Evidence and lessons from Latin America

The increase in social and environmental conflicts as a result of the demand for extracting natural resources has pressed Latin America to look for new responses to address these conflicts, generating interesting lessons learned for other regions.

LATIN AMERICAN APPROACHES TO EXTRACTIVE INDUSTRY CONFLICTS

SUMMARY

The rapid expansion of extractive industries in Latin America is transforming the societies and territories in which it is occurring. This phenomenon has provoked social and environmental conflict, especially involving the rural and indigenous communities that are most immediately affected. How are Latin American countries seeking to mitigate and avoid such conflicts? This Guide reviews the underlying causes and actors involved in extractive industries conflict, then analyses Latin American countries' responses and policies in recent years. It also assesses the contextual and other factors that have enabled these policies to be implemented and draws out the main lessons to be considered in other regions.

COMMON PROBLEM AND RELEVANCE

The expansion of extractive industry activities in the global south has triggered a myriad of social and environmental conflicts. In Africa, there are conflicts over pollution, such as over oil contamination in the Niger River Delta and small-scale mining contamination in Tanzania. Moreover, there are conflicts related to local livelihood degradation or forced displacement, such as in Botswana, Ghana, Namibia and Tanzania. Asia is home to socio-environmental conflicts in several extractive sites, such as in Indonesia, Papua New Guinea, the Philippines and Thailand, and even transnational armed conflicts, as for example in India, around gold mining.[1]

In Latin America, conflicts associated with extractive industry development are also widespread, in particular in extractive sites where local populations have resorted to confrontations with the state or private corporations over land use, environmental contamination and distribution of resource revenues. How to understand, prevent, and manage conflict scenarios in the realm of extractive industry expansion is a complex and context-specific issue Latin American countries are trying to address.

KEY LESSONS LEARNED

Participatory policies and mechanisms for fostering rural development planning are key in conflict prevention.

Establishing a transparent dialogue and negotiation process is the only way to maintain conflicts under control and reach socially sustainable agreements.

Latin American countries prove that conflict transformation is possible in the extractive industries.

[1]Philippine Misereor Partnership, Inc. 30 April 2012.*Philippines: Mining, Conflict And Death Of Indigenous Peoples In Tampakan*. Electronic publication; Nem Singh, J. 9 January 2012. *The Resource Curse: Governing Extractive Industries in the Global South*. E-International Relations, electronic magazine; Chopra, K. 2000. *Environmental Issues in South Asia: Theory, Policy and Institutions for Governance*. IEG Working Paper 206. Institute of Economic Growth, Delhi.

OVERVIEW OF THE LATIN AMERICAN RESPONSE

In Latin America, the economic boom from resource extraction has produced an increase in the numbers of social and environmental conflicts, primarily between extractive companies and local communities, such as in Argentina, Bolivia, Chile, Colombia, Ecuador and Peru. The Peruvian case is representative of many countries in the region, where increasing mining production has been met with increasing numbers of conflicts, as the chart below shows.

Chart 1: Extractive Investments and Reported Conflicts in Peru 2005-2010
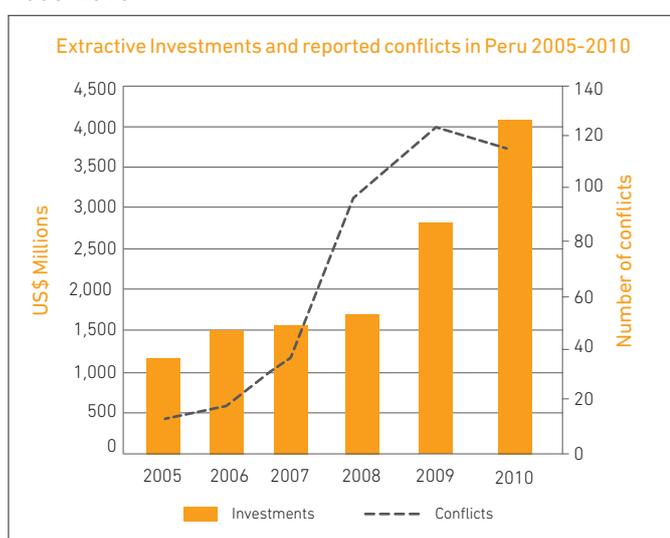
Own elaboration.
Sources: Data from the _Sociedad Nacional de Minería, Petróleo y Energía_ (National Society of Mining, Petroleum and Energy) and the Peruvian Ombudsman.

UNDERSTANDING THE CAUSES OF EXTRACTIVE SECTOR CONFLICTS IN LATIN AMERICA

To better understand Latin America's efforts to manage its conflicts, first we present an assessment of the four main causes of such conflicts. The first is the consolidation of a primary export model that has triggered a new cycle of geographic expansion of extractive projects in the region. This expansion has been led by a handful of extractive corporations, mainly private-sector in mining, and public-private mix or state-owned in oil and gas. The growth in extractive activities

in turn has increased pressure on local, rural and indigenous communities' resources. Currently, concessions for extractive projects cover vast areas of rural land, including indigenous territories and areas set aside for natural preservation.

Latin America is characterised by a continent-wide push to open new frontiers for extraction.[2] The Andean countries - Bolivia, Colombia, Ecuador, Peru and Venezuela - are a good example of the aggressive expansion of extractive activities. In Peru, 64 hydrocarbon blocks cover more than 70% of the country's Amazonian territory, with 11 blocks overlaying protected areas and 58 overlapping indigenous-titled communities. In Ecuador, two- thirds of the Amazon is zoned for hydrocarbon expansion. In Bolivia, 55% of the national territory is considered to be zones for potential hydrocarbon exploitation that has been assigned to Bolivia's state-owned oil company YPFB for exploration, overlapping natural protected areas and indigenous territories.[3]

Second, the region has slowly seen the end of 'social deals' in which resource use and contamination were seen as off-set by the positive impact of massive local employment in some extractive sites.[4] Modern, large-scale extractive projects now need only a relatively small and highly qualified labour force, so extractive companies no longer offer the same levels of local employment. In the case of open-pit mines, which require a larger amount of local natural resources such as water and land, due to their scale of production,[5] what can extractive companies offer in exchange for local resource use? Sometimes companies offer 'development' itself, but this is a rather ambiguous and hard to fulfil reward that can then become another source of tension and potential conflict.

