

Resource Conflicts: Emerging Struggles over Strategic Commodities in Latin America Phase II

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EXECUTIVE SUMMARY

The efficiency and success of U.S. security initiatives in Latin America requires a thorough understanding of resource conflict and the state's role in managing it. International investments in mining and hydrocarbons in the Central Andes could potentially affect U.S. economic influence in those countries and have real implications for U.S. security presence relative to other world powers. Resource conflict makes it hard for the U.S. government to monitor extraction and production of strategic materials that are critical for the U.S. government to meet its defense needs and to achieve a favorable balance of power vis-à-vis other world powers through control over these commodities.

This report examines how the regulations that structure the process of local community consultation affect the mining sector in Peru and the hydrocarbon extraction sector in Bolivia. By identifying commonalities in resource conflicts and analyzing how subnational institutions can predict the condition under which conflict arises, this research serves as a first stage in predicting, preempting, and resolving conflict more effectively. The findings in this report should matter to those concerned with the mechanisms by which new projects are reviewed and approved, including the degree to which a project's environmental and social impacts are anticipated and evaluated.

In Peru, participation is limited to the procedural level; communities can voice criticism but lack authority to halt a project within the structure of those procedures. At the other extreme, Bolivian lowland communities are granted a high degree of input in new hydrocarbon projects; their legitimate leaders must approve projects in writing in order for companies to obtain the necessary licenses from the environment ministry.

This report observes, paradoxically, that the more inclusive framework in Bolivia has led to a free ride for projects on the technical front: in the Bolivian hydrocarbon cases analyzed here, conflict has revolved around achieving dialogue with the state and companies and obtaining appropriate compensation for projects. In contrast, what initially appears to be an easier road for companies has actually triggered more oversight on the technical front in Peru. For Peru, the analysis has shown how the Environmental Impact Assessment has become a highly political process in which subnational actors prove critical in developing and approving the EIA and ultimately the mining project, in spite of regulations that formally limit local participation to empty procedures. Mining conflict has escalated to the point of triggering outside oversight and sometimes the cancellation of projects, stemming from community complaints about technical dimensions of projects.

INTRODUCTION¹

Latin America, particularly the Central Andes, has undergone a tremendous rise in protest activity surrounding the extractive industries since the 1990s, when liberal economic reforms were widely introduced in hydrocarbons and mining. These mobilizations have had important implications for resource extraction and related policies, as well as for political stability more broadly. This report focuses on one critical element in the conflict story: formal and informal institutions that influence behavior in zones of extraction for proposed projects that have yet to be developed.

The Central Andes, rich in hydrocarbons and minerals, has communities that face a tension between pushing back against new extractive projects, on one hand, and benefitting from resource extraction via direct investment as well as the distribution of royalties. Why then do some resource conflicts trigger oversight of technical aspects of new extractive projects, while in other cases conflict remains focused on questions of compensation? This report, part of a broader study on resource conflict in the Central Andes, addresses the effects of the formal and informal subnational institutions that structure community participation in the approval process for new mining and hydrocarbons projects. In particular, the report focuses on Peru's mining sector and Bolivia's hydrocarbon sector.

The analysis finds that in both countries, regulations introduced in the two sectors have had varied effects on resource conflict and the resulting oversight (or lack thereof) of projects' technical elements. Peru's regulatory environment stands out for granting only minimal participation to communities in zones of extraction. In Peru, participation has been limited to the procedural level, particularly regarding environmental impact assessments (EIAs): communities in the zone of extraction are able to voice their opinions about assessments but do not have the authority to halt a project within the structure of those procedures. By regulation, it is the state that is to ensure that these procedures are carried out, and only after they are completed can the EIA be approved and the new project be carried out.

Bolivia sits at the other extreme, with regulations that are more accommodating of the communities in Bolivia's hydrocarbon-rich lowlands. Bolivian lowland communities are granted a high degree of input in new hydrocarbon projects; their legitimate leaders must approve projects, in writing, in order for companies to obtain the necessary licenses from the environment ministry.² In short, in Peru a company needs merely to demonstrate that they held meetings that permitted communities to contribute their opinions; in Bolivia, meanwhile, communities must actively approve the project before it can move forward.

¹ I am grateful to the individuals in Bolivia and Peru who helped me with this report by generously sharing with me their time and views. Diana Wueger and Judith Tulkoff provided exceptional support at the editing stage.

² The ministries responsible for environmental issues have changed over time; in order to avoid confusion, I've opted to use generic terms rather than specific ministries.

These different institutions have had implications for the shape of conflict in the two countries, and ultimately the degree to which technical elements of projects have undergone real oversight. In Peru, companies and the state have proven willing to fulfill the regulatory requirements, which do not, on their face, present obstacles to project approvals. Yet despite the formal emptiness of subnational participation, communities have used those procedures to effect real substantive outcomes, including more stringent review of the EIA, changes in EIAs, and the halting and even cancellation of projects. Specifically, groups have protested to stop the required procedures and therefore stall projects.

