP; Sulawesi in Indonesia and INCO; several regions of Australia and RTZ; the Marinduque area of the Philippines, which involves Placer Dome; and conflicts in Latin America involving Parapanema in Brazil; Capasirca, Amayapampa and Llallagua in Bolivia; and Tambogrande, Yauli-La Oroya and Tintaya in Peru.

³ See De Echave C., José: *Construyendo un proceso de toma de decisiones frente a operaciones mineras*. CooperAcción, August 2001.

⁴ See recommendations on indigenous peoples in the World Bank Extractive Industry Review.

Debate over the promotion of sustainable development and increased concern about environmental protection and the responsible use of natural resources in general are global trends that have influenced the behavior of the various stakeholders involved in mining activity.

The legal and institutional framework established in the early 1990s in countries such as Peru, which was extremely effective in attracting investment that resulted in sustained growth in the mining sector, proved to have serious limitations when it came to addressing the multiple conflicts that arose.

The various interest groups involved in mining cases have responded to these conflicts in different ways. Companies have fiercely defended the current legal framework⁵ and directed their strategies toward establishing what they call voluntary self-regulation mechanisms, which are codes of conduct that seek to define criteria for carrying out their activities. These codes can be policies or specific guidelines for behavior by a company or an industry groups.

For the mining industry, the main message behind the development of these voluntary or self-regulatory mechanisms is the acknowledgement of certain negative externalities resulting from their activities, which the industry believes can be controlled without the need for public regulatory measures. This clearly raises deeper questions about how to address the various conflicts in the mining companies' areas of influence — a debate over self regulation vs. public regulation.

Most mining companies in Peru now have codes of conduct, and in January 2003 the National Mining, Petroleum and Energy Society (*Sociedad Nacional de Minería, Petróleo y Energía*, SNMPE) unveiled its own code of conduct, which was signed by nearly all medium-scale and large mining companies. This document consists of eight major norms related to such issues as transparency, equality, respect for ethnic diversity, dialogue, occupational safety and health, and efforts to reconcile the companies' business interests with the sustainable development of society.

An overview of the voluntary codes of conduct, whether for companies or industrial groups, gives an idea of their real effectiveness. One report published jointly by Oxfam America and Oxfam Australia⁶ provides some insight, presenting an evaluation of experience with voluntary codes of conduct. Among the main positive aspects of such codes, the report says, are that:

- They have improved industry performance and standards.
- They offer some advantages to local communities, which can use them to hold companies accountable.
- They can bring about long-term changes in the behavior of company employees in ways that go beyond work activities.

⁵ They have also claimed that the rules of the game must remain stable so as to create a climate conducive to investment and the development of new operations.

⁶ Mining Ombudsman: Annual Report 2001-2002, Oxfam Community Aid Abroad, November 2002.

- In general, the norms also apply to contractors that provide services to the company.

In discussing weaknesses or negative aspects, the report indicates that there is frequently a substantial difference between what the code says and what is actually done in mining areas. These codes also lack mechanisms for enforcement and independent monitoring and evaluation. As a result, company representatives act as legislators, judge and jury in overseeing their own activities, with no participation by third parties.⁷

An analysis by the OECD⁸ of 246 voluntary codes showed that they did not include minimal universal norms such as those established by the international human rights system. Another significant loophole is that these codes do not provide plaintiffs with adequate mechanisms for filing grievances.

The conflicts that have occurred in the past decade can be classified in various ways — according to the scale and type of production, the types of impacts (environmental, social, economic, cultural, etc.), the type of population (rural or urban), etc. An alternative form of classification, which could simplify their grouping for analysis, is to separate conflicts in older mining areas from those in newer ones.

Mining expanded in the past decade in areas of Peru where mines had historically existed as well as in regions where there had never been mining operations. In the new areas, the communities' strategy has generally been one of opposition to mining on their lands. Examples include Tambogrande and Huancabamba in Piura, Jaén and Santa Cruz in Cajamarca, and Chincheros in Apurímac. There has also been resistance to the expansion of operations in areas where there has been a history of mining, such as the conflict over Cerro Quilish in Cajamarca or the community of Vicco in Cerro de Pasco.

There are also communities that already coexist with mining operations. In these cases, the communities' strategies are aimed at gaining recognition for rights that have been violated, without necessarily proposing that the mining companies withdraw from their lands. Tintaya falls into this category.

For the communities, the most significant element in the response to conflicts with mining companies came with the centralized organization that resulted from the creation of the National Coordinating Committee of Communities Affected by Mining (*Coordinadora Nacional de Comunidades Afectadas por la Minería*, CONACAMI).⁹ Confrontations and grievances marked the period of CONACAMI's birth, and the new organization rapidly became the most representative body for communities affected by mining. It launched an intensive campaign focusing on the main conflicts facing its grassroots groups in various regions. CONACAMI's principal strategies revolved around strengthening organizations, building capacities, developing alliances and waging campaigns. Mining companies and

⁷ For example, enforcement of the SNMPE's code is in the hands of an Advisory Committee made up of past presidents of the organization.

⁸ The Organization for Economic Cooperation and Development, which consists of the world's major industrialized countries.

⁹ CONACAMI's founding assembly was held in November 1999.

government agencies such as the Ministry of Energy and Mines identified CONACAMI and the non-governmental organizations aligned with it as *anti-mining* groups.

Along with these initiatives, which have been implemented by different stakeholders, there have also been multi-stakeholder efforts to address mining-related conflicts. Dialogue groups have been established in Peru, sometimes to address specific conflicts and sometimes simply to bring stakeholders together and build trust. Results of these efforts have varied. The following are some of the main aspects of the case involving the communities in the province of Espinar that are located in the Tintaya mine's area of influence.

2. The case of the Tintaya mine

The first actions implemented with regard to what are now known as the Tintaya mining operations date back to the second decade of the last century. Exploration began in the area in 1917, when a U.S. company, Andes Exploitation of Mine, found reserves in the community of Anta Cama.

Work continued in the 1940s, and in 1952 the Cerro de Pasco Corporation acquired the rights to continue exploring. In September 1971, as part of an effort to stimulate state participation in the mining sector, the Peruvian government granted the state-run company Minero Perú the right to develop the Tintaya deposits. The state-run company hired H.A. Simons International Ltda. to prepare a feasibility study.

On May 2, 1980, the Empresa Estatal Minera Asociada Tintaya S.A. (ETAMINSA) company was established. Shares in the new company were distributed as follows: Minero Perú (45 percent), Centromin Perú (45 percent), and the Development Finance Corporation (*Corporación Financiera de Desarrollo*) (10 percent). In September 1981, the company changed its name to Empresa Minera Especial Tintaya S.A. Operations began in April 1985.

As part of its effort to develop the mining sector, the government, with Resolución Directoral N.41/81/EM/DGM dated June 26, 1981, expropriated 2,368 hectares of land owned by the community of Anta Cama, in the sector called Tintaya Marquiri. The community members filed a protest with the Ministry of Energy and Mines on the grounds that the land had been appraised at an unfairly low price and that various damages were not taken into consideration.

In the 1990s, through a series of structural reforms, the transfer of state-run companies to the private sector began. The special committee charged with the privatization of the Tintaya company was appointed on February 12, 1993, by Supreme Resolution No. 044-93 issued by the office of the president of the Council of Ministers.

Before being privatized, the Tintaya S.A. company underwent a series of restructuring measures. Available reserves were assessed, shares in the company (99.85 percent) were

transferred to Minero Perú S.A. and there were job cutbacks.¹⁰ It should be noted that in 1993, the company registered US\$4.6 million in profits, and in its last year of production as a state-run company it processed 8,000 metric tons of ore a day in its concentration plant.

Six companies presented bids for the purchase of the Tintaya mine on October 6, 1994. The U.S. consortium Magma Copper Company/Global Magma Ltda. was the winner. The contract signed on November 29, 1994, included a cash payment of US\$215.7 million and the purchase of US\$55 million of Peru's external debt. Employees also acquired shares worth US\$3.8 million, placing the total amount for the sale of the Tintaya mine at US\$276.8 million.

The new company changed its name to Magma Tintaya S.A. But soon afterward, in January 1996, Magma was bought by Broken Hill Proprietary (BHP), an Australian group that merged with the British company Billiton PLC in 2001 to form the world's second-largest mineral producer.

Once Tintaya was transferred to the private sector, its new owners decided to expand their operations and productive capacity by more than 50 percent and built a copper oxide treatment plan. For the expansion, they acquired 1,263 hectares from the community of Tintaya Marquiri; later, to ensure the safety of their tailings dam, they acquired 246 hectares from the community of Alto Huancané. Later, as a result of exploration of the Corrocohuayco and Antapaccay mining concessions, the company purchased 400 hectares from the community of Huano Huano and 477 from the community of Alto Huarca. Finally, as a result of the construction of a new tailings dam, the company decided to acquire 875 hectares from individual landowners.

All of these events, from the expropriation of land from the mother community of Anta Cama,¹¹ in the Tintaya Marquiri sector, to the subsequent land purchases, along with environmental and other concerns, created a growing sense of discontent among communities neighboring the Tintaya mine. As a report prepared by the members of the dialogue group stated,¹² "the land purchases in 1996 created unpleasant situations in the communities and led to complaints about the validity of the transactions. This attracted the attention of Oxfam America, CooperAcción, the National Coordinating Committee of Communities Affected by Mining and the Cusco Regional Coordinating Committee, which decided to offer support to the affected communities." "The view of the organizations that have been supporting the communities is that sufficient progress has not been made in addressing the communities' grievances."¹³

After the National Coordinating Committee of Communities Affected by Mining was created in October 1999, the case of the communities in Espinar became a priority for the new organization. Meanwhile, CooperAcción had begun working in the province of

¹⁰ Dropping from 1,413 workers in 1989 to 770 in 1994.

¹¹ In 1990, the community of Anta Cama approved the dividing up of its 17 "annexes," including Tintaya Marquiri, Alto Huancané, Bajo Huancané and Huano Huano.

¹² Report by the BHP Billiton Tintaya Dialogue Table, June 25, 2002.

¹³ Report by the BHP Billiton Tintaya Dialogue Table, June 25, 2002.

Espinar in 1997, and the communities asked for a review of the land transactions with the mining company and an independent environmental assessment.

The analysis of the land transactions revealed a series of aspects underlying the community members' concerns,¹⁴ including the loss of communal lands to the mining company without ensuring the conditions needed for the community members' subsequent survival; extreme undervaluing of the land; failure to fulfill commitments; informality in negotiations, reflected in agreements reached with community leaders who were not authorized to make such decisions; pressure from parallel easement requests with the Ministry of Energy and Mines; forced eviction from lands and abuse of women's human rights; illegible public records; community leaders acting without power to dispose of community property without being authorized to do so; disagreement over the surveying of land; etc. These issues were described in a report by the OXFAM Community Aid Abroad Mining Ombudsman's Office.¹⁵

A report on environmental issues prepared in April 2001¹⁶ mainly warned about the quality of water sources for both domestic and agricultural use and bird habitat. It was recommended that actions be taken to recover the area damaged by flooding from tailings and pasture areas, ensure appropriate disposal of tailings sediments accumulated in the Tintaya River bed and do intensive monitoring of water, air and soil.

Based on this work, CONACAMI and the five communities near the Tintaya operations, with technical support from CooperAcción and the sponsorship of OXFAM America, asked the OXFAM Community Aid Abroad Mining Ombudsman in Australia to take up the case. "The request was accepted and was followed by a case investigation in December 2001."¹⁷

The OXFAM Community Aid Abroad Mining Ombudsman's Office had been created in February 2001 to establish a formal mechanism for channeling grievances about Australian mining company operations in any part of the world. The office generally receives grievances from communities affected by Australia-based mining companies through OXFAM Community Aid Abroad networks in Asia, the Pacific, Africa and Latin America.