This has meant that the focus of conflict has shifted from labour to environmental concerns. Workers' unions have been replaced by rural or indigenous communities as protagonists of local conflict, since nowadays competition is not for better salaries but for local land and water resources.[6] As Bebbington argues, the environment has become an increasingly important domain of contention and social mobilisation, becoming both a vehicle and an objective of contentious politics, influencing the way in which politics is organised and performed.[7]

[2] Bebbington, A. 2009. The New Extraction: Rewriting the Political Ecology of the Andes. _NACLA Report on the Americas_ 42(5) 12-20.
[3] See more information in the _Exploration Bidding Round Bolivia_ website. In 2012, the Bolivian government promoted an exploration bidding round to assess the entire hydrocarbon potential of the country, in line with the planned actions of the Hydrocarbons 3058 Law.
[4] To learn more about how social licence was and is now obtained in Latin America, see the ELLA Brief: From Expropriation to Social Licence: Accessing Land for Extractive Industries.
[5] O hUallacháin, B., Matthews, R. 1996. Restructuring of Primary Industries: Technology, Labor, and Corporate Strategy and Control in the Arizona Cooper Industry. _Economic Geography_ 72(2) 196-215.
[6] Damonte, G. 2008. The Transnationalization of the Mining Industry in Peru and Bolivia. In: Damonte, G. _The Constitution of Political Actors: Peasant Communities, Mining and Mobilization in Bolivian and Peruvian Andes_. VDM Verlag, Berlin.
[7] Bebbington, A., Humphreys Bebbington, D., Bury, J. 2010. Federating and Defending: Water, Territory and Extraction in the Andes. In: Boelens, R., Getches, D., Guevara Gil, A. (eds.) _The Politics of Water Rights and Identity in the Andes_. Earthscan, London.

Box 1: The Transnationalisation of Mining and Conflicts in Bolivia and Peru

During the 1980s and 1990s, the Bolivian and Peruvian governments implemented a series of market-orientated structural reforms in order to jump start the economy. These reforms facilitated the entry of multinational corporations into the local economies, while at the same time reduced the state's presence at mining sites, favouring the implementation of corporate policies instead of public ones.

The policy package included five key reforms: 1) privatisation of mines, ore and soil deposits; 2) tax reforms, including tax stabilisation, tax holidays and a general tax reduction for investments; 3) new agrarian legal frameworks aimed at incorporating rural and indigenous land into land markets; 4) deregulation of labour; and finally, 5) new environmental and social regulations. This new scenario created political tensions since formal extractive industry 'social rules' were changed without effective state regulation.

Along with these reforms, corporations introduced new discourse and corporate social responsibility (CSR) practices as a strategy to release social tensions while avoiding emerging conflicts. This strategy focused mainly on three mechanisms: payment for the use of local resources; compensation for negative impacts on local livelihoods, including environmental degradation; and promoting local sustainable development, which implied companies would replace the protagonist role of the state. However, CSR has not led to its expected outcomes. Companies have failed to understand local concerns and politics and their consultation processes have not been legitimated by local populations. Without adequate state regulation and local participation, CSR policies have certain limits in preventing conflicts.

Source: Damonte, G. 2008. The Transnationalization of the Mining Industry in Peru and Bolivia. In: Damonte, G. *The Constitution of Political Actors: Peasant Communities, Mining and Mobilization in Bolivian and Peruvian Andes*. VDM Verlag, Berlin.

Third, disagreements about how to distribute and use the huge revenues generated by extractive projects fuels conflict.[8] Table 1 (next page) shows differences in the allocation of extractive royalty payments according to three different government approaches. One of the most noticeable features of this three-country comparison is a more specified allocation of the royalty payments according to different central government sectors in Brazil and Chile. Perhaps most importantly, the table demonstrates a more redistributive model in Brazil and Peru, compared to a more centralised allocation pattern in Chile's central government.

Currently, extractive industries are highly profitable businesses thanks to increasing production volumes, falling production costs and historically high commodity prices. Seeing the high profits of private companies, the mostly poor areas where extraction actually happens strive for a better share of extractive royalties. Moreover, as some authors argue, the strategy used by the government to distribute royalties ends up challenging the decision making context of development promotion in subnational governments: in the face of increasing royalty revenues, conflict and competition to control these revenues also increases. This leads to a polarised political game, resulting in short-term policies instead of promoting long-term local development processes.[9]

Fourth, some conflicts are associated with governance weaknesses such as lack of transparency or the presence of corruption or violence in extractive projects. On the one hand, rules are not always well-defined, leaving room for informal deals or violent episodes between company officers, state representatives and local civil society leaders. On the other hand, failure to comply with promises or agreements by any of the parties involved in extractive projects has led to conflicts mainly when there are not clear or accepted reasons for the lack of compliance.

For example, one of the most severe cases of pollution in Latin America, known as the 'Amazon's Chernobyl', was compounded by problems of transparency and corruption. The case goes all the way back to 1964 when Texaco (later purchased by Chevron) gained permission to extract oil in the Ecuadorian Amazon region. Although this region was home to indigenous communities, they were not even informed when the initiation of extraction activities began. For over 30 years, the company dumped waste into open pits in the forest, seriously affecting the environment and indigenous communities of the region. Recently, in 2011, a judge in Ecuador found the company liable for US $9 billion in clean-up costs, but Chevron has so far refused to pay.[10]

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[8] For a more detailed discussion of how rent distribution is related to extractive industries conflict in Latin America, read the ELLA Brief: Rent Distribution and Conflict Management.
[9] Arellano, J. 2011. *¿Minería Sin Fronteras? Conflicto y Desarrollo en las Regiones Mineras del Perú (Mining Without Borders? Conflict and Development in the Mining Regions of Peru)*. UARM, IEP & PUCP, Lima.
[10] To learn more about this case, visit the website of the Chevron Toxico Campaign.