In contrast, companies in Bolivia view the consultation process (*consulta previa*, or *consulta*) as a major impediment. This is especially true of Bolivia's public companies, which are not accustomed to consulting with communities prior to initiating new projects. Threatened by the consultation process, companies have sought to sidestep the procedures altogether by claiming that projects are not located on indigenous territory, that the type of project places it outside the purview of the regulations, and/or by simply disregarding the regulations and moving forward with the project. Conflict in Bolivia thus has not been about halting the procedures to spur substantive oversight of projects, but about ensuring the procedures are followed in the first place. Once the consultation process is underway, the remainder of conflict is generally limited to discussions—often stretching out over months—within the structure of the *consulta* process, in part because the regulations grant substantive power to decisions made within the framework, making the process the legitimate forum for debating all dimensions of projects. Additionally, that communities have had to fight to ensure that the *consulta* is even conducted seems to have given them incentive to work within the *consulta* process. The discussions themselves focus on compensation for the projects' unquantifiable impacts on the environment and cultural practices, as communities do not have access to sufficient technical expertise to analyze technical dimensions of the projects. Paradoxically, then, the much more robust framework for respecting the interests of groups in the zone of extraction in Bolivia has resulted in less scrutiny of the actual effects and plans of new projects than in Peru, where groups have been able to use procedural structures to kick projects up to levels where they have faced real scrutiny.

Added to this institutional variable—whether regulations grant communities a substantive or merely procedural role in project approvals—a structural factor also helps to explain why discussions in the consultation process in Bolivia have focused on compensation and not on technical aspects of projects as they do in Peru. A key structural characteristic of mining in Peru has proven important in Peru's mining conflict: the massive use of water in the mineral extraction process, which has an obvious impact on surrounding communities. In the cases analyzed here, there have been clear potential adjustments to projects that would reduce the degree to which communities' water sources were threatened, including the construction of desalination plants, dams, and reservoirs. This has meant that communities have been able to

mobilize around a technical issue—in spite of limited technical expertise—with the possibility of changing the project itself while still receiving the benefits of the investment in their zone that would come with the mining project, both directly from mining companies and in the form of royalties. Importantly, though initially protest may not be entirely “anti-mining,” as conflict has escalated, at times the ultimate stance of communities has been to oppose the mining projects altogether, irrespective of technical alterations.

In contrast, there have been no technical aspects of the Bolivian projects examined here that have stood out as both a single central focus of complaint and also potentially avoidable. Because of this, major conflict around technical aspects of projects has been essentially precluded in the consultation process.

This report is based on interviews conducted during March 2012 in Lima, Peru, and during August and September 2012, in La Paz, and Santa Cruz, Bolivia (see Appendix), supplemented by newspaper articles, secondary sources, and laws and regulations.

I. RESOURCE CONFLICT IN THE CENTRAL ANDES AND U.S. SECURITY INTERESTS

By identifying regularities in resource conflict and analyzing how subnational institutions can predict the conditions under which conflict arises, this research serves as a first stage in predicting, preempting, and resolving conflict more effectively. There are numerous reasons why these goals are worthwhile, in general and for a U.S. security policy audience.

Theoretically, the report demonstrates how formal institutions can produce outcomes that are not anticipated by their creators or by actors engaged in the conflict. Perhaps more fundamentally, the report’s findings should matter to those concerned with the mechanisms by which new projects are reviewed and approved, including the degree to which projects’ environmental and social impacts are anticipated and evaluated, as well as the extent to which that review is technical as opposed to political and participatory.

Given the major role of mineral extraction in Central Andean economies, resource conflict—particularly at the project approval stage—has significant implications. Subnational opposition can halt a project for a new mine, a new gas plant or pipeline, or the expansion of an existing operation. In contrast, popular opposition is unlikely to shut down an ongoing operation.³ Conflict over hydrocarbons and mining is significant in Latin America, especially in the Central Andes, which relies heavily on revenue from mining and hydrocarbons exports. Groups mobilize to oppose the environmental and social effects of hydrocarbons and mining

³ According to a mining consultant, the only exception to this trend is the 2009 shutdown of the longstanding La Oroya smelter in the department of Junín (run by Doe Run). Maiah Jaskoski, interview, Lima, Peru, March 23, 2012. On the shutdown see Patricia Velez, “Update 2—Doe Run: Peru Creditors Reject Restructuring Plan,” *Reuters*, U.S. Edition, April 12, 2012.

extraction, to alter the percentage of royalties the state captures from private companies involved in production and transport, and to effect how royalties are distributed. In extractive zones, indigenous activism is particularly salient. The Central Andean countries have large indigenous populations, which maintain significant presence in resource-rich zones. Over the past two decades these groups have been increasingly organized and active, presenting demands through formal channels, such as political party formation, and through direct action, primarily protest activity. Resource-related conflict has become so intense that it has paralyzed the industries, triggered increased state control over these sectors, heightened antagonism between resource-rich regions and the central government, and led to the early removal of sitting presidents.