"The Ombudsman checks all claims by making on-site investigations and takes action where the grievances appear to be credible. The Ombudsman consults with communities and community support organisations over any actions Oxfam Community Aid Abroad undertakes in respect of their case."¹⁸ This is an important aspect that should be highlighted, since the experience with this office and its handling of the grievance that was presented demonstrate the importance of making correct use of opportunities that exist in the international sphere, which can be extremely helpful for communities facing conflicts with mining operations in any part of the world.

¹⁴ *Los Conflictos de Tierras en la Provincia de Espinar: El Caso de BHP y las Comunidades de Tintaya Marquiri y Alto Huancané*, CooperAcción, June 2001.

¹⁵ Mining Ombudsman: Annual Report 2001 – 2002, Community Aid Abroad, November 2002.

¹⁶ Prepared by EQUAS S.A. at the request of CooperAcción.

¹⁷ Mining Ombudsman: Annual Report 2001- 2002, Oxfam Community Aid Abroad, November 2002.

¹⁸ Mining Ombudsman: Annual Report 2001 – 2002, Oxfam Community Aid Abroad, November 2002.

It was amid this scenario that dialogue began in Tintaya with the participation of the communities of Tintaya Marquiri, Alto Huancané, Bajo Huancané, Alto Huarca and Huano Huano; the company BHP Billiton Tintaya, the National Coordinating Committee of Communities Affected by Mining; its regional organization in Cusco; Oxfam America and CooperAcción, with the OXFAM Community Aid Abroad Mining Ombudsman's Office as an observer.

II. BUILDING DIALOGUE

1. The stages of the Dialogue Table

The implementation phase:

In December 2001, Mining Ombudsman Ingrid Macdonald traveled to Peru to visit the province of Espinar, meeting with representatives of communities neighboring the Tintaya mining operations. “She also attended numerous other community meetings at affected sites and in the community itself, where grievances were also heard.”¹⁹ She also met with representatives of CONACAMI, OXFAM America, Equas S.A. (the company that had done the independent environmental monitoring), CooperAcción, the head of the government Ombudsman’s Office in Cusco and the mayor of Espinar.

The visit had sparked concerns within the mining company, and toward the end of her visit, after BHP Billiton executives contacted Ingrid Macdonald, a meeting was organized with representatives of the company,²⁰ CONACAMI, OXFAM America, CORECAMI Cusco, the municipality of Espinar and CooperAcción.²¹ The meeting marked the first time that the various interest groups involved in the case had sat down face to face. They agreed to begin a dialogue process “with the commitment to work jointly to arrive at solutions to the different problems that had been identified.”²²

The mining company asked for a reasonable amount of time²³ to prepare for the process, a request that was accepted by all the parties. The first meeting of the Tintaya Dialogue Table (*Mesa de Diálogo de Tintaya*) was held on February 6, 2002,²⁴ formally marking the beginning of the process.

At the February meeting, key aspects were defined that would lay the groundwork for the Dialogue Table’s efforts. These included:

- a. The definition of a code of conduct that emphasized respect for all members of the Dialogue Table, balanced representation, consensus building, confidentiality, transparency, flexibility, punctuality, etc.
- b. The definition, by consensus, of the issues to be addressed: communal lands, the environmental situation, human rights cases and sustainable development for the area.
- c. A work dynamic that combined plenary sessions of the full Dialogue Table with commission work.

¹⁹ Mining Ombudsman: Annual Report 2001 – 2002, Oxfam Community Aid Abroad, November 2002.

²⁰ Representatives of BHPB Base Metals and BHPB Tintaya S.A.

²¹ While the mining company’s intention was to meet with Ingrid Macdonald, she made the participation of these organizations a condition for the meeting.

²² Mining Ombudsman: Annual Report 2001 – 2002, Oxfam Community Aid Abroad, November 2002.

²³ Approximately one month.

²⁴ The meeting was held at the Sheraton Hotel in Lima.

- d. The assistance of an outside facilitator for the group's plenary sessions.²⁵

Another element that merits special attention involves the communities' perception of the performance of Peruvian government agencies. At the beginning of the process, the communities and CONACAMI proposed that the government — that is, the Ministry of Energy and Mines or any other agency of the executive branch — not participate. That proposal was accepted by the other members of the Dialogue Table, and except for the government of the province of Espinar, no other government body was represented in the process.

Another issue that was discussed during this phase involved the funding needed for the Dialogue Table. The decision was made to establish a common fund with contributions from all the members, in an effort to ensure that any organization or person contracted would have no direct relationship with any particular member, but would be hired by the Dialogue Table as a whole.

The implementation phase concluded with the agreements reached at the meeting in February 2002.

Second phase: bringing the players together

Once the dialogue had started, the next phase was characterized by bringing the players together. This stage essentially lasted from February to June 2002. There had been a significant lack of trust between the mining company and organizations such as CONACAMI, OXFAM America and CooperAcción because of prejudices and a lack of knowledge of one another.

The first few months, therefore, provided time for the actors to get to know one another. For the organizations that were accompanying the communities, the first meetings were defined by strategies that sought to review and evaluate the company's past performance and pressure for acknowledgement of the errors committed. Discussion centered on issues that were identified as priorities: land transactions, environmental impacts and human rights.

Four plenary sessions were held between February and June 2002 with all members of the Dialogue Table: the first on February 6, the second on March 1, the third on April 4 (all in Lima), and the fourth in Yauri, Espinar, on June 7. There was no meeting in May because the members of the group agreed to suspend activities until an environmental incident at BHP Billiton's oxide plant, which caused the precipitation of copper hydrates in the Ccamacmayo basin, was clarified.

²⁵ Antonio Bernales and Javier Aroca (OXFAM America) played this role.

During this period, it was established that the mining company, the communities and the organizations that were advising them had different views of what had happened in the mine's area of influence and the strategies that should be implemented.

Unilateral views and assessments were gradually set aside. One positive factor was the Dialogue Table's agreement to a phase of joint studies that would provide a common assessment of what had occurred in the environmental, social, economic and cultural spheres, providing a snapshot of the current situation. The group agreed to do joint environmental monitoring, a socio-economic assessment of the area²⁶ and an analysis of cases involving human rights violations.

This phase ended with a report signed by all members of the Dialogue Table, which was submitted to Ingrid Macdonald in June 2002. The report noted that once the environmental incident was overcome, the members of the Dialogue Table agreed that the process had moved into a new phase in which the commissions would begin working, giving "greater impetus to the land commission; there was also consensus that the various communities' issues could not all be addressed at once because they were not of the same nature and priorities had to be set. The communities agreed that Tintaya Marquiri would receive greater attention."²⁷ The report concluded by highlighting some of the results of the process and, more importantly, reaffirming the "willingness to keep working to find solutions that are satisfactory for all the parties involved." The report noted that "this dialogue process seeks to achieve true points of equilibrium in the Tintaya mine's area of influence, including the legitimate aspiration for sustainable development of the area on the one hand, and the presence of BHP Billiton's mining activities on the other. This will lay the groundwork for a harmonious, lasting coexistence between the mining company and the neighboring communities in the future."²⁸

Acknowledgement that there were problems that had to be resolved jointly and agreement to keep the dialogue going were unquestionably the major achievements during this phase.

Third phase: the work of the commissions

After the June 7 meeting in Espinar, a stage began that was characterized by the establishment of commissions and their subsequent work. The communities were free to decide whether and how to participate in the commissions, but leadership of the commissions fell to the presidents of the communities and the heads of the Regional Coordinating Committee of Communities Affected by Mining (*Coordinadora Regional de Comunidades Afectadas por la Minería*, CORECAMI).

²⁶ While this was an initiative sponsored by BHP Billiton, the study included the communities, and the Dialogue Table chose GRADE to monitor the process and make recommendations.

²⁷ Report by the Dialogue Table of BHP Billiton Tintaya and neighboring peasant communities, June 25, 2002.

²⁸ Report by the Dialogue Table of BHP Billiton Tintaya and neighboring peasant communities, June 25, 2002..

The following is a description of the work of each of the commissions:

a) Land Commission:

Because of the importance of this issue and the communities' expectations, there was great interest in the Land Commission from the very beginning, and community members participated actively. The first meeting was held on June 23, 2002, in the administrative offices of the company's mining camp; 29 people attended, representing the various interest groups involved in the Dialogue Table. It was agreed that the commission would have a president²⁹ and representatives from each of the communities (the community's president plus three members), as well as one titular member and one substitute for each of the other members of the Dialogue Table. It was also agreed that a certain proportion of the community representatives would be women.

The commission decided that its main objective was to come up with a definitive solution to the land problem of the communities participating in the Dialogue Table. The first task was to document the expropriation that had occurred in 1982 and the land transactions in the 1990s, in order to arrive at a common understanding and design possible solutions. The exact number of hectares affected in each community was also determined:

<u>Peasant Community</u>	<u>Area affected</u>
1. Comunidad Campesina (CC) Tintaya Marquiri	3,274.50 hectares
2. Comunidad Campesina Alto Huancané Huinumayo Sector (CC. Alto Huancané)	204.73 hectares 246.00 hectares
3. Comunidad Campesina Huano Huano	400.85 hectares
4. Comunidad Campesina Alto Huarca	477.00 hectares
5. Comunidad Campesina Bajo Huancané	151.77 hectares

²⁹ During the initial phase, the president of the Land Commission was Miguel Palacín Quispe, president of CONACAMI.

Not surprisingly, when the work began there were different perceptions of what had occurred. While the communities questioned the how the deals had been handled, the company stated that it had acted according to the law and defended the validity of the transactions. Regardless of the legality of the land transfers, however, everyone soon agreed that the events had had a significant impact on the social, cultural and economic life of the communities. A solution to the land issue, therefore, went deeper than formal considerations and a merely legal framework.

Because the community of Tintaya Marquiri was the most affected, the commission eventually agreed, by consensus, to make that case a priority. The work on that community's land problem clearly characterized the commission's progress.

Before the dialogue began, the company had acquired the Ccopachullo property, where it said the 42 families from Tintaya Marquiri could resettle. Although the Ccopachullo proposal had been accepted in a community assembly, however, many people in the community doubted viability and the real capacity of that property to house the number of families indicated by the company.

To clarify the potential of the Ccopachullo land, the company offered to hire the Universidad Nacional del Altiplano in Puno to do an edapho-agrostologic study.³⁰ The organizations that were advising the communities also participated, complementing the technical report.

The two reports provided more precise information about soil characteristics and the land's potential, classifying it by its properties and possibilities for use: for natural and cultivated pasture, housing areas, other crops or production activities, etc. The report by the Universidad Nacional del Altiplano concluded that the land could support about 15 families, once work was done to improve its carrying capacity. In the medium term, the number of families could increase to a maximum of 30, as long as investments were made and projects were implemented to provide them with adequate infrastructure, improved pastures and fodder for cattle and sheep. In short, Ccopachullo's viability would depend on a series of development investments.

Taking a more realistic view of the possibilities of the Ccopachullo project enabled the Land Commission to identify some lessons learned and establish some criteria for a satisfactory, realistic solution for the communities. One initial element, which gradually matured as a solution, involved replacing the amount of land affected by expropriation or sale/purchase, plus an additional amount, which could depend on the quality of the land being offered in exchange.³¹ The idea of basing the solution on the number of families affected in each community was discarded, since the solution sought to return lands so that the new plots could be managed collectively.

³⁰ A study to evaluate soil quality and development potential.

³¹ The final agreement included an additional amount for each community, ranging from a minimum of 25 percent to a maximum of 50 percent, depending on the quality of the land. The additional land was considered a sort of compensation for the damages suffered by the communities.

It was also agreed that any land acquisition had to be approved by an assembly of the community involved, and that the land had to be similar to or better than the lands the communities had lost.

Another principle adopted by the Dialogue Table was *relocation with development*. Initially presented by BHP Billiton in connection with the Ccopachullo project,³² the expanded proposal implied reaching a definitive solution to social problems resulting from the land transactions and mining operations, providing new land for agricultural use, reactivating agriculture in the communities, fostering growth and improving families' quality of life, providing the communities with development opportunities and signing agreements for technical assistance.