Table 1: Comparing Allocation of Extractive Royalties: Brazil, Chile and Peru

		Percentage of total revenues allocated		
		Brazil (2002-2007)	Chile (2010)	Peru (2010)
Central government ministries/ agencies	Science (R&D)	5.5 – 6.5	1.5	-
	Defence	0 – 3.3	13.2**	-
	Environment/ Mitigation	4.8 – 5.6	-	-
	Mines & Energy	19.1 – 22.5	-	-
	Other	0 – 1.7*	12.6***	-
	Non-specified Sector	-	71.8	46.0
Decentralised government units or agencies	Producing States/ Regions	41.9 – 42.0	0.6	17.6
	Producing Municipalities	9.0 – 9.3	-	4.0
	Affected Municipalities	6.2 – 7.4	-	-
	Universities from Producing States/ Regions	-	-	4.4
	Municipalities within the producing States/ Regions	3.8 – 4.5	-	-
	Municipalities within the producing Province	-	-	28.0
	Other States/Regions	-	0.3	-
Private	Private Landowners	2.6 – 4.4	-	-
	TOTAL extractive revenue	100%	100%	100%

Note: Brazil allocates Royalties and Special Participations (amounted to 109% of Royalties 2002-07). The allocation scheme depends on whether the field is onshore or offshore.
* This goes to a Special Fund to be distributed among all entities when production is offshore.
** The law which set extractive rent allocation into the defence sector has been repealed this year.
*** Taxes and dividends from public equity firms go to the Economic and Social Stabilisation Fund (ESSF) according to a specific rule, and is then used to prepay public debt.

Own Elaboration.
Data Source: Morgandi, M. 2008. *Revenues Distribution at the Sub-National Level: The Experience in Seven Resource-Rich Countries*. Revenue Watch Institute, New York.

Overall, Latin America's current extractive expansion has generated conflict over control and use of resources. The causes of opposition to extractive industry projects are not only related to land ownership and environment protection, but also to people's need to control their resources and decide on the course of their lives.[11] In this sense, Bebbington argues that social conflicts make evident how competing models and concepts of *development itself* coexist in relations of conflict or synergy. The development models held by social movements need to be taken into account in order to understand and respond successfully to conflicts.[12] In Latin America, these conflicts have therefore placed the relationships between economic development, environmental quality, land and human rights on the public agenda in new and powerful ways.[13]

KEY ACTORS IN LATIN AMERICAN CONFLICTS

Current conflicts have revolved around three main sets of actors: the state, the extractive industry corporation and the local population. Interestingly, in Latin America each of these actors has developed different positions and voices during the unfolding of conflictive scenarios.

Governments: States have tried to present coherent policies and political positions when facing social conflicts, but they have not been very capable of maintaining that coherence. On the one hand, there are common political fractures among state actors. While actors in state mining and oil sectors tend to be consistently supportive of extractive projects, environmental agencies and ombudsman offices sometimes have been less supportive during an ongoing conflict. This can lead to conflict within the government itself. In one telling example, contradictory opinions about the controversial Environmental Impact Assessment (EIA) for the Conga mining project led to an extensive reshuffle of Peru's cabinet in 2012.

Companies: The corporation, as well as its subsidiaries and subcontracted companies, are key actors in all extractive conflicts. The main corporations try to show a single corporate culture based on corporate social responsibility (CSR) principles. However, in some cases not all subsidiaries have followed the same social policy, generating inconsistencies between corporate discourses and subsidiary companies' actual practices. In Peru, Newmont Mining's standards and discourse relating to the practice of its subsidiary mining company Yanacocha is an example of this. When the Choropampa mercury spill happened (see Box 2),

[11] Laplante, L., Spears, S. 2008. Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector. *Yale Human Rights and Development Law Journal* 11 69-116.
[12] Bebbington, A., *et al.* 2008. Mining and Social Movements: Struggles Over Livelihood and Rural Territorial Development in the Andes. *World Development* 36 (12) 2888–2905.
[13] Bebbington 2009, above n 2.

Box 2: Lack of Transparency in the Response to Conflicts Mercury Spill in Choropampa, Peru

On June 2nd, 2000, a truck transporting mercury to Yanacocha, the largest gold mine in South America, located in Cajamarca, Peru, spilled 151 kilograms of liquid mercury over a 25-mile long area, contaminating the town of Choropampa and two neighbouring villages. The villagers' immediate response was to collect the metal, unaware of its potential danger. Over the next few days, Yanacocha hired village youth to clean the highway and paid villagers to return mercury. As a result, according to a government estimate, more than 900 people were poisoned, and continued suffering the grave effects many years after.

When the symptoms of poisoning appeared and people began to complain, the company responded by denying culpability. In fact, this is one of the most alarming cases in Latin America where a company's first response to conflict was marked by a deliberate concealment and manipulation of information. The company even hired an international toxicology expert, Dr. Michael Kosnett, to argue that mercury could be eliminated in a few weeks, with no long-term risks.

This situation was worsened by corruption, manifested by the complicity of some state and civil society actors with the company's position. Health professionals are an unfortunate example, from those working in the local health post all the way to the head of the regional hospital of Cajamarca who initially denied that mercury could be harmful. CARE, an NGO working in Cajamarca, provided brochures with information that assured people that mercury could be naturally eliminated, information that was false in the face of the evidence of high levels of mercury in the bodies of the affected people.

To learn more about this case, see the short documentary Choropampa: The Price of Gold, produced by Guarango Film and Video, Peru, 2002. The producers have also made this Guide to the Documentary with additional background information and resources about this and other Peruvian extractive industries conflicts.

