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## **“A PARADIGM CHANGE”**

### **PERU:** **CONFRONTATION OR COOPERATION** **FOR SUSTAINABLE DEVELOPMENT**

**A Report by Partners for Democratic Change**

**March 25, 2005**

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## **I. EXECUTIVE SUMMARY**

In January 2005, BHP Billiton contracted with Partners for Democratic Change [Partners] to conduct an assessment in Peru to:

1. Set forth a strategy that will create a sustainable capacity in Peru to manage conflict and change in communities, especially those communities in which BHP Billiton or its affiliates are carrying out mining operations; and,
2. Provide feedback on the sustainability and effectiveness of the collaborative process currently under way in Peru with certain mining communities.

BHP Billiton's recent experience as a stakeholder in the outcome of a consensus agreement in Tintaya encouraged the corporation to explore how: similar processes could be undertaken; the level of present capacities to implement consensus-building processes; and, how the application of conflict resolution and change management processes might reduce conflict and costs associated with mining in Peru.

Partners agreed to conduct an assessment and prepare a public report related to the assignment that would be made available to BHP Billiton and to those interviewed. After discussions with BHP Billiton, it was decided that Partners would take a "wide angle lens" approach to the assignment by conducting cross-sector interviews that would provide broad recommendations to the questions posed. This Executive Summary and Report are solely the responsibility of Partners for Democratic Change and do not represent the position of BHP Billiton.

### **A. SUMMARY CONCLUSION**

*With leadership from the mining industry, significant, effective, and demonstrative change is possible in Peru. The mining industry in cooperation with civil society organizations and government has a unique opportunity to transform Peru and the industry's viability by enhancing sustainable community development, strengthening governmental institutions, and reducing conflict and market sector transactional costs.*

### **B. SUMMARY FINDINGS**

There is both an opportunity and a challenge right now in regards to community-mining relations in Peru:

- Mining initiatives have been shut down due to community protests;
- Many mining companies have realized that in order to conduct their business they need to be engaged in the communities in a meaningful manner;
- Communities and NGOs are demanding that mining initiatives benefit local citizens and protect the environment;
- There is very little regulation or government capacity to make sure this happens;
- Mining companies do not see their tax payments reaching the citizens or marginalized mining communities;

- Weak government, corruption, and inefficient systems for money management and distribution hinder effective tax distribution;
- BHP Billiton, Oxfam, Corecami Cusco, Cooperación, and the five communities surrounding Tintaya achieved a consensus-agreement through a dialogue process that has raised the expectations for corporate-community engagement.

The Report amplifies on: the Impact of the Tintaya Agreement, the need for Community Engagement, the capacity for Replicating the Agreement, and the role of Trust-Building and Acknowledgement in Peruvian culture. Regarding the Agreement, the Report focuses on: Confidence Building Measures; Dispute Resolution Systems; Skill Leveling; and, Risk Management. The Report also addresses the societal stakeholders [government, civil society, universities, professionals and extractive companies], identifying needs and competencies to manage change and conflict.

### **C. RECOMMENDATIONS**

In discussing recommendations, the Report notes that there is “a unique opportunity for mining companies in Peru to showcase how corporations can be effective builders of law and society in evolving democracies while addressing their responsibilities to shareholders.” The challenge is to capture the lessons learned from the Tintaya dialogue, implement the agreement effectively, and generate models that can be used to prevent and manage change and conflict across sectors and cultural differences. To this end, the Report recommends:

- Building on the excellent Peruvian practitioners in change and conflict management and addressing the urgent need for additional change and conflict management capacity;
- Increasing the number of skilled practitioners in the rural areas that can acculturate the models to local needs;
- Providing training to communities, mining companies, and the government to help resolve conflicts;
- Increasing the professional and intellectual capacity to identify and prevent conflict;
- Promoting good governance, community sustainability, and school conflict management programs.

In pursuing these recommendations, the mining community has a unique opportunity to advance a culture of consensus and trust and better government in Peru.

## **II. ASSESSMENT METHODOLOGY**

After discussions with BHP Billiton, it was decided that Partners would take a “wide angle lens” approach to the assignment by conducting cross-sector interviews that would provide broad recommendations to the questions posed. Partners sought to achieve such a broad picture of:

- How key stakeholders--policy decision-makers and shapers, government officials, NGO leaders, professionals, and mining industry leaders--viewed the mining industry in Peru;
- The role of the mining industry in Peruvian society and economy;
- The general level of conflict in Peruvian society as relates to the mining industry;
- The effect of mining-oriented conflict on sustainable development in mining regions;
- Present efforts to address mining and natural resource conflicts;
- The implications of the use of consensus-building methodologies to address these conflicts;
- The capacity of the society to engage in multiple consensus processes;
- The social, political, and psychological orientation of the stakeholders to consensus processes;
- The stakeholders’ expectations of the applicability and utility of conflict management and consensus processes to mining and broader Peruvian issues.

The assessment was conducted in Lima during February 14<sup>th</sup>-18<sup>th</sup> by Raymond Shonholtz, President; Liz O’Brien, Executive Vice President; and, Megan Ryan, Associate Director of Operations, of Partners for Democratic Change. Prior to arriving in Peru, the Assessment Team engaged in a due diligence review of materials and reports related to the above questions. While in Peru, the Assessment Team interviewed approximately 40 persons, representing nearly 35 different groups from various sectors.