The community of Tintaya Marquiri approved the relocation-with-development proposal on August 29, 2002, and the search began for new lands that would meet the community's needs. Fourteen potential sites were located and visited by members of the community. Before any decision was made about possible acquisition, the land's characteristics and agricultural, hydrographic, physiographic and other resources were evaluated. The evaluation determined that only two of the areas were appropriate.

Amid the search for land, at a meeting of the Land Commission on October 15, 2002, representatives of Tintaya Marquiri informed the commission that 50 percent of the community members had decided to be relocated in the Majes Valley in Arequipa. The Majes proposal took all the members of the Dialogue Table by surprise, since it had not been raised as a possibility in the commission and appeared to be a unilateral decision by the community. It also involved relocation outside the province and in a region with characteristics different from those to which the community members were accustomed.³³

Although the proposal by Tintaya Marquiri was not backed by the communities' own organizations,³⁴ which defended the idea of keeping the community intact, it was evaluated by the Land Commission. A visit was made to the area and a commission was appointed to prepare a technical report.

The preliminary report by the Majes Technical Commission³⁵ concluded that the acquisition of that land was not viable, because it was state property and could only be acquired through a public bidding process under the law. The Land Commission

³² Presented to the Dialogue Table in Espinar on June 7, 2002.

³³ Majes is located in the region of Arequipa.

³⁴ Representatives of the National Coordinating Committee of Communities Affected by Mining (*Coordinadora Nacional de Comunidades Afectadas por la Minería*) disagreed with the idea because it meant moving a community from a high Andean area to the coast, with possible cultural and social impacts on the community. The fact that one group of community members would move to the coast would also mean definitive separation from the mother community.

³⁵ The mission of the commission, which was established on October 29, 2003, was to evaluate and issue an opinion about the relocation of community members in the Majes Valley.

also noted that the Majes alternative did not meet the criteria set by various international bodies for the relocation of affected populations, since it was a place where environmental conditions were completely different and unfamiliar to the community — where the traditional production systems of a high Andean community were not applicable, for example, which could result in significant social and cultural impacts. The community insisted on relocation to Majes for about eight months, stalling the commission's work.

The arguments that were raised and the emergence of other options for land in the province or nearby areas eventually made the Majes option less attractive to the community. The assembly of Tintaya Marquiri finally approved the acquisition of the Jayuni property,³⁶ an area of 1,179 hectares in the province of Espinar. The Buena Vista property, which consisted of 1,892.47 hectares, was later located and acquired.

Because of the delay caused by the Majes issue, the other communities involved in the Dialogue Table suggested that their cases be handled in parallel, and an action plan was drafted for each. In the community of Alto Huancané, priority was given to the cases of 14 families living near the tailings dam, applying the same principle of relocation with development under conditions similar to those established for Tintaya Marquiri. The other members of the community of Alto Huancané decided to remain on their land, where they would benefit from development projects agreed to by the Dialogue Table.

Although in the communities of Bajo Huancané, Huano Huano and Alto Huarca the scheme for returning lands involved fewer hectares³⁷ than in Tintaya Marquiri, the communities' internal agreements became complicated because they involved different sectors or individual cases. For example, one community, Alto Huarca, had been divided into individual plots before the lands were sold. Nevertheless, the three communities approved the model of a return of community lands with development, which meant that they would regain the same number of hectares plus an additional amount that ranged from 25 percent to 50 percent.

As the process progressed, certain concepts were more clearly defined. The original idea of "relocation with development" gradually fell by the wayside, and it was necessary to clarify that the most realistic strategy meant "providing land with development," rather than "collective relocation."³⁸

Although the communities were going to receive new land, in many cases the area of permanent residence would not change. This was true in Tintaya Marquiri: "within family groups, agricultural activities are mainly carried out by the older population, while the other family members have other activities and other sources

³⁶ On February 7, 2003.

³⁷ See table of land area affected in each community.

³⁸ In November 2003, BHP Billiton Tintaya presented a comprehensive proposal to the Dialogue Table that outlined these concepts.

of income.” “This group’s permanent residence is in the village of Tintaya Marquiri and not in the countryside.”³⁹ The company’s request that people leave their land, therefore, applied on to families “inside the risk area of operations or on the company’s lands.”⁴⁰

Applying these concepts, the decision was made to find the remaining land needed for the five communities. In December 2003, the Dialogue Table agreed that the amount of additional land to be provided to each community would range from 25 percent to 50 percent.

The process was slow for reasons that included the difficulty of finding appropriate land in the province of Espinar. Meanwhile, many property owners began speculating with prices when they realized that the communities were interested in acquiring new land.

This forced the Dialogue Table to appoint an Executive Land Commission⁴¹ to speed up the acquisition of new plots and arrange to transfer titles and help community members settle on their new lands. Meetings were held with each community to establish a work plan for the community. When the agreement was signed, the following land acquisitions had been made for the communities:

Peasant community	Property acquired	Number of hectares acquired
Tintaya Marquiri	– Ccopachullo	918.50 *
	– Jayuni	1,219.00
	– Buena Vista	1,892.47
Huano Huano	– Huara Huara	467.66
	– Torca and annexes	223.00
Alto Huarca	– Minera Huayco	146.00
	– Auteña Pulpera	285.00
Alto Huancané**	-----	-----
Huancané Bajo	– Muñaypata	210.00

* The amount of land was corrected by a stationary topographic survey in which the community participated. It originally was noted as 1,035.00 hectares, as listed in the purchase/sale documentation. The correction is currently being processed by the Special Land Titling Program (*Programa Especial de Titulación de Tierras*).

³⁹ “Nuevas tierras con desarrollo” (“New lands with development”). Document presented by BHP Billiton Tintaya in November 2003.

⁴⁰ “Nuevas tierras con desarrollo” (“New lands with development”). Document presented by BHP Billiton Tintaya in November 2003.

⁴¹ The commission was established on June 26, 2004.

** The case of Alto Huancané is receiving special handling. Of the 14 families affected, nine requested urban land, two requested assistance to continue working their lands, and families requested land purchases. This alternative was proposed to the Dialogue Table and was finally included in the agreement⁴² as follows: “(...) in the exceptional case in which different solutions are chosen,⁴³ they must be accepted by consensus in the Dialogue Table.”

By late 2004, some progress had been made in the transfer process, especially in the cases of Tintaya Marquiri and Huancané Bajo. Tintaya Marquiri had progressed in plans for implementing the lands in Buena Vista and Jayuni, and 20 and 30 families, respectively, had moved. In Huancané Bajo, the community had moved two families and livestock to the Muñaypata property and had prepared a project to establish a community sheep-farming enterprise.

In the cases of the other communities, the acquired lands are being evaluated, and the search continues for the land that is still needed as well as for development possibilities.

b) Environment Commission:

The Environment Commission defined its task as determining the environmental impacts resulting from mining operations in the area. Technical subcommissions on environmental monitoring, human health and animal health were set up. Each subcommission drew up an action plan that included a base line study to be done in the first phase.

It was also agreed that the commission would address the grievances and concerns of the communities and their authorities, implementing a mechanism that would involve both BHP Billiton Tintaya's Social Development Office and CORECAMI. Cases would be submitted to the commission after a preliminary investigation. Agreement was also reached to develop early warning systems in cases of spills or other possible environmental accidents.

The following are the subcommissions' principal results:

- Joint Environmental Monitoring

In its work, this subcommission took into account an environmental evaluation that had been done in November 2000 by CooperAcción, with EQUAS S.A., and a Water Monitoring Plan implemented by the company.

The monitoring sought to determine the level of pollutants in the air, water and soil of the peasant communities in the area of influence of BHP Billiton's mining

⁴² Agreement Workshop, September 24, 2004.

⁴³ Referring to the stipulated amount of land plus an additional percentage.

operations.⁴⁴ Other objectives involved the dissemination of environmental information to the communities and the definition of specific actions that could be implemented jointly by the company and the communities.

Samples were taken between June and November 2002, when the sulfur plant was not in operation. The samples were analyzed by three laboratories to ensure the reliability of the results.

The results of the monitoring varied. Some water sampling points exceeded limits for selenium and nitrates. In the former case, the commission decided to prohibit the use of those water sources and the company agreed to provide potable water to the Paccpaco and Coccoareta sectors.

In the air samples, the metals tested were below the limits set by the National Air Quality Standards. In the case of soil, levels of arsenic and manganese in some areas were above the referential values considered in the evaluation. The commission agreed to investigate soil quality and its impact on plants in certain areas because of the metals found in the soil.

In September 2003 the commission produced an information sheet with the results of the monitoring, which was distributed to the affected communities. In 2004, the results were presented to each community member who had participated in the study.

The idea was to take that study as a sort of base line and repeat it now that the company's various production units were in full operation.

- Base Line Study of Human Health and Animal Health

In October 2002, base line human and animal health studies were done. The human health study evaluated social and economic conditions in the communities, as well as nutrition and health. The study showed that some homes could be considered inappropriate (dirt floors and no water hookup), and found overcrowding (homes with an average of more than three people per room), inadequate sanitation, nutritional deficiencies and illnesses.

The animal health study determined the type and number of animals owned by community members and included veterinary exams and laboratory analyses. The study indicated a lack of technical know-how and economic capacity for improving animal husbandry techniques. Animals did not have a balanced diet and community members lacked veterinary assistance. Many diseases, malnutrition, weight loss and retarded growth were noted in the animals.

In September 2003, the commission produced an information sheet with the results of the study, which was distributed to the communities. In 2004, the results were

⁴⁴ In four areas: the Tintaya mine, Ccorcohuayco, Huinipampa and Antapacay.

presented to each farmer who had participated in the study. They were also given a talk about how to prevent the main diseases that had been diagnosed.

Based on the monitoring results and base line studies, the technical subcommissions drafted their first work plans to ensure continuity in follow-up of the study results.

- Community Environmental Oversight Program

In 2004, the commission approved the formation of an Environmental Oversight Committee in which local people would participate. It was agreed that each community would have environmental delegates on the oversight committee, sharing responsibility with the other members of the Dialogue Table.

Work is progressing on the preparation of a Community Environmental Oversight Program. The objectives include implementation of mechanisms that allow oversight of environmental quality in the mining operation's area of influence and ensure compliance with the agreements reached by the Dialogue Table.

The program will also include environmental indicators, the identification of environmental risk zones, oversight plans and environmental training. The agreement states that Environment Commission will be a standing commission whose work will be ongoing.

c) Human Rights Commission:

This commission's task was to review and address cases of human rights violations reported by residents of the five communities in the Tintaya mine's area of influence.

Representatives of the mining company, OXFAM America, CooperAcción and CONACAMI participated in the work. Some of the presidents of the five communities and representatives of CORECAMI participated initially, but did not maintain a continual presence. The commission chose to have a rotating coordinator. CONACAMI initially assumed that responsibility, but was replaced by CooperAcción in April 2004.

Community members' accounts of alleged human rights violations were initially gathered by CONACAMI. A total of 34 potential cases were recorded and submitted to the commission in an initial report prepared by CONACAMI.

The cases occurred between 1982 and 2001. Various cases were related to the purchase and sale of land and the relocation of community members and included allegations of rape, injury, verbal aggression, threats, forcible eviction, damage to private property and intimidation. In April 2003, another case was added at the suggestion of the OXFAM Community Aid Abroad Mining Ombudsman.⁴⁵

⁴⁵ The death of a community member.

The commission began by engaging in dialogue with community members about their grievances. It was extremely difficult, however, to determine exact details about the cases, because of the time that had elapsed, contradictory information and the lack of documentation.

The commission therefore recommended to the Dialogue Table that it select an independent body specializing in human rights to carry out an objective investigation with the backing of all members of the Dialogue Table. A subcommission was formed by representatives of CORECAMI, OXFAM America, BHP Billiton and CooperAcción, and the group agreed to accept the results of the independent study.

From the start, the commission had also recommended that the mining company improve its orientation, training and internal control systems to avoid future human rights violations.

- Independent study

In July 2002, organizations interested in carrying out the investigation were invited to apply. The Legal Defense Institute (*Instituto de Defensa Legal*, IDL) was chosen by consensus. IDL prepared the report with assistance from the Vicariate of Solidarity (*Vicaría de Solidaridad*) of the Catholic Prelature of Sicuani. The report was submitted to the Dialogue Table in December 2002.