Lawrence Kurlander, a senior executive of Newmont in the United States, was sent to conduct an environmental audit of the mine. He found health, water and land problems that contradicted the company's statements on their operations' compliance with US environmental standards. Actually, according to Kurlander, Yanacocha was not even complying with Peruvian standards, and the company's practices were so serious that senior executives could be subject to criminal prosecution and imprisonment.[14] In addition, CSR principles were not commonly adopted and practiced by subcontracted companies. Such contradictory discourse and practice have frequently marred communication and the political relationship between company officials and the local population, creating a fertile space for conflict to arise.

Local actors: At this level, the local population, as well as civil society leaders, are the main actors in extractive industry conflicts. The 'locality', in many senses, has no clear boundaries and cannot be clearly defined. Localities may encompass ethnic groups, rural communities, farmers or city dwellers. Likewise, local populations can organise themselves in many local, national or even transnational institutions or organisations, such as indigenous or peasant communities, rural or urban organisations, unions, political parties and religious groups, among others. Moreover, the local population can be politically represented by formal or informal leaders.

In any case, though, efforts must be made to define and understand 'localities' for each specific extractive project. To understand the locality in political terms, it is fundamental to identify local political interests, sources of power and struggles from a historical perspective. Moreover, current local struggles must be contextualized within a broader global movement that crosses the borders of Latin America, such as the environmental justice movement.[15] Those transnational alliances have strengthened social movements, building and developing capacities, providing more legitimate arguments and tools, and exerting international pressure on the state and companies.

LATIN AMERICAN RESPONSES: FROM PROTESTS AND VIOLENCE TO DIALOGUE

Latin American governments' strategies to respond to and manage conflict have varied over time and according to other socio-political variables. Basically, there have been two ways of approaching conflicts from a governmental perspective: confrontation and dialogue.

[14] Perlez, J., Lowell, B. 16 November 2005. The Cost of Gold: Treasure of Yanacocha Tangled Strands in Fight Over Peru Gold Mine. *Shell to Sea Electronic Magazine*.
[15] Carruthers, D. (ed.). 2008 *Environmental Justice in Latin America: Problems, Promise, and Practice*. Cambridge, MIT Press, Boston.

Protests

In the past, states and companies responded with violence to protesters in conflicts around extractive projects. There are many stories of companies' security personnel exercising indiscriminate violence against local protesters and state forces repressing miners' unions in the mining sites of the 20th century. However, now companies and state forces rarely are able to use indiscriminate violence against protesters, mainly because democratic rules delegitimise indiscriminate violence, civil society groups are stronger, and none of the actors condones violence, at least not openly.

Currently, conflicts are more visible while expressing discontent through public demonstrations, which is typically considered a legitimate expression in Latin American societies. It is common to see peasants or city dwellers mobilising in the streets in opposition to mining or oil projects, either marching, blocking activities or just meeting. In particular, in Bolivia, Colombia, Ecuador and Peru, massive street mobilisation against extractive projects can be expected if the problem is not resolved, while the demonstration is non-violent. In Argentina and Chile, demonstrators tend to use less large-scale mobilisations, and more of other actions such as ritualised symbolic protests, overnight gatherings or 'virtual demonstrations' via social networks.

Sometimes protests can spread beyond the locality, acquiring a provincial, regional, national or even transnational dimension thanks to political articulation, advocacy networks and media coverage (see Box 3). In this sense, mining sites have become transnational locations of contention.

Dialogue

In contrast to violent forms of expressing and resolving conflicts, more democratic responses have also taken place in Latin America, focusing on facilitating dialogue and promoting consultation processes. Recently, Latin American countries have seen the rise of the use of community referendums on mining projects as a means of expressing and assessing opposition to them. For many academics, these voting exercises are a means of democratising resource governance. For example, Schilling-Vacaflor, based on the analysis of several consultation processes in Bolivia's hydrocarbon sector, argues that consultations are important for democratisation as they can give voice to persons and

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Box 3: Transnational Conflicts from Chile and Peru

The Pascua-Lama conflict, originating in Chile, is a typical example of anti-mining mobilisations taken to an international scale. This mining project of the Canadian Barrick Gold Corporation has been planned since 1991, when the first studies of glaciers were carried out, though the conflict only reached its peak in 2005. Protesters from both countries feared the serious environmental harm that could be caused by the announced 'transplantation' of three glaciers in order to gain access to the deposits beneath them. Although the company changed its original plan and made a compromise to not move any ice or glaciers, local communities no longer trusted the company, and the conflict continued. By 2006, many international organisations joined local resistance movements and began advocating against the project, even putting pressure on the Canadian government.

More recently, Conga, another mining project, was put on hold after intense social mobilisation in the northern Andes of Peru. This project, whose main shareholder is Newmont Mining Corporation, the world's second largest gold producer, has seen social unrest since 2011. The driving force of the protest is mostly the risk of damage to the environment and water resources. The Conga conflict has received national and international levels of media coverage and advocacy, generating a profound criticism of the government's policies and reactions towards mining activities and social conflict.

Sources:
Estrada, D. 12th November 2005. *Pascua-Lama Conflict Reaches a Climax*. Mines and Communities Electronic Magazine.; UrkidiAzkarraga, L. 2008. Movimientos Anti-mineros: El Caso de Pascua-Lama en Chile (Anti-Mining Movements: The Case of Pascua-Lama in Chile). *Revista Iberoamericana de Economía Ecológica* 8 63-77.; Chipana, C. 24 June 2012. The Conga Project: Gold or Water? *The Prisma Electronic Newspaper*.