## **III. ABOUT PARTNERS FOR DEMOCRATIC CHANGE**

Partners for Democratic Change [Partners] is a global organization committed to building in-country capacities to manage change and conflict and strengthen civil society organizations and governmental institutions. Partners has over 15 years of experience in building local capacity in core democracy skills in over 50 countries. By often working through independent national Centers which are staffed entirely by in-country professionals, Partners Centers’ adapt and acculturate change and conflict management expertise and programmatic initiatives to the context of each country. Through a network of 12 Centers in Central and Eastern and Southeastern Europe, the Caucasus, and Latin America, Partners has contributed to the democratic and market economy transitions of many countries. Partners has built new professions of communications specialists, mediators, negotiators, and facilitators of consensus-building processes that enable civil society, private enterprises, and government at all levels to work together on issues of shared concern. Partners has been active at critical moments of democratic transition, including:

- Russia in 1989 and 1990: training Russian leaders when Gorbachev became President of the Supreme Soviet;
- Poland in 1989 when Solidarity became the government: in 1990 conducting the first negotiation training for leaders of the Solidarity Presidium;
- Bulgaria in 1991 when the communist government fell: planning to establish a new national Center on conflict management, which opened in 1993;

- Czechoslovakia in 1990 when Havel called for an end to communism: in 1991 building a new national center on conflict management;
- Czechoslovakia in 1993 when it peacefully separated: training 7 of the 20 Czech and Slovak national peace negotiators;
- Hungary in 1991 immediately following the establishment of the first democratic government: creating a Center in 1993;
- Argentina in 1996: creating a new Center during the economic transition brought on by President Menem;
- Mexico in 2004: creating a new Center following the democratic reforms of the Fox Administration.

This listing of its history is relevant to this Report and to the experience Partners brings to the assessment. While undertaking an assessment of this nature and writing a report with recommendations is always sensitive, Partners comes to this effort with experience about change and an orientation toward its possibilities, contradictions, conflicts, and transformative capabilities.

#### **IV. THE TINTAYA MINE AGREEMENT**

##### **A. OVERVIEW**

The summary provided below is the consolidation of interviewee comments.

Mining presents an opportunity and a challenge in Peru. As mining initiatives have been shut down due to community protests, many mining companies realize that in order to conduct their business they need to engage with the communities where they work in a much more meaningful and participatory manner than in the past. Community leaders, traditional and elected, international non-government organizations [NGOs] and local civil society organizations [CSOs] are demanding that mining benefit local, regional, and national constituencies. There is limited regulation or government capacity to make sure this happens.

While most mining companies<sup>1</sup> make philanthropic donations and pay their taxes, this governmental revenue may not reach the mining community constituents, poor and marginalized communities, or citizens of the region. The collection, management, and distribution of mining revenue and expenditures are not fully transparent due to weak government, corruption, and inefficient systems for accountability. This reality places greater burden on mining companies, forcing them to be an actor in functions traditionally performed by government, such as: sustainable community development; direct community agreements regarding fund distribution; environmental development; and, physical infra-structure improvements. The weakness of governmental functionality places mining companies and communities in a direct, and often bitter relationship, such as in the Tambogrande and Quilish protests, leaving communities dependent on mining and mining dependent on resources owned by the community in a confrontation stance. Long-term sustainable development is difficult to achieve from this position even if the immediate message is “engagement” when the shadow for non-engaging is “get out.”

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<sup>1</sup> Reference throughout this Report is to formal mining companies domestically or internationally owned, and not to informal mining.

Confrontational negotiations fall into a deeper Peruvian cultural orientation between have and have-nots, and serves to address asymmetric power relationships. While this may have been the catalyst for the stakeholders to begin engaging in the Tintaya Mining Dialogue, it is submitted that the consensus that was achieved through the Dialogue was an agreement based not on confrontation, but on a change in the stakeholders' perceptions of one another, the issues, and the potential opportunities for future relationship through cooperation. It is further submitted that one of the national community organizations withdrew from the Tintaya process, not because of the agreement, but because the shift in stakeholder orientation and perspective that resulted in the agreement did not fit into its national confrontational challenge to the mining industry.

The Tintaya Agreement can be many things: a unique moment of collaboration between stakeholders; a model for how similar stakeholders might work in the future; or, a new paradigm for industry, community, government engagement that side steps the traditional, cultural, and historical approach and offers a new normative value in relationship building that places traditional foes on the same side of the table working together to achieve diverse interests through a consensus outcome.

As Partners' approach to its assignment is a "wide angle lens" perspective, we offer in this Report a broader analysis to sustain recommendations related to pursuing a new normative value of dialogue related to achieving consensus to immediate and potential contentious issues.

## **B. TINTAYA DIALOGUE**

BHP Billiton is currently involved in several ambitious endeavors in Peru to engage the communities in which it works. There is an effort underway that has been quite successful to date to work with the communities around the Tintaya Copper Mine in Cusco, Peru.

In 2001 community concerns about the mine resulted in a coalition of NGO's – including Oxfam America, Cooperación, and Corecami Cusco-- joining forces with the community to enlist the help of the Mining Ombudsman at the Australian NGO, Oxfam Community Aid Abroad. The Mining Ombudsman receives and investigates complaints from communities affected by the operations of Australian-based mining companies, including BHP Billiton, and seeks to ensure that those companies deal with communities through a fair and equitable process, respecting their fundamental rights.

With the support of the Ombudsman, the parties – including the civil society organizations – agreed to form what came to be called the "Mesa de Diálogo de Tintaya" (the "Dialogue Table"). A trained Peruvian professional facilitator, who had been chosen by a consensus of the NGOs and the company, facilitated the first meeting in February of 2002. Four commissions were created to address each of the four issues that were jointly identified as primary in five communities around the Tintaya mine: land, environment, human rights, and sustainable development. In addition, at Tintaya, BHP Billiton has a "Framework Agreement" ("Convenio Marco") with the municipal government and other local institutions, addressing concerns of communities' local to Tintaya but outside of the five communities covered by the Dialogue Table.