The commission asked IDL to analyze and determine how human rights violations against members of the communities near the Tintaya mine had occurred. The organization was also asked to make recommendations and design a strategy for preventing such cases in the future.

IDL based its study on the grievances that had been lodged, corroborating information through field visits to the area under investigation. The IDL investigators gathered testimony from the alleged victims, witnesses and the alleged perpetrators when possible. Other sources of information included court records, minutes and other documents provided by witnesses and members of the Dialogue Table.

In its report, IDL presented the accounts of the alleged victims and the alleged perpetrators when possible. It also indicated the form of reparation requested by the alleged victim.

The report recommended that one priority be to re-establish the relationships that had deteriorated because of conflicts between the mining company and the peasant communities. It recommended doing this through the following actions:

- The company should publicly acknowledge its responsibility for the adverse social, cultural and economic impacts of mining operations on the lives of the communities and their members.
- In cases of human rights violations, it should offer comprehensive assistance to help the victims and their family members recover physically and psychologically, and victims should receive legal advice so as to be able to defend their rights. The report also recommended that the handling of the cases take into account gender and cultural issues.
- Criteria should be established to allow for better relations between the communities and the company. In future land transactions with the company, for example, the communities involved should have technical and legal advice.
- A Dialogue and Conflict Resolution Working Group for Tintaya should be formed (a role that could be played by the commission) to oversee compliance with the recommendations agreed to on the basis of the report, to provide support for women deceived or abandoned by company workers, and to do preventive, educational and awareness-raising work with company employees and community members to ensure respectful relationships.

The report divided individual cases into the following categories: those in which a human rights violation occurred (four), those in which a violation probably occurred (six), those in which a violation did not occur (19) and those in which it was impossible to establish whether or not a violation had occurred (five).

In cases in which human rights violations occurred, the company was found to have varying degrees of responsibility. The report convinced the members of the Dialogue Table to seek different types of solutions to satisfy those affected.

In cases of probable human rights violations, the report stated that “these are related to mining activity in the area and the impact it has had on the life of the communities.”⁴⁶

In cases of alleged rape, it concluded that “the presence of mining company workers in an extremely poor Andean region with an indigenous population created a power relationship that was characterized by arrogant attitudes in everyday relations. The most serious aspect of these attitudes were cases of sexual relations with peasant women, who complained they were based on violence or deceit.”⁴⁷ Although the company was not directly responsible in these situations, the report recommended that it provide some degree of assistance to the affected women and their children.

IDL concluded that in several cases of eviction, there had been physical and verbal violence against community members. In cases involving the purchase and sale of

⁴⁶ Page 82 of the report.

⁴⁷ Page 83 of the report.

community lands, the report noted that there had been an asymmetrical power relationship.

Finally, in some cases in which community members left their lands to make way for the mine, they had to move human remains from their cemeteries. While this had not been reported to the Human Rights Commission, it was mentioned by some plaintiffs in their testimony. IDL stated that this constituted aggression against the population's values and sensibility and that there should be symbolic and public reparation.

The commission rejected five cases in which the alleged plaintiff could not be identified and another in which the alleged plaintiff stated that there had been a misunderstanding, but not a human rights violation.

Based on IDL's work, the commission developed a methodology for handling the remaining cases. The members agreed, by consensus, not to try to establish legal responsibility or seek possible judicial solutions, but to facilitate fair reparations according to the assessment of each case.

It agreed to begin with the cases in which the report had clearly established that human rights violations occurred. This category included three deaths and one case of verbal aggression. At the recommendation of the Oxfam Community Aid Abroad Mining Ombudsman, a fourth death was added.

In April 2003, the commission members agreed to form three subcommissions:

- The first, the Security Subcommittee, was responsible for evaluating conditions in the area of the mine to identify situations that posed potential danger to people.
- The Indemnification/Reparation Subcommittee was responsible for drafting proposals for resolving the cases that were being addressed. This subcommittee played an important role in resolving the first four cases that had been given priority. The methodology involved doing a case study and filling out a form with socio-economic information to describe the plaintiffs' needs. The subcommittee submitted proposals for reparations in the first four cases to the Human Rights Commission.
- Finally, a third subcommittee addressed the case of verbal aggression, which required further investigation.

The Human Rights Commission resolved the four cases that involved deaths. As reparation for the loss of family members, sons, husbands or brothers, the plaintiffs received land, houses and/or building materials. The commission's intention was that the plaintiffs use these goods to provide monthly rental income or set up a business. In one case, the victim's widow also received financial support for her child's education, in addition to a house.

In response to the IDL report's recommendation regarding damages related to the transfer of human remains from the cemetery, the company agreed to build a gazebo-like monument in the place where they were re-interred. Construction of the monument was completed in June 2004 and it was dedicated in September 2004.

While there is a general perception that the Human Rights Commission has moved slowly and made little progress, it should be noted that in various phases the commission members worked intensively to reach agreements. The agreements, however, were not publicized adequately and community members know little about them.

Throughout the commission's work, there was limited participation by the communities and their representatives. The lack of participation may reflect the communities' impatience with the pace of the commission's work and the demands placed on them by the intensity of the work of other Dialogue Table groups.

At several points, the commission members had to clarify, define and/or adjust their methodology. For example, to break the pattern of bilateral relations between plaintiffs and the company, a protocol was proposed and adopted by the commission in May 2004. The protocol established that all members of the Dialogue Table must be informed of any proposal for resolving a case, the proposal must be presented to the plaintiff, the plaintiff must be accompanied at key points in the process,⁴⁸ and all members must have access to documentation and a possible physical review of the goods or other benefits received by the plaintiff.

So far, the IDL recommendation to establish a Dialogue and Conflict Resolution Working Group has not been implemented. In practice, the commission is taking on the tasks that were suggested for that group.

d) Sustainable Development Commission:

From the outset, the Sustainable Development Commission's objective was to define a shared vision of sustainable development for the Tintaya mine's area of influence. The idea was to mesh mining activity with the communities' expectations of substantive improvement in their living conditions. The commission therefore defined itself as a sort of programming body for the Dialogue Table that would focus on medium- and long-range objectives.

Of all the commissions established by the Dialogue Table, the Sustainable Development Commission was initially the most dynamic. Expectations that had arisen around the land issue, however, reduced expectations for this commission, and in mid-2003 its work stalled.

⁴⁸ Accompaniment would consist of the presence of the company and other members of the commission at key points such as the negotiation of the terms of the agreement and the signing of the agreement.

In the first stage, while the commission was active, it involved representatives of BHP Billiton, CooperAcción, CORECAMI and members of the five communities. Coordination of the commission was shared by the company and CooperAcción.

In 2002, the commission began defining key issues, particularly a common understanding of sustainable development and the mechanisms for reaching development targets in that area. In August and October 2002, the commission held two workshops to define its goals and targets and the local residents' immediate needs.

From the start, it was proposed that community development should be fostered through specific projects, which implied prior strategic planning in the communities. The target was to have a strategic plan for each of the five communities that would reflect their problems and outline the development strategies that they should follow.

In November 2002, with CooperAcción's facilitation, training workshops were held with community representatives to prepare profiles of development projects. When the workshops were over, each community had a project profile.

Strategic planning began in 2003 with a series of workshops also facilitated by members of the CooperAcción team. In some cases, as many as four workshops per community were held to draw up comprehensive development plans. The process took longer than planned, largely because of limited participation by representatives of the communities.

Once the plans were completed, they were presented at ordinary assemblies of each community for discussion and approval. Initially, the work plans were not approved in some communities because of a lack of a quorum; the process was finally completed in June 2004. The plans approved by the communities offer a five-year vision of development and specify strategic objectives, targets, those responsible for the tasks, annual operating plans, priority projects and strategic partnerships.

The development plans for each community are the main result of this commission's work so far. These plans will provide important input for the Dialogue Table's work in the phase that will follow the signing of the agreement. The specific projects to be supported by the development fund must stem from the plans and respond to the vision of development that was hammered out by each of the communities.

In the agreement's implementation phase, the Sustainable Development Commission will be one of the most dynamic working groups.

e) Coordination and Follow-Up Commission:

Once the phases of implementation and bringing the parties together were completed, the various members of the Dialogue Table agreed that there was a need for a body to coordinate and follow up the entire dialogue process and the commissions' work. At a

meeting on June 7, 2002, the group agreed to establish a Coordination and Follow-Up Commission responsible for “overseeing the work and progress of the Dialogue Table and commissions, calling meetings, drafting an agenda and in general guiding and encouraging the Dialogue Table process.”⁴⁹

After the Dialogue Table’s plenary session on June 7 in Espinar, the new body was formed. The commission’s task was to establish a form of coordination that would interconnect and guide all the work that was being done. The commission would also be responsible for major decisions about the process, such as joint studies, the selection of organizations to do work for the Dialogue Table, organization of plenary meetings, conflict management in the dialogue process, external facilitation, handling the budget, relations with other groups, etc.

The commission consisted of all the members of the Dialogue Table, and the decision was made to include representatives appointed by the communities in its expanded meetings. BHP Billiton Tintaya was responsible for coordinating the committee. While the commission’s main sessions were held in Lima, it also met by teleconference with communities in the area of Espinar.

Although the Coordination and Follow-Up Committee was initially conceived as an operational body that would support the other Dialogue Table commissions, it also played an extremely important role in bringing together the various institutions and building the trust that the process needed.

Over the three years of the process, the Coordination and Follow-Up Commission has operated most consistently and has been one of the most influential groups in decision making.

The phase of consolidation of results:

At a meeting on December 19, 2003, the Dialogue Table’s Coordination and Follow-Up Commission analyzed the possibility of the Dialogue Table entering a phase that would enable it to solidify the progress that had been made by drafting and signing a formal agreement. The idea was accepted by all members of the Dialogue Table, and OXFAM America and CooperAcción were charged with drawing up the agreement.⁵⁰

The methodology proposed for drafting the agreement included separate workshops with the main actors involved in the issue — the five communities and their representative organizations on the one hand, and the mining company on the other. It also involved a review of the documents prepared by both the company and the communities as a contribution to the resolution of their differences.

On Monday, December 22, 2003, the first meeting was held with representatives of BHP Billiton Tintaya to hear the managers’ opinions about the elements that should be included

⁴⁹ According to the text of the Agreement signed December 21, 2004.

⁵⁰ This task was taken on by Javier Aroca of OXFAM America and José De Echave of CooperAcción.

in a definitive agreement for all parties. On Monday, January 5, 2004, a meeting was held in Arequipa with representatives of the communities, CORECAMI Cusco and CONACAMI. This was a long work session in which the communities and their leaders offered opinions and suggestions. Based on the input from the two workshops and all the documentation prepared by the Dialogue Table, the draft final agreement was drawn up.

When the draft was presented in late January 2004, the members of the Dialogue Table had different reactions. Representatives of the five communities disagreed openly with the proposal, mainly because the document did not specify the amount of the fund for financing development projects. Ever since the company had signed the so-called Framework Convention with the province of Espinar in September 2003, in which it committed “to contribute up to a maximum of 3 percent of its pre-tax profits and a minimum of US\$1.5 million for the development of the province,”⁵¹ the five communities participating in the Dialogue Table felt that the dialogue was not having concrete results and that the other organizations in the province had moved ahead and reached a satisfactory agreement that included a significant sum of money. That led to the expectation that the agreement would define a specific amount.

Disenchantment with the draft chilled relations between the five communities and the non-governmental organizations involved in the dialogue process.⁵² The communities and CORECAMI Cusco began to discuss the overall amount that should be allocated for their development projects. The figures ranged from an amount similar to that of the Framework Convention to half that amount, but no final agreement was reached. The discord over this issue affected the overall process and the possibility of reaching an agreement was postponed indefinitely.