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groups over decisions that will deeply impact their way of life. However, the positive impact on democratisation can only be achieved under certain conditions that reduce the deliberative inequalities between the state, corporations and communities, such as progressive legal frameworks, mobilisation capacity, communities' access to expert and reliable knowledge, and the transparency of the process, amongst others.[16]

McGee also argues that community referendums represent an accurate and democratic way to provide - or not to provide - free,

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[16] Schilling-Vacaflor, A. 2012. *Democratizing Resource Governance through Prior Consultations? Lessons from Bolivia's Hydrocarbon Sector*. GIGA Working Paper No. 184. German Institute of Global and Area Studies (GIGA), Hamburg.

prior and informed consent (FPIC), as required by international law in certain situations.[17] Obtaining a community's consent is a competitive advantage both for companies and the community, as it enables them to establish an agreed framework that has a greater chance of preventing future conflicts.[18]

To learn more about the different consultation strategies used in the region, read the ELLA Brief: Managing Conflict Through Consultation: Latin America's Experience .

Box 4: A Case of Success: The Bolivian Government's Consultation with Guaraní Indigenous Peoples

Bolivia offers an example of how consultation can be done well. This successful consultation process was carried out to decide whether or not to implement a proposed hydrocarbon exploration project by the Argentinean Company Pluspetrol on Guaraní indigenous peoples' ancestral territory (TCO) called Charagua Norte and Isoso. The project's area of direct influence included 20 of the 33 communities of the TCO and one peasant farming territory. When negotiations with the communities began in 2009, information workshops were conducted by the company, though information was delivered in a technical way and showed biases towards the company's perspective. The Ministry of Hydrocarbons and Energy (MHE) intervened, deciding to redirect the consultation process by adapting it to the traditional forms of decision making and participation of the Guaraní indigenous peoples. The consultation process resulted in an agreement between the indigenous community and the Bolivian government to allow Pluspetrol to begin exploration activities. This case demonstrates that an attitude of respect towards traditional institutions and systems is essential when searching for a democratic and egalitarian negotiation between stakeholders.

Source: Bascopé, I. 2010. *Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso*. OXFAM and CEJIS, La Paz.

BEFORE AND AFTER: STRATEGIES TO PREVENT, MANAGE AND TRANSFORM CONFLICT

Resolving conflicts is a difficult task, given the structural foundations at the heart of most conflicts.

Social or cultural rivalries, exclusions, inequalities and marginalisation, among other structural social problems already discussed, are often at the core of enduring confrontational scenarios. Structural problems sustain latent conflictive environments, where events can provoke social unrest escalating into a visible conflict over a certain development initiative, such as an extractive project.

In Latin America, social inequalities and marginalisation have created fertile spaces for the proliferation of socio-environmental conflicts in the realm of extractive industry expansion. It is worth mentioning that although some left-of-centre governments in the region, specifically Bolivia and Ecuador, have strived for a change in the relationship between extractive industry and development, the logic and consequences of extraction on the proliferation of conflicts, for example, has been very similar to those of other countries in the region with different political ideologies.[19]

Thus, conflicts can be difficult to resolve, but they can be prevented, managed and even transformed into opportunities to revisit, and hopefully begin to solve structural policy and social problems. This section describes each of these - prevention, management and transformation - in turn.

Conflict Prevention Policies

Latin American countries have implemented a variety of policies that either directly or indirectly aim to prevent conflicts before they begin. For example, the implementation of a Land Use Planning System (LUPS) has been a key policy mechanism to foster more socially and economically sustainable rural development, including extractives development, in several Latin American countries.[20] Though the main aim of LUPS is not conflict prevention, it can be one of its by-products. However, adoption of this policy has been widely resisted by the extractive sector. The sector has insisted that the state should not, ex-ante, define certain area as off-limits to extractive industry, as they consider that regional development should be based on mining expansion, so that land planning should not establish mining restriction other than the no-go zones accepted by the industry.[21]

[17] McGee, B. 2009.The Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development. *Berkeley Journal of International Law* 27(2) 570-635.
[18] Laplante, Spears 2008, above n 11.
[19] Bebbinton, A., Humphreys Bebbington, D. 2010. *An Andean Avatar: Post-Neoliberal and Neoliberal Strategies for Promoting Extractive Industries*. Brooks World Poverty Institute Working Paper 117, Washington, DC.
[20] To learn more about land use planning in Latin America, read the ELLA Brief: Land Use Planning for Extractive Industries. For an overview of other land use issues in the region, see the ELLA Guide: Accessing Land for Extractive Industries: Socially and Environmentally Sustainable Approaches.
[21] Bebbington, Humphreys Bebbington, Bury 2010, above n 7.

BOX 5: Small-Scale Mining: A Big Problem for the State

Though this Guide mainly deals with conflicts arising from large-scale, formal extractive industry projects, at the same time, small-scale and informal mining is also generating social and environmental conflict in the region. Small-scale mining has become a huge and unmanageable problem for Latin American states. After almost two decades of partial measures to control this kind of mining, the surge in gold prices has attracted a vast amount of people to small-scale mining, and has transformed the sector into one with much more informality, and increased its potential to generate and escalate conflicts.

What are some of the common conflicts stemming from small-scale mining?

• Lack of control and formality foster the appearance of new actors that try to capture the revenue generated in order to finance their informal and illegal activities. It is common to find guerrilla groups and drug dealers extorting profits from small-scale miners.

• The failure of governments to effectively regulate access to land and mineral resources creates conflicts due to overlapping land rights. This is a major concern in areas populated by indigenous peoples.

• Most of the small-scale mining becomes informal because it is carried out in areas where mining permits are granted to third parties from outside the local area. Conflicts may be kept at the local level when they involve mining companies and the small-scale miners, but can also reach the national level when governments intervene and send security forces to remove miners.

What are some successful approaches from Latin America?

• *Narrow-focused projects to solve one aspect of small-scale mining, combined with more integral approaches*. The GAMA project in Peru aimed to improve the environmental performance of the sector by providing technical solutions, but did so using an integral, community-orientated approach, focusing on all relevant social, cultural, organisational, health-related, economic and legal issues.

• *Government intervention in different links of the gold value chain makes regulation easier*. In Chile, the National Mining Company (*Empresa Nacional de Minería* - ENAMI) purchases minerals from the small miners, then processes them in order to add value. In this way, ENAMI prevents the commercialisation of minerals on the black market.