At the national level, the "Grupo de Diálogo de Minería y Desarrollo Sostenible" (Mining and Sustainable Development Dialogue Group) has been operating for several years. This dialogue

group is facilitated by Labor, a Peruvian NGO. The "Grupo de Diálogo de Minería y Desarrollo Sostenible," which routinely has meetings with 25-35 NGO and mining industry participants, addresses mining issues at the national level.

In December 2004, the parties of the Tintaya dialogue signed an agreement based on almost three years of dialogue and negotiation. This was a topic of much interest among mining companies, NGOs, and communities in Peru. The following are our summary findings on the dialogue and the next step of its implementation.

### C. SUMMARY LEARNINGS

The Tintaya Dialogue Agreement was signed on December 21<sup>st</sup> 2004 by Comunidad Campesina Alto Huancané, Comunidad Campesina Alto Huarca, Comunidad Campesina Huancané Bajo, Comunidad Campesina Huano Huano, Comunidad Campesina Tintaya Marquiri, BHP Billiton Tintaya S.A., Corecami Cusco, Cooperación, and Oxfam América. From the interviews, the following highlights Partners' findings regarding the Agreement:

#### 1] IMPACT:

- Everyone interviewed had significant comment about the Tintaya dialogue and Agreement, underscoring our finding that the Agreement has an operative significance larger than the Agreement itself and has stirred up widespread discussion in Peru about: how mining companies should engage communities; how communities and civil society organizations should interact; the role of international NGOs; and, the functions of local and national government.

For many, Tintaya represents a paradigm shift in stakeholder relationships and perceived outcomes. Prior to the Tintaya process, stakeholders were in antagonistic positions: Making any good faith move by one party generated suspicion on the part of the others, which fostered strong cultural stereotypes of mistrust that none of the parties had the ability to disown. By shifting to a consensus building model for dialogue versus just having a dialogue, the stance of the parties changed as did the agenda. Due to the dialogue, the parties' relationships are now more horizontal than vertical [the historical condition], allowing for new relationships between them. While the horizontal relationships created were outcomes of the process, it was the authenticity of the work that the parties put on the agenda that altered their relationships. In short, Tintaya is about issues that the parties agreed to work on; it is this interaction on work issues that created new relationships, more horizontal trust experiences, and changes in perception about one another. In future consensus-building dialogues, the focus needs to be on the work items, understanding that the new relationships achieved will be framed out of this focus. This new set of conditions was achieved because all the stakeholders, except one NGO and the municipal government, had different interests but common goals.

- There is nervousness among some corporations that the Tintaya agreement raises unreasonable expectations on other mining companies by communities and that all



communities would want grants similar to Espinar's by BHP Billiton, regardless of the size, activity, and profits of the mining company.

Behind this nervous attitude, expressed by both mining and government representatives and some NGO leaders, lies the deeper reality that a shift took place in the relationships of the Tintaya stakeholders. It is this shift more than the financial agreement that generates the uncertainty. What does it mean for future transactions if the normative process is consensus-based dialogues managed by third party facilitators? What is the impact on transparency of the parties and their ability to agree on common subjects in good faith consensus negotiations? How must the stakeholders prepare for such engagement and what level of training might reduce transactional costs, improve outcomes, and build sustainable relationships relevant to the successful implementation of the consensus agreement?

In shifting to a horizontal, consensus model, the Tintaya stakeholders crossed a cultural threshold in Peru, creating the context for a new set of relationships that challenge the normative cultural value relating to trust. It is this broader implication that generates a sense of unease in some quarters. This unease is not interpreted as malign or from bad motives, rather it is interpreted as a continuation of the cultural domain of mistrust, casting an outcome created through a trust-generating process with skepticism. From the perspective of skepticism, it is understandable that many will see and want to see Tintaya as an idiosyncratic outcome based on the unique character and behavior of the stakeholders and the particular circumstances of Tintaya itself. This is not the opinion of Partners' Assessment Team.

The Tintaya Agreement has raised expectations in many quarters. From a transactional perspective, negotiation and consensus results based on good faith interaction can reduce costs, improve relationships, and generate a different normal value of behavior. Actions that ameliorate and mitigate tensions and potential hostilities between corporations and civil society create an environment where each sector can focus their efforts on their primary functions. Corporations are in the business of making and improving goods and services for a profit; civil society organizations are in the business of participation, engagement, and improvement. These are not opposite missions and have several common sectors of interest upon which negotiating processes can surface, examine, and build consensus.

## 2] COMMUNITY ENGAGEMENT:

- There is awareness within the mining/constituent communities that community-base building must take place prior to any mining action, but interviewees have no common understanding as to when this should begin or what is culturally perceived as "respectful" in engaging mineral rich communities.

There is a significant cultural gap between internationals and Peruvians and between Peruvians from Lima and Peruvian *campesinos* and indigenous communities. There is a need for more cross-cultural capacity building and for adapting skills and processes so that they are seen as relevant and useful within *campesino* and indigenous cultures.

One director of a mining company noted that the "social dimension was new for companies," though he understood the need for increasing "sensitivity" to community issues and had offered on

a voluntary basis training in community sensitivity and relations to its field managers. This often translates for field managers into “who is the major local political person who needs attention.” At the other end of the scale, an NGO leader stated that it was necessary for mining companies to “knock on the door before coming in.” In short, before any planning, buying land, meeting with government agencies, etc., the company must come to the community and begin to build a relationship through communication. This approach respects the community’s independence. There is a substantial distance in these two perspectives. One government official noted that “while it is often difficult to discuss democracy and equity in Peru, Andean and Amazon communities are organized on a communal basis and are democratic, something that mining companies do not understand or know how to relate to very effectively.” Another government official stressed that the “first contact in mining is through social communication.”