The company then proposed negotiating with each of the communities in order to move ahead and find solutions. After receiving the first reports of those meetings, CONACAMI, OXFAM America and CooperAcción objected to this initiative, worrying that it would establish a pattern of bilateral relations between the company and the communities to the detriment of the collective Dialogue Table process.⁵³

This led to CONACAMI's temporary withdrawal from the Dialogue Table, while OXFAM America and CooperAcción decided to continue with the process once the company reaffirmed its commitment to reaching a consensus-based solution through the Dialogue Table.

With this impasse overcome, work was done in the second half of 2004 to solidify the process and continue seeking an agreement. The acquisition of land for the communities continued,⁵⁴ and an agreement was finally reached on the amount to be allocated for funding development projects.⁵⁵

⁵¹ Framework Convention for Development of the Province of Espinar and BHP Billiton Tintaya S.A.

⁵² CooperAcción, OXFAM America and CONACAMI.

⁵³ It was also noted that a pattern of bilateral relations had predominated in the previous phase of the Dialogue Table without positive results.

⁵⁴ See the report on the Land Commission's work.

⁵⁵ The amount finally agreed to was US\$330,000 a year for the next three years.

Under these conditions, work resumed on the final text of the agreement. This time the idea was to define it as an agreement on the consolidation of the Dialogue Table's progress to date, with the understanding that the process would continue as an ongoing mechanism for conflict resolution and a vehicle for supporting sustainable development in the area.

The members of the cooperating organizations and the representatives of the Dialogue Table drew up a new document based on the earlier draft. The Agreement was defined as an effort to consolidate the progress made throughout three years of work, in which the signatories "reaffirm their willingness to continue with the Dialogue Table as a standing mechanism for resolving conflicts or problems that may arise and a vehicle for supporting the sustainable development of the communities."⁵⁶

This was the gist of the text that was finally signed on December 21, 2004: "Recognizing the progress made by the Dialogue Table, the member are convinced that it is necessary to perfect an Agreement to consolidate this progress."⁵⁷

The drafting of the document went through various stages in an effort to validate it before it was signed. After the initial draft was prepared, the text was discussed in the Coordination and Follow-Up Committee with input by all the members. This was followed by workshops in October in the city of Cusco and in Espinar, with the participation of approximately 70 representatives of the five communities, leaders of CORECAMI, members of CooperAcción and OXFAM America, and the mining company. The methodology used in the meeting in Espinar involved analysis of each point of the agreement, and minutes were drawn up to incorporate corrections that were approved by consensus. The text was finally presented and approved in general assemblies in each of the five communities⁵⁸ between November and December 2004.

The main elements of the agreement are indicated in the fifth clause, Adoption of Commitments, which consists of 14 points: declaration of the parties, acquisition of land for the communities, land ownership, executive commission on land, technical assistance for settlement, sustainable development, the development fund, management of the fund, human rights, environment, continuity of the company's operations, implementation, oversight and confirmation of the agreement.

Each of these points sets out in greater detail the main sense of the agreement and the work to be done after its signing. In the point on the declaration of the parties,⁵⁹ the members of the Dialogue Table reaffirm their voluntary commitment to continue working toward a solution to the problems involving land and human rights, as well as addressing the communities' environmental and social concerns, responding jointly to the challenge of sustainable development in the province of Espinar.

⁵⁶ Sixth clause of the Agreement.

⁵⁷ Fourth clause of the Agreement.

⁵⁸ In some communities, more than one assembly was needed to approve the agreement.

⁵⁹ Point 5.1 of the fifth clause of the Agreement.

With regard to land acquisition, besides ratifying the commitment to “exchange land for land,” taking as a basis the land that was expropriated by the state and purchased by the company, plus a percentage ranging from 25 to 50 percent, the Agreement called for immediately beginning the legal transfer of property to the communities. It also stated that the company agreed to provide technical assistance to help the community members settle on their new land; this was understood to involve training sessions that would be scheduled to train animal health technicians, experts on pastures and health outreach workers, providing opportunities to young people and women from the communities; first aid supplies and basic veterinary kits; basic tool kits; and transportation for the families that had to relocate. For relocation and settlement on the new lands, the company would also provide means and resources according to a reference list that included infrastructure (construction of a road suitable for vehicles, housing modules, basic sanitation, water for human consumption, latrines, lightning rods), agricultural aspects (cultivation of annual crops for fodder, oats and barley for animal feed, drainage for swampy areas) and animal husbandry (installation of wire fences, pasture for animals in the areas appropriate for each species, better processes for selection, genetic improvement plan).

Under the Agreement, the Executive Land Commission was responsible for drawing up a work plan for speeding up the identification and acquisition of the land needed to complete the commitment. At the time the Agreement was signed, 5,361.63 hectares had been acquired and another 582 to 1,770 hectares were needed.⁶⁰

In the area of development, the document recognized the importance of working for the future of the communities, guided by their own vision and plans and respecting their culture and organizations. As has been noted, a fund was created with an annual contribution of US\$300,000 from the company for three years, beginning with the date the Agreement was signed. The expectation was that this amount would be augmented by funds from international cooperation and public and private agencies. The use of the funds and procedures for allocating them would be approved by consensus by a Special Commission made up of the presidents of the five communities, three company representatives, and one representative of CooperAcción, OXFAM America, CONACAMI and CORECAMI Cusco. Accounting would be handled by the Tintaya Foundation.

In the area of human rights, the document ratified the commitment to work on implementing the commission’s agreements, and the company “agrees to address, with humanitarian criteria, the cases identified in the report prepared by the Legal Defense Institute.” The Human Rights Commission was also ratified as a standing body that would define criteria and procedures for handling new cases in the future.

The Environment Commission was also ratified as a standing commission and the Agreement noted that guidelines and methodologies would be established by consensus for the implementation of environmental monitoring plans and programs, human and animal health assessments, and community oversight in the mining operation’s direct area of influence. It also stated that environmental safety would be addressed “by the Dialogue

⁶⁰ Depending on whether the increase was 25 percent or 50 percent.

Table, defining procedures and mechanisms for implementation in case of any environmental contingency (incidents or damage).”⁶¹

Another relevant aspect related to future prospects for mining in the area appears in Point 5.11, “Continuity of the Company’s Activities.” This point states that as the company continues to explore and develop its mining operations in the area, these activities and those carried out on other lands require the prior consent of the communities or individual landowners. This is in line with the principles of the World Bank’s Extractive Industry Review report, which states that activities such as mining should be done with the free and informed consent of the surrounding population.

Finally, the Agreement states that the members of the Dialogue Table would charge the Coordination and Follow-Up Committee with overseeing the implementation of the Agreement and “the intermediation of OXFAM Community Aid Abroad of Australia would be sought in order for the Mining Ombudsman’s Office to supervise compliance with the Agreement.”⁶²

In the short term, the future of the Tintaya dialogue process depends on its ability to implement the agreements as quickly as possible, a task that will continue to demand great effort and commitment from the members of the Dialogue Table. The signing of the Agreement marked the end of a process that began in December 2001 and the start a new phase in which the principal assets are the agreements that have been reached and the experience gained through the dialogue process. This will serve as the foundation for new efforts by the same stakeholders, who will undoubtedly also involve new partners in the process.

2. The stakeholders’ performance

The Tintaya dialogue process and the work done throughout the three years also required great effort on the part of the various members of the Dialogue Table. The strategies initiated during those years by each actor involved in the process represented efforts to bolster their organizations’ ability to participate effectively in the process, developing the skills of their representatives and establishing relationships with new organizations to forge stronger partnerships.

Some stakeholders have become stronger than others in the process, but there is no question that all have learned significant lessons that should be put to advantage in the future work of their organizations.

The following is a brief description of the performance of each of the stakeholders participating in the Tintaya Dialogue Table.

⁶¹ Point 5.10 of the fifth clause.

⁶² Point 5.13 of the fifth clause.

- **The BHP Billiton Tintaya company:**

There is no doubt that the presentation of the case involving the five communities near the Tintaya mine to the Mining Ombudsman's Office in Australia worried the mining company. For the first time, communities around Tintaya were protesting publicly about their situation through international bodies.

The first reactions from the company's headquarters in Australia and the involvement of company executives in the initial phase of the dialogue process were evidence of the degree of concern that the grievance had caused.⁶³ The first two meetings of the Dialogue Table were attended by different representatives of BHP Billiton, which had just undergone a merger.⁶⁴

All indications are that the formation of the Dialogue Table marked the beginning of a new phase in which BHP Billiton Tintaya substantially modified the way it related to communities. The company had established bilateral relations with each of the communities in an effort to negotiate specific things such as land purchases, agreements with communal enterprises, certain infrastructure projects, donations, social projects, etc. In the case of Tintaya Marquiri, as has been noted, the company had taken steps to purchase land to implement a special program that would be transferred to the community. At the same time, the company was negotiating an agreement with the municipality and most of the organizations in the province.

Overall, until the Dialogue Table was established, relations between the company, the communities and local authorities in Tintaya's area of influence followed the traditional pattern common to many mining areas, in which the principal characteristic is a marked asymmetry with no apparent willingness to establish a collaborative relationship based on clear medium- and long-range objectives.

The involvement of international and national non-governmental organizations, an organization such as the National Coordinating Committee of Communities Affected by Mining and organized local communities created a radically different scenario and forced the company to redefine its short-term strategies. One initial indicator of this was the company's request, at the December 2001 meeting, for a postponement of the formal start-up of the Dialogue Table's work. The representatives of BHP Billiton Tintaya stated clearly and transparently that they wanted to prepare adequately for the process.⁶⁵

Another important element was the communities' negative perception of some of the company executives. One report prepared by Ingrid Macdonald states, "there have been complaints made against several mid-level company officials and lower-level staff involved in the dialogue process and the commissions. Community members have accused company

⁶³ The first two meetings were attended by the managers responsible for operations in Peru and representatives of BHP Billiton's corporate office such as Gibson Pierce, office manager of BHP Billiton Base Metals, which at the time was based in Santiago, Chile.

⁶⁴ In 2001, BHP Limited and Billiton Plc. decided to merge their operations at the international level, forming the conglomerate BHP Billiton Ltd.

⁶⁵ While this request surprised the other members of the Dialogue Table, it was well received and accepted.

staff of not listening to them during the investigations of the commission or preventing women in particular from speaking to the consultants. There have also been allegations that company officials have intimidated community members by stating that if they are involved in the Dialogue Table process then they are acting 'against' the mine and will therefore not obtain work at the mine."⁶⁶

These perceptions were recorded and relayed by the non-governmental organizations involved: "These allegations were communicated to the company in June 2003 and it was strongly recommended that an investigation be conducted and appropriate action taken. BHP Billiton responded on 18 July 2003 stating, 'BHP Billiton takes very seriously the concerns expressed about certain individuals working for the company. The allegations will be investigated.'"⁶⁷ The company's response and the development of good relations within the Dialogue Table and the commissions helped create a better climate that allowed the work to progress.

During the initial phase of the Dialogue Table, BHP Billiton Tintaya established a policy of reinforcing the group to help it address issues, organizing the distribution of responsibilities in the subcommissions. In the Coordination and Follow-Up Committee, the company was represented by Paul Warner,⁶⁸ who at the time was director of community relations and institutional affairs for BHP Billiton Base Metals; Ricardo Harten, lawyer and member of the board of directors; and Lucio Ríos, vice president and assistant general manager for operations in Tintaya. The company's point person on the Development Commission was Enrique Velarde, community development manager, and its representative on the Environmental Commission was Arturo Pacheco, health and environment manager. As part of the same internal strategy, the company re-launched its foundation⁶⁹ to provide operational support for the social work it had undertaken.

BHP Billiton Tintaya also devoted effort to building its managers' skills in the areas to be addressed in the dialogue process, as well as in conflict management, development promotion and social responsibility toward communities. It also implemented a strategy for approaching the non-governmental and other groups that were part of the Dialogue Table. In some of these areas, it worked jointly with the other members of the group.

All of these efforts and the outcomes have unquestionably strengthened the company, its strategies and its social responsibility policies in the Tintaya area. As a result, BHP Billiton Tintaya is now perceived as being in the vanguard in developing better mining practices in Peru.