• *Certifications to back up value-added and facilitate entry into upper-end markets*. The *Fairtrade and Fairmined certification system* has granted three mining organisations (Cotapata Mining Cooperative in Bolivia, Oro Verde in Colombia and SOTRAMI in Peru) the right to have their products labelled as Fairtrade and Fairmined ecological gold. These organisations, in return for not using any chemicals and having high environmental standards, receive premium prices for their gold.

To learn more about how the region is confronting the challenges of conflict in small-scale and artisanal mining, read the ELLA Brief: Small-scale Mining in Latin America.

Latin American countries have also learned that some policies and procedures need to accompany LUPS implementation in order to avoid conflicts over contentious land use plans. First, states have formalised land rights by establishing clear land tenure systems that grant land rights recognising both customary land uses and ancient land rights, such as indigenous rights. Second, states have established a formal participation process for land planning validation. Third, in countries such as Peru, Free Prior and Informed Consent procedures and regulations regarding indigenous populations and territories have been put in place.[22]

As another policy to prevent potential conflicts in extractive projects, most countries have implemented Environmental Systems to prevent conflict over environmental concerns.

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[22] To learn more about consultation as a conflict management strategy, read the ELLA Brief: Managing Conflict through Consultation: Latin America's Experience.

These systems include specific government environmental regulations as well as the preparation and participatory validation of Environmental Impact Assessments (EIAs). For example, in Brazil, Chile and Colombia, independent state environmental agencies are in charge of approving the EIAs.

In addition, some countries, such as Peru and Colombia, have established systems of extractive royalty distribution that reward the producing territorial units - be that district, provinces, or regions where extractive projects are located - with larger royalty shares. This is believed to not only foster development, but also undermine a project's local opposition.

Finally, several states have implemented transparency policies that require corporations to disclose financial information to avoid conflict over corruption claims. For example, Peru has acquired a compliant status in the Extractive Industries Transparency Initiative (EITI), while other countries have enacted specific transparency laws and policies.

Likewise, more responsible private extractive corporations have gone beyond complying with state regulations to implement additional policies aimed at preventing conflicts from emerging. In the realm of CSR principles, several corporations foster local development and transparency. Some of the largest corporations publish extensive information on their website and in other corporate documents. In addition, several corporations - again typically the largest - have created social funds to implement development projects in their area of influence. These funds are directly managed by companies' development offices or indirectly through foundations or NGOs supported by the corporations. For example, Anglo American has supported Care in Brazil and launched the Emerge Initiative in Chile, and Antamina created the Ancash Foundation in Peru.

Policies for Conflict Management

States and corporations have developed different policies to manage conflicts once they emerge. When conflicts are in their first stages, meaning there is some resistance to the project but still not to the extent of public demonstrations, the state or the corporation have resorted to initiating or repeating consultation processes. Once the conflict develops and the parties have stated their positions publically, the expected state reaction is to set up dialogue procedures following

Box 6: Involuntary Resettlement, Conflicts and International Guidelines

The development of a large-scale extractive project may entail displacement of the current owners, occupiers or users of the needed land. This is rarely a matter of free and informed choice on the part of those who are displaced. Legal instruments are typically available to compel or coerce land transfer, and displaced communities very often lack the power, information, and legal standing to protect their interests. Studies have repeatedly shown that in the overwhelming majority of cases, displacement increases poverty among already poor people; one of the impacts of this is the triggering of future conflictive situations.

Consequently, states, multilateral agencies and extractive corporations are making new efforts to mitigate the negative impacts of displacement. In particular, the World Bank Group has researched and provided guidelines for such processes, such as the World Bank Operational Policy (WB) O.P. 4.12 on Involuntary Resettlement and the International Financial Corporation (IFC) Performance Standards 5 on Land Acquisition and Involuntary Resettlement. Likewise, most Latin American countries require companies to incorporate a resettlement plan into their EIAs when displacement is planned. The main goal of these plans and guidelines is to improve or at least restore displaced people´s living conditions.

In Latin America, companies that have followed international guidelines have achieved the best results. For example, the Xstrata Corporation has achieved an agreement with an indigenous community for its resettlement in the *Las Bambas* project in Peru. The final result, however, remains to be seen, as the key issue is how to assure and measure the improvement of displaced people´s living standards. A lesson from the Latin American experience is that guidelines can be very useful templates, though they have to be adjusted to specific populations and changing contexts.

Sources: Cernea, M. 2004. *Impoverishment Risks, Risk Management and Reconstruction Model: A Model for Population Displacement and Resettlement*. UN Symposium on Hydropower and Sustainable Development. Beijing, 27th-29th October 2004.; Cernea, M. 2000. Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement. In: Cernea, M., McDowell, C. (eds.) *Risks and Reconstruction: Experiences of Resettlers and Refugees*. World Bank, Washington, DC.; McDowell, C. (ed.) 1996. *Understanding Impoverishment: The Consequences of Development-induced Displacement*. Bergham Books, Oxford.

different formats, such as multi-party roundtables, third-party mediation or state high-level dialogue commissions.

In this context, responsible corporations and democratic governments have learned after decades of conflicts that sometimes it is necessary to give some concessions and that transparency in negotiations is fundamental to generate agreements amongst opposing sides. The temporary suspension or slow-down of a project can facilitate calmer negotiations; this is generally the first state offer in negotiations. Then, states have accepted to review EIAs, increase local revenue shares and impose new environmental or social conditions on the projects.

When dialogue and negotiation processes fail, some states still resort to repressing local opposition directly or indirectly, such as by inciting counter-opposition demonstrations, as a last resort to restore order. However, this last violent reaction has mostly spurred spirals of violence, ultimately making the extractive project socially unfeasible. Thus the lesson learned here is that dialogue and negotiation are the only sustainable ways to overcome conflictive scenarios.