Even though BHP Billiton came to the community it was seen by several NGOs as “late,” after the company had already made its decision to extract. According to some, the “respectful” act would have been to come before it wanted something from the community. In a world where people act from perceptions instead of from agreed upon rules, it is difficult to get it “right” even when operating from perceived good intentions.

### **3] REPLICABILITY:**

- There were varied opinions about the replicability of the Tintaya dialogue. Some interviewees thought it could serve as an excellent model for other mining dialogues. Other interviewees thought it might be particular to Tintaya.
- The Oxfam Australia ombudswoman was seen by many as a key to success as she was neutral and well-respected.

For replication, it is critical to closely examine the motivations of the Tintaya stakeholders to participate and to define the work issues such that the idiosyncratic nature of personalities does not become the dominant definition of success for the Agreement. While Tintaya benefited from the unique combination of stakeholders, it is the issues, motivation, process, competency and availability of capable third parties, and commitment to achieve consensus on common issues that defines the replicable qualities of the achievement.

Oxfam and Cooperación were important stakeholders in the Tintaya Agreement. Paul Warner from BHP Billiton was also an essential and critical participant. For other stakeholders, the use of third-parties brought legitimacy and balance necessary to make the process move forward. However, it does not seem likely that Oxfam can play this ombuds role on a continuous basis in mine after mine in the future. It would better to view the Tintaya Agreement as an “historical moment” that legitimated a process that warrants future application, but not necessarily with the same parties.

### **4] TRUST BUILDING**

- Interviewees stated that that the Tintaya Dialogue worked because the stakeholders had good intentions and were respected people.

While it took months, if not a few years, it was the interactions related to good faith negotiations focused on work items that resulted in the parties experiencing a “trust” not heretofore known to them in other forms of negotiation. Having this experience became the foundation for the agreement and implementation plan. It was not trust that made the agreement or the agreement that made trust, it was the commonality of the work that the stakeholders were doing and its importance to them that generated the time and interactions from which trust emerged.

In the Peruvian context, “trust” has cultural meaning. It is neither something that is given or expected nor a normal part of relationships or discourse. It is the *lack of trust* that is meant in Peru when one talks of trust. As lack of trust is the normative value in relationships and discourse, even in negotiations, the building of trust is not an objective goal in Peruvian society. For stakeholders and observers of the Tintaya Mining Dialogue to consistently comment that trust was achieved and to talk about “real trust” between the parties underscores the cultural significance that the interviewees give to the process and outcome. In short, the fact that the stakeholders could even make this type of agreement means they broke traditional normative values and perceptions, creating a phenomenon or cultural breakthrough. So seminal was the event that an entire symposium on corporate responsibility sponsored by CRS, Caritas, and CEAS was dedicated to its implications where nearly every speaker confirmed what interviewees shared; that trust, stated almost as a mythical phenomenon, was created by the dialogue, but generally lacking in Peruvian society on every level from intimate to national.

Interviewees gave this question of trust serious reflection, providing a range of premises for this socio-psychological condition: The history of abuse in the society; lack of benefits to local people in the mining community and broken promises; uneven skills and a sense that people take advantage of the less educated and prepared; a history of patron-client relations that exists in the culture; deference to leaders, elected or self-declared; low capacity for authentic negotiations; perception and experience of negotiations as a “stronger-take-all” process; lack of individual and political autonomy, creating more “group think” than decision based on individual need; and, a lack of experience and acceptance of “representatives” or representational government or appreciation that it can work for the whole versus a clan, tribe, or specific group.

The trust that was created in the Tintaya Dialogue process is not replicable. It is the ingredient that emerges from the interaction of the parties. If the interaction of the parties is focused on work items, desired outcomes, and is respectful, good faith communication is likely to emerge even if there is no agreement. Thus it is not the agreement that achieves trust, it is the process the parties are using and their behavior in that process that generates trust sufficient to overcome the Peruvian’s sense of mistrust and cultural skepticism that trust is not achievable.

Given that trust is such a critical issue in Peruvian society and that a major subject such as mining could generate a trust-based agreement understandably has major societal stakeholders assessing the significance of this event. From this perspective, it is understandable that some stakeholders are nervous or even see the agreement as undermining standing perceptions and arrangements that work in their favor, concomitantly there are those who see the agreement as a new path out of stalemate, creating an opportunity to move the social and economic agenda forward in a way heretofore not seen as possible.

## **5] ACKNOWLEDGEMENT:**

- Every stakeholder to the dialogue process commented on being under-appreciated for their efforts and insufficiently acknowledged for their labor, time, commitment, participation, and complex interactions required to build internal organizational support for their participation.

Consistently stakeholders noted that they “felt out there alone,” lacking real support with no one providing appreciation for their engagement or appreciating its organizational and familial costs. As one sociologist stated, there is within Peruvian society a fragmentation between “me” and everyone else, which is experienced on a daily, unconscious basis. “No one represents me, no authority applies to me, and my world is central and justifies my actions. I do not appreciate or trust others, as their motives are not mine and do not relate or concern me really.”

From this perspective, “appreciating the other” may simply not come to one’s mind or be even sought, though its absence, as experienced from a “self being deprived” is quite real. In short, not giving appreciation appears to be a cultural phenomena, but not being appreciated, which relates to a world centered on one’s self, is a cultural constant.