The communities and their organizations

⁶⁶ Macdonald, I. and B. Ross, *Mining Ombudsman Annual Report 2003*, OXFAM Community Aid Abroad, p. 37.

⁶⁷ *Ibid.*, p. 37.

⁶⁸ Paul Warner was also a member of the Human Rights Commission.

⁶⁹ The Tintaya Foundation (*Fundación Tintaya*).

The dialogue process tested the capacities and operational ability of the communities involved, from their grassroots organizations to regional and national bodies.

From the time CONACAMI was founded, the case of the communities of Tintaya was a priority on its agenda. The establishment of CONACAMI and its regional branch in Cusco⁷⁰ in 1999 allowed for an unprecedented degree of organized coordination among the communities in the Tintaya mine's area of influence. The communities' problems were documented through workshops held in coordination with non-governmental organizations, assemblies, investigations and the gathering of testimony.

The Tintaya case thus gained publicity, which was a significant outcome of the work of the communities and their new allies. It was in this context that the report was prepared and presented to the OXFAM Community Aid Abroad Mining Ombudsman's Office in Australia.

The communities' performance as part of the Dialogue Table has gone through various stages. Initially, there was a high degree of joint organization under the leadership of CONACAMI and the regional coordinating committee. The constant presence of CONACAMI promoters in the area, ongoing training activities, organization-building strategies, and the sharing of experiences with other communities in Peru and other parts of the world bore fruit. The communities went into the dialogue process with a high degree of organization and with clear objectives in major areas that were eventually adopted by the Dialogue Table as a whole: land, the environment, human rights and development.

CONACAMI and its president, Miguel Palacín, headed the Land Commission, which was the Dialogue Table's most important working group from the very beginning. In the first two years, CONACAMI was constantly involved in the commissions' activities and the most important events, such as assemblies, visits, coordination with the Mining Ombudsman's Office in Australia, workshops, relations with other members of the Dialogue Table, studies, etc. CONACAMI's leaders and their commitment to the process were important factors in the beginning of the Dialogue Table's work.

At first, CORECAMI Cusco also played an important role as the main regional organization. Its performance began to decline, however, after a regional congress was held in August 2002 and there was a change in leadership. The new directors were slow to consolidate as a group and could not maintain the same degree of leadership and grassroots relations. By then, six months had passed since the beginning of the dialogue process and the communities felt that it was not progressing as rapidly as they had hoped and that there were no concrete results on the horizon.

This created disenchantment among the representatives of the five communities, who criticized the leaders of CORECAMI, CONACAMI and the partner organizations. They called for more rapid negotiations, and the community presidents sought more direct intervention in the process.

⁷⁰ CORECAMI Cusco is headquartered in the province of Espinar.

The breakdown in relations between CORECAMI and the five communities could not be repaired, and it worsened as CONACAMI gradually distanced itself from the area and the process. CONACAMI did not maintain the same degree of involvement that it had at the beginning, and in late 2003 it no longer had a promoter in the area; according to a report by the organization,⁷¹ “toward the end of 2003, the process stalled briefly and CONACAMI stopped participating actively.”

The differences among the communities’ various organizational bodies made it difficult to overcome the obstacles that were encountered along the way. This was reflected in CONACAMI’s decision to withdraw from the Dialogue Table at a key moment. The decision was not followed by the five communities or CORECAMI Cusco, which chose to remain in the process even without the significant support of CONACAMI. That further weakened the coordination among the communities, which began to follow separate strategies within the Dialogue Table.

CONACAMI’s decision was prompted by the fact that the company had begun negotiating with each of the communities at a time when the Dialogue Table’s work was stalled. In CONACAMI’s view, this broke with the dynamic of the Dialogue Table and marked a return to the practices that had existed before the group was formed. Although organizations such as CooperAcción, OXFAM America and CORECAMI Cusco considered CONACAMI’s concern justified, once the grievance was taken to the company, the necessary corrective measures were taken and the Dialogue Table dynamic resumed. These organizations felt that if they withdrew from the process, the result would be precisely what CONACAMI feared; as a result, they tried to overcome the impasse, ensure that corrective measures were taken and re-establish the Dialogue Table as the appropriate place for dialogue and negotiations.

CONACAMI established a commission to evaluate the dialogue process. After doing its work and visiting the communities in the area, the commission recommended that CONACAMI rejoin the group. Although it announced its intention to do so, in practice CONACAMI remained absent until the agreement was signed.

In August 2004, CORECAMI Cusco held another congress at which new leaders were elected. The new leaders, with the support of some former ones, participated in the process until the signing of the final Agreement in December 2004.

Perhaps the greatest merit of the leaders of CORECAMI and the presidents of the five communities in the last phase was their having remained in the Dialogue Table. There was a strong commitment to the process and enough clarity not to allow the collapse of an effort that showed the promise of leading to the resolution of some of their principal grievances, as eventually occurred. This commitment was even more evident in the assemblies organized in each community to discuss the Agreement before it was signed.

⁷¹ Evaluation of CONACAMI’s participation and progress in the Dialogue Table process in Espinar. Lima, August 2, 2004.

The Tintaya dialogue process has also shown clearly that communities in much of the country, including the Tintaya mine's area of influence, are no longer a "homogeneous and egalitarian social unit."⁷² This is particularly true given that, over nearly two decades, communities such as Tintaya Marquiri gradually lost nearly all their land, their families had to emigrate, and those who remained in the area were forced to dedicate themselves to different economic activities, with varying degrees of success. Other communities were divided up, and today there are more individual than collective landholdings.⁷³ What is certain is that the dialogue process has highlighted the differences that exist both within each community and among them.

Paradoxically, the signing of the Agreement that solidified the Dialogue Table's progress did not come at a time when the communities' representative organizations were at their best. The intense dialogue process revealed the weaknesses in the various organizations' structures and leadership.

After the Agreement was signed, CONACAMI announced that it would respect the decision of the five communities and reaffirmed its "willingness to continue accompanying the communities and CORECAMI to oversee compliance with the agreements that have been signed." It also confirmed its decision to rejoin the Dialogue Table "to work for the implementation of the commitments assumed by the parties involved."⁷⁴

The signing of the Agreement clearly paved the way for a new stage of work for the communities. The central task is to regain the degree of organization they had before the dialogue process began so they can effectively monitor the implementation of the Agreement.

- **The role of OXFAM:**

OXFAM is an international confederation of twelve independent, non-governmental organizations working to find lasting solutions to poverty, suffering and injustice in the world. Its mission is to build a world without poverty, and its goal is to enable people to exercise their rights and control their own lives.⁷⁵ Two members of this international confederation, Oxfam America and Oxfam Australia Community Aid Abroad (CAA), played a vital role throughout the Tintaya Dialogue Table process.

Oxfam America (OA) is headquartered in the United States; in South America, it works in Peru, Bolivia and Ecuador. One main focus of OA's work in Peru is the impact of extractive industries on communities. It seeks to ensure that the human rights of the communities affected by these activities are recognized and protected. To meet its

⁷² MONTOYA, Rodrigo: "They are no longer, by any means, a 'homogeneous and egalitarian social unit. That image ... is a myth that must be destroyed." "A propósito del carácter predominantemente capitalista de la economía peruana actual," Editorial Teoría y Realidad, Lima, 1970. Cited in Alberto Flores Galindo, "Los mineros de Cerro de Pasco, 1900-1930," Obras Completas. Lima, Sur, 1993.

⁷³ This was the case with the community of Alto Huarca.

⁷⁴ Letter from CONACAMI to the Dialogue Table, December 20, 2004.

⁷⁵ www.oxfam.org.

objectives in this area, it works directly with communities affected by extractive industries, their representative organizations and non-governmental organizations. These include the National Coordinating Committee of Communities Affected by Mining (CONACAMI), the regional coordinating committee in Cusco (CORECAMI Cusco) and CooperAcción.

Through its relationship with CONACAMI and CooperAcción, OA became aware of the Tintaya case and sponsored the submission of the Tintaya communities' grievances to the Mining Ombudsman's Office in Australia (CAA). OA stayed in touch with CAA from the start, facilitating the sharing of updated information and the progress being made by the Dialogue Table. OA also coordinated Ingrid Macdonald's four visits to Peru.

CAA has had an office on mining issues since February 2001. This office provides assistance to local and indigenous communities in cases in which basic human rights may be threatened by the operations of Australian mining companies. CONACAMI asked the office to look into the Tintaya case in November 2000. The request was accepted and the case was included in the Mining Ombudsman's Office annual report in June 2001.

The CAA representative investigated the case during an initial visit to Peru in December 2001. During that visit, Ms. Macdonald met with the stakeholders, including many community representatives. The company also requested a meeting, which was finally held with representatives of the communities and the organizations advising them. Once the field investigation was finished and the parties involved had agreed to establish the Dialogue Table, the CAA office took responsibility for monitoring the process.

After the Tintaya case was accepted, Ingrid Macdonald made four visits to the area and published a series of reports on the case. She also followed the Dialogue Table's progress, listened to the communities' grievances and concerns, monitored progress on commitments and made recommendations for improving the dialogue process.

The CAA Mining Ombudsman's Office demonstrated significant commitment to the communities of Tintaya, winning the people's confidence. Because it was an external player and because of the respect it enjoyed, the Mining Ombudsman's Office was able to listen to and feed back the different views of the Dialogue Table's members, facilitating greater understanding within the body. Because of its experience and knowledge of the issue, it also provided a wider perspective that was reflected in the observations and recommendations it made over the three years.

While OA's role was initially defined as one of *observer*, its participation was broader. Through their active participation, OA's representatives to the Dialogue Table helped consolidate the group, accompanying the communities and their organizations and providing facilitation and sometimes mediation. OA helped distribute information to the communities, analyze the process, prepare legal reports and draft the Agreement. It also participated directly in workshops and community assemblies and facilitated plenary meetings OA has also participated regularly in the Coordination and Follow-Up, Land and Human Rights commissions.

OA's participation in the Dialogue Table is consistent with its mandate to promote consensus-building and dialogue, mainly through the work of its partner organizations, three of which participated in the Dialogue Table. Its performance and its support for the Dialogue Table's goals were recognized by all the members of the group.

- **The role of CooperAcción**

CooperAcción is a Peruvian non-governmental organization established in 1997 whose mandate is to work for the development of coastal and mining communities in the country. It helps people in these areas enhance their ability to defend their rights and define their own vision of development.

CooperAcción's Mining and Communities Team has followed the problem of mining conflicts in recent years. It works in various conflict areas, responding to requests from affected communities.

CooperAcción began working in the province of Espinar in late 1997. The communities and the local government invited CooperAcción to do some investigation and provide advice on organizing and substantiating their case. The communities asked for assistance in reviewing questionable land transactions and analyzing the environmental impact of mining operations in the area. They also agreed to do a self-assessment of socio-demographic and economic aspects of the communities.

To implement these activities, a collaboration agreement was drawn up by CooperAcción, the provincial municipality of Espinar and the communities of Espinar. It was agreed that community members would be involved in the work.

Based on the legal, environmental and socio-economic study, the communities, along with CONACAMI and CooperAcción, prepared a case file in 2000 that documented the difficult situation in which the communities of Espinar found themselves. The file was sent to the CAA Mining Ombudsman's Office, which accepted the case.

Once the agreement was reached to establish the Dialogue Table, CooperAcción was an active member, participating in all of the working commissions and coordinating the Environment and Human Rights commissions. The CooperAcción team involved in the Espinar case includes economists, lawyers, an environmental expert, a geographer and a local outreach worker. The members of the organization divided up the work according to their areas of expertise.

CooperAcción has provided information and guidance to the communities and their organizations on technical issues related to the Dialogue Table's work. The flow of information and analysis was designed to foster the communities' informed participation and ensure their optimal positioning within the Dialogue Table.

Throughout the process, CooperAcción also sought to identify the communities' needs and points of view. For example, the CooperAcción team's lawyers provided advice and

organized an information session for a plaintiff with the Human Rights Commission about the resolution of a case. The discussion fostered understanding and analysis of the various options available in that specific case.