Moreover, a remarkable institutional improvement related to conflict management has been the creation of ombudsman offices in many Latin American countries in the last 25 years. Latin American ombudsman offices have been shaped by a context of exclusion, inequality and constant conflict; therefore, unlike the European model, centred on the supervision and control of public administration, the Latin American ombudsman has been much more concerned with the defence of human rights and with assisting in and mediating conflict resolution.[23]

One of the Latin American countries where this institutional progress has taken place is Peru. The Ombudsman's Office (*Defensoría del Pueblo*) has become a strong and independent government agency that has played a vital role as a mediator in conflicts, taking concrete positions on how government policy and practice should change. In fact, one of the major challenges for ombudsman offices in Latin America has been the ability to maintain impartiality and avoid political pressure in order to preserve social legitimacy: the Peruvian case is a paradigmatic example of an office that has successfully achieved political independence. In this regard, Bebbington states it clearly: "co-opted Ombudsman's offices do not help".[24]

Another successful example of autonomous ombudsman's intervention can be found in Costa Rica, specifically in the water and soil contamination case attributed to the El Pedregal mining company.[25] Here, the ombudsman conducted serious investigations to demonstrate the neglect of state institutions responsible for ensuring environmental protection. These actions contributed to empowering civil society and gave more consistency to their demands.

Conflict Transformation: An Emerging Strategy

In the last few years, some scholars have begun to propose transforming conflict situations into windows of opportunity for improving state policies as well as tackling the structural problems that underpin the conflicts. Since conflicts are massive events that draw the attention of not only the actors directly involved in the conflict, but also regional and national social actors and the public, they can create the perfect space to revisit public policies and discuss related structural social problems such as poverty, marginalisation, corruption and environmental degradation.

The advocates of conflict transformation policies propose generating a more integral perspective on conflict management that targets the causes, instead of trying to deal with the immediate consequences. From this perspective, the creation of a consolidated National System of Conflict Management that is able to transform - and not just administer - conflicts is needed (see Box 7). Conflict transformation in Latin America is still more of a proposal than a policy, but its foundations lie on lessons learned from a myriad of social conflicts in the region.

However, it is important to mention that if policies for conflict transformation are not framed within a practice of 'sovereignty' - understood as the respect for the autonomy of the regulation and audit functions of the state on the one hand, and for the objection and validation schemes proposed by impacted communities on the other - there is a risk that they will reduce its democratic effects.[26]

[23] To learn more about the human rights focus of ombudsmen offices in Latin America, including in areas other than extractive industries, read the ELLA Brief: Latin America's National Human Rights Institutions: Fostering Democratic Transitions and Guaranteeing Human Rights.
[24] Bebbington 2009, above n 2, 13.
[25] Quesada, M.F., Gamboa, C. 2005. *El Defensor del Pueblo en Latinoamérica: un Análisis Comparativo* (*The Ombudsman in Latin America: A Comparative Analysis*). University of Costa Rica, San José.
[26] Cisneros, P. 2011. *¿Cómo se Construye la Sustentabilidad Ambiental? Experiencias Conflictivas de la Industria Minera en Ecuador* (*How is Environmental Sustainability Constructed? Conflictive Experiences of the Mining Industry in Ecuador*). FLACSO, Quito.

Box 7: Building a New Conflict Transformation Paradigm

Recommendations for a National System of Conflict Management

Based on a previous analysis of the current institutional treatment of conflicts in Peru - mainly characterised as responding to crisis - the document summarised here proposes to create a national system of conflict management that has the capability to transcend the *administration* paradigm of conflict management to a transformation paradigm focusing on structural and institutional changes.

1. The system should be run by an independent national authority that approaches conflict from a governance perspective. This perspective implies the ability to articulate the opinions and interests of all stakeholders from different levels - national, regional and local - and to build common guidelines to facilitate dialogue.

2. Political decentralisation is needed to overcome the vertical and sectorial character of conflict management. Central governments need to transfer functions and competences, such as environmental regulation, to regional and local governments.

3. State authorities should take into account recommendations from ombudsman offices and civil society groups.

4. Authorities have to understand not only different actors' demands but also culturally embedded world views, including marginal populations and indigenous minorities. In this sense, instruments such as local consultations can serve as means to empower local actors.

5. Another basic component of a national system of conflict management is transparency. It is vital to develop mechanisms to monitor state actions, negotiation process and outcomes, including mechanisms to allow local populations to lodge complaints and denounce bad practices.

6. Finally, structural causes of the emergence of conflict must also be targeted. the Latin American experience is that guidelines can be very useful templates, though they have to be adjusted to specific populations and changing contexts.

Source: Huamani, G.et al. 2012. *Hacia una Mejor Gestión de los Conflictos Socioambientales en el Perú* (*Towards a Better Management of Socio-environmental Conflicts in Peru*).CIES, Lima.

There are three interrelated enabling factors that have framed efforts to prevent and manage extractive industry conflict in Latin America.

First, Latin America's ongoing and generalised democratisation process has had positive political and institutional effects in the region. Democratic, free and mostly trustworthy elections have assured the survival of democratic institutions that have grown in most countries. The creation of ombudsman offices in several countries is a clear positive outcome. In general terms, Latin American states have democratised and strengthened the state apparatus, making public institutions more transparent, capable and reliable. Indeed, they are more adept at managing conflicts than before.

Second, civil society's increasing participation in conflicts has created more room for fertile dialogue and the possibility of conflict transformation. Civil society groups have flourished in the realm of national democratisation and globalisation. These groups are now visible and certainly outspoken. In several cases they have international connections and increasing mobilisation capacities: organisational and innovative methods to push for change. In countries where political parties have lost political clout, grassroots organisations alone or through social movements have replaced them as political representatives. In any case, states and companies now have politically strong counterparts which certainly facilitate dialogue, making possible the formulation of realistic alternatives to conflict.

Finally, free media and the development of alternative means of communication have facilitated regional, national and even international public scrutiny of extractive conflicts. Public opinion is thereby more educated and influential than before, and can prevent or at least publicly condemn possible violations of democratic practices in ongoing conflicts. In this regard, it is worth noting the increasing use of the internet and social networks to present alternative information, as in the Conga or Pascua Lama conflicts discussed above. Conflictive scenarios and open conflicts can no longer be hidden from the public, so that private, state and civil society actors in conflict tend to try to control their behaviour, conducting themselves in a more socially acceptable way.