## **D. IMPLEMENTATION: AGREEMENT AND RECOMMENDATIONS:**

### **1] AGREEMENT:**

There are concerns about the implementation of the Agreement. All the key players understand that the harder work had just begun. Possible problems in implementation were seen as: change in community leadership due to the elections; ensuring that community leaders utilized funds to benefit many people and not just a few; ensuring enough technical capacity to implement some of the community projects; and, an unforeseen change in BHP Billiton’s policy. Ensuring consistency in working together during implementation was articulated as an overriding concern.

The burden of expectation for successful implementation is enormous, especially as the underlining statements by and perception of the stakeholders has been that trust between them has been achieved. The burden is greater than the Agreement and it is critical that all the stakeholders see the paramount significance of the implementation tasks as restatements of the trust that has been achieved and not as individual acts, activities, or independent decisions divorced from the greater reality that has been created by their interactions and statements.

Implementation is now infused with trust. As trust is not the cultural normative value, it is critical that implementation actions reflect and restate the trust that has been achieved for what is now at stake is much more than the Tintaya Mine Agreement. What is at stake is showing the significance of trust by making all decisions trust based. The “Tintaya moment” presents a possible shift in the cultural paradigm, creating a new normative way that stakeholders will behave to achieve consensus on potentially confrontational issues in the future. Failure to see the broader significance of the implementation stage has the potential to bring the parties back to their starting positions and unravel the true achievement of Tintaya for the stakeholders, the mining industry, communities of engagement, and Peruvian society.

## 2] RECOMMENDATIONS:

Realizing the full potential of the Agreement, means in practice creating an implementation principle: that in all cases of doubt, trust and good faith prevail over uncertainty and skepticism and that measurable, accountable, and transparent practices are the agreed upon standards.

### Components of this include:

#### 1. Confidence Building Measures:

The Implementation process should be seen as a set of confidence building measures with each action designed not only to achieve the intended outcome, but as reinforcing actions that increase their confidence and trust in one another. In this regard, it is important that the stakeholders agreed on having a regular and frequent review of actions taken and a set of congratulatory acknowledgements for actions well done. Again, statements of appreciation and acknowledgement continue the larger intention or benefit of using an implementation action as a vehicle to continue to build trust, which is a critical part of the paradigm shift: the real opportunity and outcome of the consensus agreement.

#### 2. Dispute Resolution System:

Agreed upon and effective dispute settlement systems supported by agreed upon third-party facilitators, negotiators or arbitrators need to be in place prior to the full implementation of the Agreement.

Agreement on what is subject to third party processes. For example, is a decision by the Tintaya Foundation regarding a local project subject to third party processes? Is it agreed by all the stakeholders that the Foundation Board's decision is final? Has the community affected been educated on this and like matters that relate to the use of funds under the Agreement that are allocated to the community? Interviewees on this subject gave different answers and impressions generating this recommendation for greater clarity and education. If the ombudsman role was seen as positive by the stakeholders to creating the Agreement, as stated by interviewees, creating an ombuds function would build on these positive experiences and create something potentially permanent for future issues.

Likewise funding from Avina for environmental monitoring of the Agreement creates information, but the format for information sharing, by whom, and when is not clear to several interviewees. If this impression is correct, there is a potential here for misinformation and perceptions to operate when a system of information sharing would address this potential problem.

#### 3. Skill Leveling:

Some interviewees were concerned that the local skill level was not sufficient to implement different aspects of the Agreement. Should this be the case, then targeted skill building relevant to implementation should be addressed. To continue the relationship/trust building at the local level, some of this skill building could be done in teams made up of the representative of the stakeholders thereby having local community leaders, BHP Billiton site employees, and other stakeholders work together to define their skill need, design a skill development program, and develop together a

proposal for securing the skills. Again, it is the work that defines the relationship. Expanding responsibility for getting the work done will over time expand relationships and trust.

4. Risk Management:

As the major components of the Agreement--land title ownership, environmental improvement, human rights corrections, and local projects--are complex, it is very likely that issues will arise that were not anticipated by the negotiating stakeholders. From a conflict prevention perspective, it would be good for the relevant stakeholders to examine each subject from the perspective of “what could I do to undermine this agreement and what acts might take place to sabotage the agreement.” Taking this perspective allows the stakeholders to continue to define their work and place themselves in an anticipatory posture. This form of risk management builds a higher level of sophistication into the implementation system and keeps all the parties responsible for anticipating, preventing, and mitigating disputes.

5. Summary:

The Tintaya Mine Agreement is important for the stakeholders to realize as they have invested nearly three years of work and their respective reputations in achieving what has been promised and agreed to. Given what Partners has learned from the interviews, there is anxiety within the stakeholder group about realizing the Agreement. Appreciating that the stakeholders represent different socio-economic backgrounds and political/community perspectives, it is likely that communication will remain a constant challenge. While one can pick at this part or that in the Agreement that might generate a concern, the best approach is prevention, moving issues well before “the curve” of potential disagreement. As communication is culturally laden, mechanisms for sustained communication, review, and interaction, as encouraged above, are strongly recommended. If the immediate stakeholders cannot perform this function on a timely, routine basis, it is recommended that surrogates be designed and begin to meet regularly.

## **V. THE MINING INDUSTRY’S OPPORTUNITY TO REDUCE CONFLICT AND STRENGTHEN PERUVIAN GOVERNANCE AND SOCIETY**

After speaking to over forty people in Lima from a cross-section of fields--non-governmental organization workers, government officials, mining company personnel, religious representatives, and donors--we selected the following findings for comment and consideration:

### **A. CAPACITY IN CHANGE AND CONFLICT MANAGEMENT:**

There was almost universal agreement that there is a need for additional capacity to manage change and conflict in Peru.

