

# IM4DC

## Action Research Report

### SUMMARY

**Researcher:**

Mario Paredes Campana - student

**School/Centre:**

Institute of Environmental Studies

**University/Institutions:**

University of New South Wales

**Key themes:**

Governance and Regulation  
Community and Environmental Sustainability

**Key countries:**

Colombia

**Completion:**

April 2014

**Research aims:**

This research sought to address the following:

- A better understanding of the process of Previous Consultation for mining projects in Colombia
- Reasons why it failed to deliver any agreement in the case of Law 1382 of 2010

**For further information on this action research:**

Contact person: Ros Taplin

[r.taplin@unsw.edu.au](mailto:r.taplin@unsw.edu.au)

**Final report available on request from:**

[admin@im4dc.org](mailto:admin@im4dc.org)

## Previous Consultation and the Legal Framework for Mining in Colombia

The Colombian government has shown interest in developing the mining industry as one of its “five development locomotives” for creating new jobs and revenue for the economy. In order to attract foreign investors, a new legal framework was developed and arranged in Law 1382, which was approved by the Colombian Congress in 2010.

In 2011, a group of academics, NGOs and indigenous people started a legal procedure to repeal the law under the premise that it did not comply with the constitutional requirement of Previous Consultation with ethnic minorities. The Previous Consultation process is a fundamental right guaranteed by the Colombian Constitution to ethnic minorities, which aims to preserve their cultural, social, and economic way of life. Any project that may affect their way of living or their ancestral lands has to undergo a process of consultation with these communities, but its incomplete regulation and enforcement are generating high levels of conflict for all stakeholders involved in mining projects.

This project aimed to achieve a better understanding of the process of Previous Consultation for mining projects in Colombia, and the reasons why it failed to deliver any agreement in the case of Law 1382 of 2010. On-site semi-structured interviews were conducted in Bogota with representatives of the government, academia, mining companies and indigenous peoples. Additional data was sourced from relevant publications and documents. NVivo 10 software was used for analysis.

The research found that stakeholders are aware of the need to conduct a debate to produce clear definitions and agreements in order to solve it. The key elements of this debate are:

- A clear definition of development
- The role of mining within this definition of development
- The purpose, legal boundaries and instrumentality of Previous Consultation within this definition of development

Within this context, the passing of Law 1382 of 2010, its failed consultation process and its subsequent repeal, is a symptom of the lack of definitions and clarity observed. Even if all stakeholders had a clear representative body the positions are so distant in some aspects, that it is unlikely that they would have achieved a meaningful result within the set timeframe.

Until agreements are reached over these foundational issues, any new attempts to pass laws or reforms to the Mining Code risk facing similar problems as those faced by Law 1382 of 2010, and the conflict between worldviews risk being perpetuated with all the negative effects that this entails.