The organization also facilitated strategic planning in the communities and with CORECAMI Cusco. This participatory phase enabled each community to define its own vision of development based on the objectives, plans and activities that would enable it to reach its goals.

The strategic plans approved by the five communities are particularly important, as they define the work to be done after the signing of the Dialogue Table's Agreement. The Agreement includes the establishment of a Development Fund for the communities, and the allocation of those resources should be guided by the communities' strategic plans.

The CooperAcción team also facilitated training for the communities during the Dialogue Table process. Workshops were held with the communities and with specific groups, such as women, in the five communities. The workshops with women sought to build trust and increase their participation in the dialogue process and their organizations.

The dialogue process represented a huge challenge for the CooperAcción team and revealed certain weaknesses in its intervention strategy. The main problems included the team's intermittent presence in the area, which made it more difficult to monitor the process, and the need to further strengthen itself as an organization, build capacities in certain areas related to this type of process,⁷⁶ and improve its internal planning, monitoring and evaluation processes.

At times there were tensions with the communities, as well as demands that the CooperAcción team was unable to address. This forced the team had to constantly evaluate its relationship with the communities and adjust its strategies as the process unfolded.

CooperAcción's aim was to keep the process going despite all the difficulties that arose along the way, supporting, above all, the decisions made by the communities and their regional organization. The Tintaya case has unquestionably been one of the most significant in which CooperAcción has been involved since its founding, and has been a situation from which important lessons can be learned that will help the organization enhance its structures, acquire new management tools, and develop new and greater capacities.

⁷⁶ Intercultural issues, conflict management, gender.

III. CONSIDERATIONS FOR EVALUATION

Dialogue processes as community tools for conflict management

For community organizations and their partners, the Tintaya experience has put the issue of dialogue processes as tools for managing conflicts and defending rights on the agenda for debate and evaluation.

Communities often have little faith in dialogue mechanisms,⁷⁷ but as mining-related conflicts have developed, their organizations have faced the challenge of implementing, through campaigns and formal grievances, “proactive, participatory and inclusive strategies”⁷⁸ that could lead to opportunities for dialogue.

Analysis shows that communities representatives’ participation in other dialogue processes related to mining has been intermittent, and they have been unable to move beyond the lack of a clear commitment to such processes and determination of whether they could lead to significant change.⁷⁹ In many of these cases, the decision to participate has been based more on tactical — a desire to approach other stakeholders, make their demands known, give their organizations a leading role, analyze the power map, back up grievances with strong-arm tactics, etc. — than strategic criteria, with no firm conviction that dialogue would bring about fundamental change.

The Tintaya experience was substantially different. The communities’ commitment to participate was crucial from the outset and remained steady throughout the process.⁸⁰ As a result, agreements were reached that, if implemented appropriately, could lay a solid foundation for efforts to achieve development and defend the rights of the communities. Does this make it a successful process? It has unquestionably been significant, and the outcome so far has been positive. It has also resulted in lessons that have been useful for the communities and their organizations.

One is that the Tintaya Dialogue Table made it possible to begin addressing a series of key questions: How should this type of process be conceived? When is the right moment to begin dialogue? What are the requirements? What are the challenges? Can experiences like that of Tintaya contribute to strategic change in the management of mining-related conflicts?

Although there are no hard and fast recipes that guarantee complete success, the example of Tintaya offers some useful guidelines and lessons that should be taken into consideration.

⁷⁷ Because of the failure of previous cases and the sense that these mechanisms did not yield positive results.

⁷⁸ Cabrera, Myriam, “La Comunicación y la Administración de Conflictos,” LABOR and CooperAcción, 2004.

⁷⁹ Other cases of mining-related dialogue include those of La Oroya, Huarmey, Cajamarca and San Marcos. These cases continue to be marked by distrust, a significant asymmetry in power among the parties and the lack of a clearly defined agenda, which are factors that have limited the possibilities for dialogue and consensus.

⁸⁰ Although not free of difficulties.

Opportunities presented by the international situation

One initial observation is that mechanisms now exist in the international sphere that, when used correctly, can be very helpful for communities. These include non-governmental organizations or multilateral bodies that create ombudsman's offices for communities likely to be affected by extractive industries, as well as international human rights organizations and international networks that monitor companies' behavior.

Nevertheless, these mechanisms have not always been used effectively by communities and their organizations. Even when the international group initially expresses interest, cases are often rejected because the documentation was prepared too hastily, proper procedures were not followed in the country, the communities involved were not consulted, or the goal apparently was simply to file a grievance.⁸¹

The Tintaya case presented to the OXFAM CAA Mining Ombudsman's Office in Australia not only was accepted, but also led that office to make a strong commitment to the communities and to the dialogue process that grew out of its intervention. This commitment was expressed by the office's representative on various visits to the area, in the preparation of regular follow-up reports, and in the guidance that was offered to the stakeholders and the Dialogue Table. All of this work was supported, financially and professionally, by the OXFAM America office in Peru.

An initial conclusion for people affected by mining operations and for their organizations, therefore, is that the use of these mechanisms must be the result of rigorous work that enables them to substantiate their grievances and that is fully backed by the communities and their organizations.

Adequate preparation

A dialogue process that seeks to respond to the expectations of the communities and their organizations must be the result of prior internal work that strengthens the communities and helps them present the conflict appropriately. In the case of Tintaya, before the dialogue began there was a phase in which the communities were reinforced and developed more solid relationships among themselves. This involved capacity-building strategies and the development of new organizations and partnerships. This placed the communities in a stronger position in the conflict and helped modify power relationships in the area.

If the process had begun without that prior work, it might not have moved past the initial stages.⁸² Laying the groundwork created more equitable conditions and helped break down the asymmetrical power relationships that usually characterize relationships between mining companies and communities. The startup of the Dialogue Table was a good time to

⁸¹ To gain media attention that can be used in the country as a pressure tactic.

⁸² For example, the phases of implementation and bringing the players together, as described in the second part of this document.

measure the ways in which the map of power in the area had changed after the groundwork had been laid. It was found that the communities were in a better position to begin the dialogue process.

Once the process began, it also became clear that capacity-building and reinforcement, especially for the communities and their organizations, would be an ongoing task. Many communities now have the skills necessary to organize campaigns and file grievances about their cases. These should be complemented with skills related to negotiation and conflict management, implementing strategies, developing alliances, etc.

The Tintaya process gradually became more complex and required creative and unprecedented solutions. This meant there was also a need for skills in monitoring process, coordinating commissions, overcoming conflicts and developing solutions to each of the issues identified in the process.

This became even more necessary as the dialogue demanded more intensive participation from the communities. We must not forget that one of the observations made by the communities and their allies was that the legal and institutional framework of a country like Peru results in *low-intensity* mechanisms for participation and processes that do not create the conditions necessary for real, timely, informed participation by the people involved. The opportunities often arise too late or the results are not binding. As a result, they lack credibility with the communities involved.

Processes like that of the Dialogue Table are the antithesis of low-intensity community participation, since they allow the strong, active participation of communities, generate and transfer the information that the communities need, and result in binding agreements that must be respected by all parties. All of this requires that the stakeholders be strong and able to exercise their right to participation, with new and greater capacities that give them a powerful voice in the outcome.

A consensus-based agenda

The Tintaya case also demonstrates the importance of defining an agenda that reflects the communities' real interests, differentiates between legitimate demands and underlying interests, and specifies the main objectives to be achieved. In general, when this type of process begins, there are excessively high expectations that lead to the definition of unrealistic objectives and time frames. The definition of a legitimate work agenda is therefore crucial, and in the case of Tintaya it was the first major agreement reached by the Dialogue Table.

Communication

Another challenge that arises in the dialogue process involves communication and the dynamics that develop among the stakeholders and within interest groups. This is especially

true when the negotiations involve a “process of communication among parties that seek mutually acceptable solutions to issues that are of common concern.”⁸³

In a dialogue process, community organizations face the challenge of ensuring adequate communication both within their own structures and with the outside world, especially with other stakeholders involved in the process. Within the organization, the goal is to ensure that all community members are sufficiently informed about the Dialogue Table’s activities, hear its suggestions, and constantly validate its progress and the agreements that are reached. The challenge of communication with the outside world consists of appropriately communicating the communities’ positions, demands, vision of the process and ideas about an acceptable agreement, making it clear that the communities are acting responsibly throughout the process.

In the Tintaya Dialogue Table, the communities and their allies had to constantly reinforce their communication strategies to overcome shortcomings that were identified along the way and ensure that the information reached all members of the communities. This was done, in part, by verifying the transfer of information and validating the agreements, using the organizations’ traditional mechanisms, such as ordinary and extraordinary community assemblies, congresses, etc.

The Tintaya process also posed the challenge of intercultural communication involving Quechua-speaking peasant communities that were demanding their economic, social and cultural rights, and which were engaged in intensive, ongoing dialogue — perhaps as never before — with a transnational mining company that had its own complex corporate culture. Some authors consider “dialogue”⁸⁴ — the encounter between mutually recognized parties — to be a key complementary concept when speaking of intercultural issues. True intercultural dialogue requires creating new opportunities for encounter in which diversity is acknowledged and respected. This new space becomes a nexus for social relationships among different individuals and social groups. In the case of Tintaya, this opportunity was afforded by the Dialogue Table, which made it possible to overcome the initial distrust, establish common mechanisms for verifying information, foster recognition of and respect for the stakeholders’ different organizational cultures, and establish common codes of conduct. These were some of the tools used to address the challenge of intercultural communication.

⁸³ Cabrera, Myriam, “La Comunicación y la Administración de Conflictos,” LABOR and CooperAcción, 2004.

⁸⁴ See Fuller, Norma, “Interculturalidad y política: Desafíos y posibilidades,” Red para el Desarrollo de las Ciencias Sociales en el Perú, 2002; Diez, Alejandro, “Interculturalidad y comunidades: propiedad colectiva y propiedad individual,” in *Debate Agrario* No. 36. 2003; Heise, María, Fidel Tubino and Wilfredo Ardito, “Interculturalidad: un desafío,” 1992; Ansión, Juan, Fidel Tubino, Santiago Alfaro, Ana María Villacorta, Javier Monroe and Inés Fernández Baca, “Educación ciudadana intercultural para los pueblos indígenas de América Latina en contextos de pobreza,” 2004; Tubino, Fidel, “Entre el multiculturalismo y la interculturalidad: más allá de la discriminación positiva,” 2002.

Representativeness

One important element throughout the process was the issue of representativeness. This is related to communication and intercultural issues and involves power relationships and decision making. Each of the stakeholders in the Tintaya Dialogue Table engaged in the process using their own mechanisms and systems of representation, in accordance with their own organizational cultures. One of the challenges for the Dialogue Table, therefore, was to find mechanisms that allowed work to proceed harmoniously despite these different approaches.

This issue was particularly important for the communities, perhaps because their culture of representation is different from that of the other members of the Dialogue Table. In communities, the president has the authority to represent the interests of all sectors of the community and make decisions in their name. Throughout the dialogue process, however, situations arose in which there were breakdowns in this community representation mechanism. One example was the participation of women, who had limited access to and little knowledge of the process, and whose interests were not adequately represented. This shortcoming in representation meant there was a risk that the Dialogue Table's efforts were not taking into consideration the demands of significant sectors of the population.

There were also situations in which there was a clear lack of decision-making power on the part of certain community presidents and the leaders of CORECAMI. Not surprisingly, this created difficulties within the Dialogue Table and raised the risk that significant decisions were being made with leaders who had limited power to represent their constituencies.