*There is already some excellent capability to apply change and conflict management in Peru, but there is a significant lack of capacity to develop and disseminate rapidly and effectively a professional expertise that is urgently needed in the industry, government, and civil society sectors.*

Interviewees were consistent that Peru has a culture of conflict, but not a culture of conflict resolution. That there is a need for: “more good and respected facilitators;” trainers who have experience with or are from the *campesino* communities; public space for dialogue and methods of

consensus-building; effective forms and forums for decentralized, transparent decision-making; more Peruvian stories about trust-building that demonstrate the efficacy of process and not just personalized trust in specific individuals; more capacity within governmental structures to manage conflict and change; training in leadership methods and skills; and, enhanced capacity of communities to negotiate.

Recognizing these limitations, four of the five stakeholder sectors are proceeding to develop limited change and conflict management expertise in Peru:

**Government**---different sections of the government are developing an expertise to analyze conflict and intervene in conflicts [for example, Consejo Nacional del Ambiente and the Ministry of Energy and Mines].

**Civil Society**---there are local conciliation forums and centers applying conciliation and arbitration services and some experimentation of collaborative, multi-stakeholder processes [for example, Centro de Análisis y Resolución de Conflictos].

**Universities**---a field of academic inquiry, study and case work is underway at some academic institutions [for example, Catholic University].

**Professionals**---a conflict and change management consulting practice is developing in Peru in response to requests from the stakeholder market [for example, Futuro Sostenible and On Common Grounds Consultants Inc].

**Mining Industry**---it is striking that the mining industry lacks a research, development, and training initiative in change and conflict management and lags significantly behind other societal and government actors in developing expertise in an area so germane to its immediate interests.

The law, “Establecen compromiso previo como requisito para el desarrollo de actividades mineras y normas complementarias” provides a framework for building up the capacities of many of the stakeholder sectors and could serve as a vehicle for promoting more cross-sector skill development.

## 1] GOVERNMENT:

The concept of representational government, the institutions of national government, as relates to mining and communities, and the role and function of municipal government present for Peruvians a range of feelings, comments, and limited expectations.

*Government has an increasingly pivotal role in the mining industry. In order to reduce long-term transactional costs, the mining industry needs to participate in improving the quality of governance, especially at the municipal level.*

As one government official noted, “municipalities are under a lot of pressure and need more skills, especially in negotiations, management, project design and oversight, and local resource management.” Given its limitations, the church rather than the state is seen more as the honest broker and caretaker of social interests. The state is also replaced by corporations and civil society organizations as the providers when the state structure breaks down. More specifically, there is a

strong perception that the Ministry of Energy and Mines has a conflict of interest between promoting and regulating mining, thereby increasing the attitude within civil society that the Agency cannot represent their interests. This perception strengthens the role of other actors, some of whom may have an interest in limiting the state's function. As noted by one ambassador, "The lack of state presence and functionality generates or exacerbates conflict."

In contrast to countries with strong central, regional, and municipal institutions, Peru's limitations in this area create a vacuum that places market sector and civil society forces in more direct contact than would otherwise be the case were government more dominant. Moreover, without the political and institutional buffers, civil society exercises a functionality that can appear representational in character, enabling civil society organizations to speak for groups and communities and deal directly with institutional and market actors. It is significant that in the Tintaya process, government was not represented; this placed BHP Billiton in direct, private-agreement making with civil society actors even though part of the ultimate agreement related to payment of funds to a regional governmental unit for distribution of funds within the state.

The continued behavior of market and civil society sectors in this direction continues the de-legitimization of the state, atrophies its functions, reinforces preconceived attitudes about state authority and representational government, reduces pressure on governmental representatives to perform their functions, and confuses civil society actors as to the defined scope of their role in a democracy. Short term private agreements that de-legitimize the functionality of the democratic state are likely to have long term repercussions in the stability of state representative institutions. To counterbalance the immediate need for agreements on economic issues in the short term with its potential for negative governmental impact, market and civil society actors need to work to directly enhance the capacity of government, especially municipal government, to perform its intended functions professionally, transparently, and efficiently. This point is elaborated upon in more detail in the recommendation section below. While some actors may prefer weak government and municipal entities for immediate negotiating advantages and sustained power relations, the reality is that weak actors make weak negotiators, achieving poorly adhered to agreements; if municipal government is an appropriate actor in agreement-making, then it needs to be a strong one. Interviewees agreed that there is a need for more effective and reliable local governance with capacity to be a negotiating partner in the dialogue processes.

While effective for the parties in the short term, it is disturbing that the Tintaya Agreement could be achieved and an implementation plan developed without the participation of an obvious stakeholder: the government. Thus the outcome of the Agreement may have limited utility for BHP Billiton when it pushes for a community-wide or municipal-wide sustainability plan that reduces the dependency of these sectors on mining revenue. Strategic planning for sustainability needs the participation of government, especially local government, if creative financing, investment, and capital and infrastructure development initiatives are undertaken. It is in the interest of the mining industry to seek an outcome of high reputation from its tax and royalty payments to begin to seriously consider ways to strengthen local government.

## **2] THE MINING COMMUNITIES:**



Mining communities are in a state of dependency on mines, which is imbedded in their historical relationships with governing structures and the legal definitions of their property and autonomy. Given the need on the part of mining industries to conform to law, be more transparent, and achieve some international validation for their behavior, a new set of motivational conditions exist that should be more effectively and constructively used by mining communities.