LESSONS LEARNED

1 Latin American countries have learned that structural social problems such as inequality and marginalisation have created fertile spaces for conflict situations in the realm of extractive industry expansion. This means that conflicts can be difficult to resolve in the short-term. However, they have also learned that conflicts can be prevented, managed and even transformed into opportunities to revisit and hopefully start to solve structural social and policy problems.

2 Regarding conflict prevention, states have learned that they need to develop participatory policies and mechanisms for fostering rural development planning that includes identifying zones for extraction. In this regard, clear land rights, a transparent and participatory process, and strong, clear and well-established social and environmental regulation and CSR frameworks are needed.

3 Regarding conflict management, Latin American civil society actors have learned that establishing transparent dialogue and negotiation processes is the only way to maintain conflicts under control and to reach socially sustainable agreements in the realm of ongoing conflicts. For this, states need to develop clear procedures, create and strengthen independent institutions, search for legitimated representatives and mediators, and above all avoid violent episodes.

4 Finally, several Latin American states, civil society groups and even extractive corporations working in the region have learned that there is room for conflict transformation. From this perspective conflicts can also be seen as windows of opportunity for improving state policies as well as tackling, at least to some extent, the structural problems that are the ultimate causes of most conflictive situations.

KNOWLEDGE PARTNERS

This is a sample of some of the key organisations working on Extractive Industries and Conflict Management issues in Latin America. For additional information about these and other organisations working on these themes, read the ELLA Spotlight on Organisations: Extractive Industries and Conflict Management.

As part of the Catholic University of Peru (*Pontificia Universidad Católica del Perú*), the Centre for Analysis and Resolution of Conflicts (*Centro de Análisis y Resolución de Conflictos*) is dedicated to analysing, preventing and managing conflicts through training, research and consultancy services. The Centre includes a strong focus on socio-environmental conflicts related to natural resources. The Centre's website offers information about courses and conferences and provides access to their publications, such as their Arbitrage (*Arbitraje*) Journal.

The Latin American Observatory of Environmental Conflicts (*Observatorio Latinoamericano de Conflictos Ambientales*) maintains an exhaustive database of information on conflicts related to extractive activities across Latin America. In addition to monitoring conflicts, the *Observatorio* - based in Chile - also provides capacity building to communities involved in conflicts related to defending their environmental rights, and conducts research and shares knowledge about methodologies for managing conflict.

Mines and Communities (MAC) is a network providing up-to-date information about the social, economic and environmental impacts of mining, with a particular focus on impacts for indigenous and land-based peoples. The website includes much information about Latin American countries, including a country search tool.

Territory, Conflict and Development in the Andes is a Research Programme of the School of Environment and Development at the University of Manchester in the United Kingdom. It focuses on understanding the political ecology of social conflicts arising in rural areas of Latin America's Andean region as a result of the interplay between natural resource extraction, local agricultural activities and development processes, with a special focus on civil society and social movements.

The purpose of the United Nations Indigenous Peoples' Partnership (UNIPP) is to provide support to better address indigenous peoples' rights at the country level within the UN system. It covers areas including culture, economics, politics, communication and international issues relevant for anyone interested in researching indigenous issues and conflict in Latin America.

RECOMMENDED READING

The following is a selection of some of the key publications related to extractive industry conflict in Latin America. For additional information about these and other important works, read the full ELLA Spotlight on Publications: Extractive Industries and Conflict Management.

Bebbington, A. 2010. Extractive Industries and Stunted States: Conflict, Responsibility and Institutional Change in the Andes. In: Raman, R. (ed.) *Corporate Social Responsibility: Discourses, Practices and Perspectives*. Palgrave MacMillan, London.

Fulmer, A. 2011. *The Politics of a Strange Right: Consultation, Mining and Indigenous Mobilization in Latin America*. 2011 Annual Meeting Paper, American Political Science Association(APSA), Seattle.

Hill, C., Lillywhite, S., Simon, M. 2010. *Guide To Free Prior and Informed Consent*. Oxfam Australia, Victoria.

Latin American Press/ComunicacionesAliadas. June 2011. *Prior Consultation: A Fundamental Right for Indigenous Peoples*. ComunicacionesAliadas, Lima.

Morgandi, M. 2008. *Extractive Industries Revenues Distribution at the Sub-National Level: The Experience in Seven Resource-rich Countries*. Revenue Watch Institute, New York.

Sawyer, S., Gomez, E. 2008. *Transnational Governmentality and Resource Extraction: Indigenous Peoples, Multinational Corporations, Multinational Institutions and the State*. United Nations Research Institute for Social Development, Geneva.

Ward, B., Strongman, J. 2011. Gender-sensitive Approaches for the Extractive Industry in Peru: Improving the Impact on Women in Poverty and Their Families. World Bank, Washington, DC.

LEARN MORE FROM THE ELLA BRIEFS

These four ELLA Briefs focus in on some of the most important Extractive Industries and Conflict Management issues in Latin America.

Managing Conflict Through Consultation: Latin America's Experience

Latin America has seen a surge in consultation processes – taking a variety of forms and pushed by different actors from the state, private companies and civil society.

Indigenous People, Conflict and Extractive Industries: Latin American Approaches

In Latin America, recognising indigenous cultural, land and consultation rights is going a long way towards reducing conflict over extractive industry projects.

Small-Scale Mining in Latin America

Latin America has experienced an amazing growth and transformation of small-scale mining so that it is no longer small or artisanal, becoming instead paramount in informality and a huge challenge for governments in the region.

Rent Distribution and Conflict Management

Can rent distribution reduce extractive industries conflict? A focus on the Peruvian case helps highlight how and if these schemes could prove effective in managing conflict.

CONTACT GRADE

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