Scope of the dialogue

Another important lesson from the Tintaya experience has to do with the challenge of addressing situations and processes that are in flux. The Dialogue Table had a positive influence on an area that extended beyond the bounds of the five communities. During the process, the map of the conflict in the area expanded as demands were raised by a group of organizations called the Provincial Consensus Committee of Espinar (*Comité de Concertación Provincial de Espinar*) and communities in the neighboring Ccañipía River basin that were facing problems with the company over the construction of a new tailings dam in that area.⁸⁵

In both cases, the conflicts could be channeled in ways that made dialogue and consensus the priority, resulting in agreements that followed the same guidelines being used by the Dialogue Table, with which there were various points of convergence. In the former case, after three months of negotiating with the provincial government and the various

⁸⁵ The Huinipampa tailings dam is located in the upper part of the watershed. Five communities — Huisa, Huisa Ccollama, Huarca, Antacollama and Suirocama — use water from the Ccañipía River for irrigation and livestock. These communities have a complex irrigation system that supplies 700 hectares of pasture in the river basin. It is one of the most productive areas of the province of Espinar.

organizations involved in the Provincial Consensus Committee of Espinar,⁸⁶ a Framework Convention for the Development of the Province of Espinar was signed on September 3, 2003. This agreement stipulated that “during the first five years after BHP Billiton resumes operations at 100 percent capacity, and as long as it operates at that level, the company agrees to contribute a maximum of 3 percent of its pre-tax profits and a minimum of a fixed annual amount of US\$1.5 million dollars for the development of the province of Espinar, including the communities in the area.”⁸⁷ The framework agreement also established an Environmental Oversight Committee responsible for coordinating with various government agencies and carrying out activities involving the Dialogue Table.

In the case of the communities in the Ccañipía River basin, the company agreed to build a catchment system for runoff and underground water from the dam; drill additional wells to monitor the quality of underground water throughout the valley and water under the tailings dam; and involve the communities in the monitoring. The company also agreed to “provide adequate compensation in the unlikely case of impact from environmental damage under (sic) the new dam.”⁸⁸ The case of Ccañipía is currently being followed by the OXFAM Australia Mining Ombudsman’s Office, and the monitoring being designed by the Dialogue Table includes taking samples in that watershed.

General assessment

Do the outcomes of the Tintaya process substantiate the effectiveness of this type of process? What is certain is that the solution to tensions between the mining industry and neighboring communities seeking to defend their rights should reaffirm the value of “forms of human coexistence and governance based on consensus, tolerance, inclusion and participation, demonstrating that any form of discrimination or exclusion is an obstacle to development and democratization of the country and a potential source of social violence.”⁸⁹ When this view is not supported by the country’s legal framework, stakeholders in mining-related issues begin to develop their own tools for conflict management.

The Tintaya dialogue led to the transformation of a latent conflict in a process in which the implementation of agreements could result in the development of a collaborative relationship among stakeholders who were once antagonistic. Upholding these agreements implies ratifying policies that ensure the inclusion of all stakeholders, eliminating all forms

⁸⁶ The main organizations involved in this body include the Single Front for the Defense of the Interests of Espinar (*Frente Único de Defensa de los Intereses de Espinar*), the United Peasant Federation of Espinar (*Federación Unificada de Campesinos de Espinar*), an association of low-income neighborhoods (*Asociación de Urbanizaciones Populares y Pueblos Jóvenes*), trade unions of merchants and transportation workers, Mothers’ Clubs, the Single Union of Peruvian Education Workers (*Sindicato Único de Trabajadores de la Educación Peruana*), peasant communities, the Association of Producers of Huinipampa, the municipal government, etc.

⁸⁷ Text of the Framework Convention for the Development of the Province of Espinar and BHP Billiton Tintaya S.A.

⁸⁸ Open letter from Jacobus P. Zwaan, then president and general manager of BHP Billiton Tintaya.

⁸⁹ Manrique, Nelson, Introduction to *La piel y la pluma: Escritos sobre literatura, etnicidad y racismo*, SUR and CIDIAG, 1999.

of discrimination, keeping open all possible channels of participation, meeting goals and communicating information so as to find new points of equilibrium in the relationship between the mining industry and communities.

This represents a possibility for significant change that is “strategic, more than tactical, in the predominant forms of communication and discourse,” although “we are also aware that this is just the beginning and that a long and winding road lies ahead.”⁹⁰ Achieving this transformation will require constant efforts to overcome the asymmetries of power that characterize relations between corporations and communities.

The stakeholders involved in this problem, especially the communities, face the enormous challenge of dealing with new experiences that will enable them to defend their rights, especially when the legal and institutional framework of the country, as in Peru, has proven to have serious shortcomings when it comes to addressing conflicts.

⁹⁰ Cabrera, Myriam, “La Comunicación y la Administración de Conflictos,” LABOR and CooperAcción, 2004.

Conclusion

The lack of tools

In the first part of this documentation of the Tintaya dialogue process, we emphasized that the principal social conflict faced by the mining industry in recent years has been in the communities near its operations. The sustained growth of mining over the past ten years, in both areas that have historically been mining regions and new parts of the country, is at the root of the multiplication of conflicts related to the defense of economic, social and cultural rights of the communities in these areas.

One of the major points of this document is that the legal and institutional framework for mining operations and corporations' "voluntary" mechanisms⁹¹ have been inadequate for the efficient management of the many conflicts in communities near mines.

Peru's weak governance is reflected in its public administration of activities such as mining; government agencies involved in this activity and environmental authorities have lacked the capacities and tools necessary to manage conflicts appropriately. Their performance has been constantly criticized by communities,⁹² which question their independence and their ability to intervene.

In the case of Tintaya, the legal framework, the institutional structure and the company's voluntary mechanisms were not enough to create conditions for a process that would address the central elements underlying the conflict. One of the main problems with these mechanisms is that they tend to allow only limited or *low-intensity* citizen participation; because they give people little influence in decision making, they lack credibility among communities. The launch of the Dialogue Table changed this scenario considerably, paving the way for binding decisions that, with the signing of the Agreement, moved into an implementation phase.

The challenge, therefore, is to develop solid institutional structures that respond to current needs and that have a real capacity for addressing the social and environmental dimensions of sustainable development in the areas of influence around mining operations. This implies, among other things, reviewing the roles that have been played by various government agencies.

The Tintaya experience also signals the need to bolster public administration of mining activity. This would be a decisive factor in developing a scenario characterized by balance, independence and collaboration among the various interest groups in a mining region. Peruvian government agencies responsible for managing issues related to

⁹¹ For example, codes of conduct for groups or for each company, foundations, etc.

⁹² Similar criticism has also come from mining companies.

mining can therefore regain the confidence of local people and overcome the perception that they are not neutral.

One area that should be pursued involves complementarity among voluntary mechanisms, voluntary multi-stakeholder initiatives such as dialogue groups, and efforts to modify the legal framework to create regulations that foster appropriate environmental and social management in the areas of influence of mining operations. So far, these dynamics have been viewed as antagonistic, but the possibility of working together to define the components of an alternative legal and institutional framework is worth exploring.

The contribution of the Tintaya case

As this document has noted, dialogue mechanisms have little credibility in communities because so many previous efforts have failed, leaving the sensation that they do not produce a positive outcome. As a result, they tend to be seen merely as public relations exercises that do not address the issues that are most important to the communities.

The experience of the Tintaya Dialogue Table offers new elements for analysis that should be considered by communities affected by mining and by their representative organizations. The results achieved in the areas that were defined as priorities by the communities and addressed by the Dialogue Table must not be taken lightly; in some cases, they were unprecedented in the country. Among the most significant achievements were the agreements that enabled the communities to regain land, receiving more in exchange than they had lost; the solution of human rights cases; the implementation of environmental oversight with community participation in the mine's area of influence; funding for development projects; and the company's commitment to seek prior consent from the communities before beginning new projects on their lands.

Are dialogue groups an alternative for communities that face conflicts with mining companies? The Tintaya experience demonstrates that they can be, but the process must be undertaken appropriately, interconnecting strategies, developing new and greater capacity, building alliances and identifying objectives in a timely manner. Whatever the nature of the conflict, at some point communities will face the challenge of dialogue; it must be taken seriously, as an opportunity to find real solutions that respond to their interests.

But processes like those of dialogue groups also reveal the strengths and weaknesses of communities, their organizations and their allies. The Tintaya Dialogue Table resulted from the reinforcement of organizations, capacity building and the development of alliances that created unprecedented conditions — favorable for the communities — that made the process possible. National and international advocacy and alliances helped lay this positive groundwork.

Once the Dialogue Table began its work, the communities and their allies demonstrated weaknesses that jeopardized the process at certain points. Relationships that had been strong at the start began to fray, and significant differences emerged among the communities involved in the Dialogue Table — differences within the communities, with neighboring communities and with their regional and national organizations, as well as with the organizations that were supporting and advising them. At times, the participants lost sight of the strategic objectives that had been established at the beginning and that had led to the group's initial accomplishments.

The Dialogue Table also created the need for ongoing advocacy both as part of the process and in the surrounding area. As the work progressed and became more intensive, the weaknesses of the communities, their organizations and their allies became more evident, and it was necessary to redouble efforts to maintain the momentum of the process and the keep sight of the goals.

As has been noted, some stakeholders did not stay with the process through the final phase of signing the Agreement. The differences among the various community organizations made it impossible to overcome some of the obstacles that arose along the way. This was reflected in CONACAMI's decision to withdraw at a key moment, a decision that was not followed by the five communities that were participating in the Dialogue Table or by CORECAMI.

Perhaps the greatest merit of the five communities and CORECAMI was that they evaluated the importance of seeing the process through to the end, without losing sight of the strategic objective of achieving an agreement that would address their principal demands.

One of the most important lessons for the communities, however, is that strategies for strengthening organizations, capacity building, and reinforcing and developing alliances must be understood as ongoing dynamics requiring special attention. Now that the Agreement has been signed and the implementation phase has begun, all the areas of work will need new impetus, and the communities of Espinar, along with CORECAMI and CONACAMI, will have to engage in an in-depth evaluation of the new context and future efforts.

Mining and multicultural dialogue

In a multicultural country such as Peru, building horizontal relationships between stakeholders who represent different cultures is a daily challenge. Conflict over mining is an excellent example of this challenge and of the need to develop intercultural channels of communication. The necessary conditions must be identified and developed; this means overcoming social, economic and cultural inequalities so as to work toward real agreements that are the fruit of intercultural dialogue.

Was the Tintaya agreement intercultural? That question is not easy to answer. We can, however, say that the agreement was not imposed by any particular stakeholder⁹³ and that it was the outcome of dialogue among the representatives of different interest groups who created a new space for discussion, mutually acknowledged their representativeness and cultural diversity, identified a common agenda and were able to reach agreements that, when implemented, could lay the groundwork for a new phase of coexistence between mining operations and the communities surrounding them.

In conflicts such as those that revolve around mining, the intercultural component is a key element and must be addressed appropriately.

In addressing mining issues, communities and their organizations propose strategic changes to defend their rights and counter the effects of this activity through their own development agendas. Achieving these goals requires a huge, concerted effort by the various sectors of the communities and their allies — from grassroots organizations to intermediate-level and national groups. This implies a new generation of initiatives that will enable the communities to overcome their current weaknesses, which have been seen in various processes, so as to develop a truly legitimate agenda that fosters active, intensive participation by the communities.

Situations like that of Peru pose an additional challenge with regard to the development of appropriate relationships among the various interest groups in areas where there are mining operations — relationships that avoid any sort of marginalization and that reinforce strategies of consensus and tolerance, fostering the informed participation of these communities. This remains the principal challenge for communities and organizations that share the goal of developing a new kind of social contract in the mining industry's areas of influence.

⁹³ Therefore it is not an intracultural agreement.

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TABLE OF ABBREVIATIONS

BHP: Broken Hill Proprietary
CAA: Community Aid Abroad
CORECAMI: Regional Coordinating Committee of Communities Affected by Mining
(Coordinadora Regional de Comunidades Afectadas por la Minería)
CONACAMI: National Coordinating Committee of Communities Affected by Mining
(Coordinadora Nacional de Comunidades Afectadas por la Minería)
IDL: Legal Defense Institute *(Instituto de Defensa Legal)*
MEM: Ministry of Energy and Mines
OA: OXFAM America
OECD: Organization for Economic Cooperation and Development
SNMPE: National Mining, Petroleum and Energy Society *(Sociedad Nacional de Minería, Petróleo y Energía)*