*The social inclusion of communities in mining decision-making and the new resources provided by mining royalties to mining communities creates a new set of community challenges, opportunities, and responsibilities that can transform present modes of dependency and create a set of potential innovations that can address the deeper level of community need and aspiration.*

As several interviewees--corporate, government and community persons--stressed, a new sense of respect and sensitivity are required in working with local mining communities. To appreciate their new position, take full advantage of potential opportunities, and be authentic negotiating partners, communities need to state and be asked about their needs and work towards a plan that enables them to prosper from their relationship with the mining companies. This can be a symbiotic relationship, rather than its historical presentation as antagonistic, exploitive, and destructive. Given the new resources that mining communities will have, they are challenged to address those needs that if met would place their communities in a horizontal negotiating position with government and industry. It is in the financial interest of the mining companies to reduce their costs by assisting mining communities to achieve their needs.

As Partners did not directly interview mining community leaders, the statement of community needs noted below came from those who interact with mining communities and were interviewed. Most of the statements relate to power, negotiating ability, breaking dependency, and community development that include:

- Select and train people from the community, especially young people, in communication and negotiation skills and as trainers;
- Enable trained persons to participate in negotiations for the community;
- Train community leaders and local trainers to conduct their own needs assessment and strategic development plans;
- Train people from the community as trainers and as participants in consensus-building dialogue processes, demonstrating how such methods empower communities and make other stakeholders' interests more transparent;
- Train community leaders and trainers in the values of negotiated agreements: good faith bargaining, adhering to agreements, honest communication, and follow through on commitments;
- Increase the ability of communities, through training, to plan for their future; build more capacity in planning, development and finance;
- Create community examples and stories of decision-making that can be used to educate corporate negotiators about community values and practices;
- Promote educational programs on the mining law and its requirements and opportunities for communities;
- Promote educational programs on democracy building and government's responsibilities and ways to hold government accountable.

While not an exhaustive list, achieving the noted level of skill would significantly even the negotiation process, improve the quality of consensus-building processes, and speed up consensus decision-making and planning. While training has been noted by nearly everyone interviewed, this is only a means to the larger end of achieving greater community engagement in planning and deciding on its future and thereby significantly reducing community dependency on mining revenue over time. As the ends being sought are in the interest of mining companies, it is to their advantage to support the means to achieve them.

### 3] THE MINING INDUSTRY:

There is a noticeable absence within the mining industry of a depth of capacity to move issues upstream, to have in place mechanisms that assess and anticipate potential issues and conflicts and provide solutions versus resistance strategies and responses. The mining industry pays a very high transactional cost for doing business in Peru. Much of this is historical and repetitive in quality. The Tintaya Mine Agreement broke some of the industry's taboos--negotiating with national and local community organizations, agreeing to pay special compensation, establishing investigatory and development commissions, and working through and with international NGO third parties.

*The mining industry needs greater capacity or access to capacity that identifies opportunities and issues before they materialize, increases its own ability to respond, prepares constructive responses, develops strategies that serve to enhance the skills of negotiating partners, and strengthens formal governance functions whenever possible.*

While many interviewees stressed that the mining industry was working hard to implement new ways of working, especially with communities, from a professional assessment it would appear that the industry as a whole is still in a responsive mode and does not have significant upstream mechanisms to be a robust actor, averting subsequent transactional costs that should have been anticipated. Risk management processes of potential conflict and response needs do not seem to be included in the early stages of planning. Community engagement, conflict analysis, and tactical responses all appear late in the development and decision-making process limiting the scope of local mining officials to review critical company decisions and plans and reducing the company's range of options at the local level. This orientation increases risk, invites surprises, and increases the cost of mining. It is submitted that the mining industry's profitability would increase by putting into place or by building and utilizing a conflict assessment/risk management function at the very front-end of its planning and decision-making process.

Finally, significant members of the mining industry should look closely at how to strengthen the capacity of municipalities to provide good governance in areas that impact mining and mining revenue and royalties to mining communities. A key starting point might be to work with municipalities to put into place:

- Trained and skilled municipal negotiators;
- Systems to assess short and long term community development needs;
- Strategies to address these needs;
- Methods for processes, evaluating, and deciding on proposals that will utilize mining royalties;
- Methods for monitoring and assessing funded projects;

- Municipal reporting and accounting mechanisms to the communities.

Finally, given the very large payments being made by mining companies indirectly to relatively small communities, it would be invaluable for the mining companies to be exploring with municipalities the development of community trust funds, endowments, or similar long-term sustainable funding mechanisms that build infrastructure projects and reduce the communities' dependency on mining as a primary community revenue source, which itself is not sustainable.

## **VI. STRATEGIC RECOMMENDATIONS AND INITIATIVES**

Partners' overall conclusion is that the mining industry has a unique opportunity to transform Peru and the industry's profitability by enhancing sustainable community development, strengthening governmental institutions, and reducing conflict. Our recommendations build on this conclusion and we outline below the beginning of a strategic approach to significantly advance these goals over a 36 month period.

While some excellent capacity exists in Peru [though mostly in Lima] in applying facilitated and multi-stakeholder processes, as well as training others in some range of these skills, it is evident that this capacity is not sufficient to meet the broad socio-economic opportunity or need. Nonetheless, it provides an excellent basis upon which to build a more focused, robust capacity capable of achieving the goals noted above.

There is a significant need to disseminate change and conflict management capacity in Peru. In particular, this dissemination needs to reach mining company employees, community leaders, and municipal officials, particularly in rural areas, and be culturally adapted so that it is a tool that is useful to indigenous communities. The conditions are favorable to create a critical mass capable by practice of shifting the paradigm toward broadly applied consensus-building processes that evenly prepare stakeholders, including municipal officials, and achieves monitored implementation plans. To achieve these and collateral outcomes, Partners recommends a broad, inclusive strategy that delivers an applied capacity to the industry, communities and other stakeholders in the shortest period of time, while enhancing the base for the intellectual development of the conflict and change management field in Peru.

There are a series of important and discreet efforts in the field of conflict and change management taking place in different sectors in Peruvian society. The most advanced is taking place in civil society with analytical work underway at a few universities and within government agencies. Building on this effort, Partners recommends the establishment of the following functions:

### Training:

- Build a training and trainers program in conflict resolution and consensus-building processes through contracts with current and future trainers and providers;
- Recruit trainers from the stakeholder constituent groups, including local mining communities, municipal government, civil society organizations and mining companies;
- Develop and implement an applied training program that includes trainers from the different constituent groups who learn and apply the methodologies.

### Services:

- Create and provide a Peruvian Ombuds function, providing to communities, companies, and/or government independent, highly respected third-party fact finders capable of making recommendations;
- Create and provide additional third party facilitators and consensus-building dialogue processes;
- Create a capacity to organize technical experts appropriate for specific issues in dialogue processes;
- Improve capacity to conduct conflict management assessments.

#### Intellectual Base-Building:

- Organize academic research, study and course development programs that advance the theory and practice of change and conflict management as a field of study in law, business, sociology, psychology and teacher training professional schools. The Catholic University and Royal Roads University are beginning to work on this.
- Building on the university base, develop the capacity to conduct assessments [noted above] and expert services [noted above].

#### Programs:

- **Municipal Good Governance:** Develop and implement a municipal good governance program for public and elected officials that improves their capacity to negotiate, participate in consensus-building dialogue processes, legislate new revenue monitoring systems, and improve the governance capacities of municipal officials.<sup>2</sup>
- **Community Sustainability Program:** Develop, in cooperation with key stakeholders, a community investment strategy designed to achieve community sustainability and independence from mining royalties, recognizing that in a few years mining contributions in tax and royalty payments will decline. The new canon law gives municipalities royalty payments, providing an excellent work theme consensus processes for the Sustainability Program.
- **Youth and School Conflict Managers Program:** To sustain a cultural shift in negotiation attitudes, create in the public schools a youth and school conflict managers program that teaches and applies communication, facilitation, conciliation and negotiation skills to school teachers and students.

Following an additional assessment, Partner will make recommendations on how best to accomplish the above. Partners envisions that a multi-resource base could be created for the above activities that included the mining industry, private foundations, domestic and international corporations, foreign embassies, and US government support.

## **VII. CONCLUSION**

BHP Billiton, Oxfam, Corecami Cusco, Cooperación, and the five communities surrounding Tintaya have showcased a dialogue process that has raised the expectations for corporate-

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<sup>2</sup> We were only able to meet with two Peruvian government officials while in Peru so there is a need for a follow-up assessment to meet with additional government officials, particularly municipal officials, and additional NGOs working on good governance issues. After such an assessment, a more detailed recommendation on the design of a good governance program will be made.

community engagement. The challenge now is to capture the lessons learned from the Tintaya dialogue, implement the agreement effectively, generate models that can be used to manage change and conflict across sectors and cultural differences, and widely disseminate change and conflict management capacity to work towards building a culture of trust based on successful collaboration that meets varying needs.

Ultimately, a significant percent of Peru's GDP is based on mining. Reduction of social and corporate transactional costs benefits all parties. Further, a strong municipal government presents a viable negotiating partner essential to realizing corporate-community consensus agreements. Finally, in pursuing its self-interest, community engagement provides the mining industry with a unique opportunity to advance a culture of consensus and better governance in Peru. Peru can move dramatically forward and the mining industry can model leadership that significantly advances the interests of all Peruvian sectors.

**List of Persons Interviewed**  
**Monday February 14<sup>th</sup> -Friday February 18<sup>th</sup>**

Manuel Glave, GRADE  
Steven Botts, Compañía Minera Antamina  
Alfredo Bambarén Lukis, Compañía Minera Antamina  
Eduardo Rubio, Minera Quellaveco  
Paul Warner, BHP Billiton  
Carlos Loret de Mola, Consejo Nacional del Ambiente  
Luis Garrido, General Electric  
Hilda Arellano, USAID  
Susan Brems, USAID  
Kimberly Delaney, USAID  
John Caulfield, United States Embassy in Peru  
Jorge Lafosse, Cáritas del Perú  
Cesar Polo Robilliard, Vice Minister of Mines  
Mark Stenning, Gold Fields  
Ian Thomson, On Common Grounds Consultants Inc.  
Antonio Bernales Alvarado, Futuro Sostenible  
Mons. Sebastián Ramis T.O.R., Obispo Titular de Huamachuco and CEAS  
Martin Scurrah, Oxfam America  
Javier Aroca, Oxfam America  
John Youle, ConsultAndes  
Jaime Garcia Diaz, ConsultAndes  
Miguel Palacín Quispe, CONACAMI Peru  
Carlos Aranda, Southern Peru  
Terry Nelidov, Catholic Relief Services  
Elvira Raffo Meiggs, Catholic Relief Services  
Carlos Santiso, DFID  
Laura Puertas, Proetica  
Epifanio Baca Tupayachi, Grupo Propuesta Ciudadana  
José Luis López Follegatti, Labor  
César Guzmán-Barrón Sobrevilla, Centro de Análisis y Resolución de Conflictos  
Melitón Carvajal, Defensoría para el Proyecto Camisea  
Raúl Farfán, Xstrata  
Baltazar Caravedo, Avina  
Richard Ralph, British Ambassador to Peru  
Paul Schellekens, Dutch Ambassador to Peru  
Myriam Cabrera, Royal Roads University  
Francois Dupuis, Senior Development Officer, CIDA.  
Richard Stoddart, National Secretariat for International Relations, Independientes  
Tom Reilly, Peruvian Democratic Development and Citizen Participation Project