With regard to U.S. security interests, resource conflict and the state's role in managing it can influence the efficiency and success of U.S. security initiatives in Latin America.⁴ First, if a country's police or military forces are focused on security for extractive industries, U.S. support intended for antinarcotics and counterterrorism operations is often diverted toward security for mining or hydrocarbon operations. A glance at the Ecuadorian case is telling. The Ecuadorian armed forces, especially the army, play a key role in controlling local and regional protests surrounding the oil sector. The army's focus on oil security has meant that logistical support from the U.S. to the Ecuadorian armed forces intended for antinarcotics and border security has been channeled toward oil security work.⁵ Second, less directly, resource conflict that triggers political instability can affect U.S. relations with Andean governments and therefore the ability of the U.S. government to pursue its counterterrorism and antinarcotics efforts in the region.

Third, resource conflict could crowd out U.S. presence, including security presence, in Latin America. Understanding conflict and how to control it can help us anticipate the rise and fall of international influence in the Central Andes wielded by other world powers. Not only do these international investments in mining and hydrocarbons in the Central Andes potentially affect U.S. economic influence in those countries, they also have implications for U.S. security presence relative to that of other world powers. Public and private companies from many different countries invest in resource extraction, and with greater resource conflict comes greater investment in security by foreign companies and governments. Fourth and finally, looking ahead, conflict makes it hard for the U.S. government to monitor extraction and production of strategic materials that are critical for the United States to meet its defense needs and to achieve a favorable balance of power vis-à-vis other world powers through control over these commodities. In sum, given the importance to U.S. interests in controlling conflict and

⁴ For a fuller discussion of linkages between resource conflict and U.S. security interests, see Maiah Jaskoski, *Resource Conflicts: Emerging Struggles over Strategic Commodities in Latin America*, (Monterey, CA: U.S. Naval Postgraduate School Center on Contemporary Conflict, 2011).

⁵ Maiah Jaskoski, "Public Security Forces with Private Funding: Local Army Entrepreneurship in Peru and Ecuador," *Latin American Research Review* 47, no. 2 (2012): 79–99.

monitoring the production of hydrocarbons and minerals in the Central Andes, it is critical to understand the logic behind conflict, conflict escalation, and conflict resolution in those sectors.

II. HYDROCARBONS AND MINING IN PERU AND BOLIVIA: AN OVERVIEW

A comparison of Bolivia's hydrocarbon sector and the Peruvian mining industry is valuable for gaining a better understanding of the regional politics of project approvals in extractive industries. In terms of export revenue, mining and hydrocarbons are the most important sectors in Peru and Bolivia, respectively. Yet these sectors have gone in different directions with regard to private-sector influence. In Bolivia, as elsewhere in Latin America, state-owned companies have continued to play a major role—and in several places, an increasing role—in resource extraction. Bolivia's trend toward greater state control of the sector permits us to analyze dynamics between state companies and communities.

Both countries have seen alternations between liberal and state-led economic models, including in extractive industries. In Peru, General Juan Velasco Alvarado's government (1968–75) nationalized much of Peru's oil and mining sectors.⁶ The next major shift in the mining sector occurred in the aftermath of the crisis-ridden 1980s, which saw hyperinflation, negative growth, and the high point of a brutal, internal conflict that left an estimated 70,000 dead by the end of the 1990s.⁷

Amid Peru's economic crisis, President Alberto Fujimori (1990–2000) pursued drastic privatization policies. By 1994, mining and petroleum had been privatized, largely through the piecemeal sale of shares.⁸ Since Fujimori left office in 2000, the government has continued welcoming foreign private investment; within his first two years in office, President Alan García (2006–2011) passed 99 decrees to break up community land and thereby encourage private investment in natural resource exploitation.⁹ More recently, President Ollanta Humala (2011–present) was elected with support from the left, which has opposed catering to private mining companies;¹⁰ nevertheless, his government has generally supported the corporate side in mining conflicts, including the Conga case analyzed in this report.

⁶ Luara Guasti, "The Peruvian Military Government and the International Corporations," in *The Peruvian Experiment Reconsidered*, ed. Cynthia McClintock and Abraham F. Lowenthal (Princeton, NJ: Princeton University Press, 1983), 187–192.

⁷ Comisión de la Verdad y Reconciliación, *Informe final* (Lima: CVR, 2003), Compendio estadístico, 86.

⁸ Jeffrey Bury, "Mining Mountains: Neoliberalism, Land Tenure, Livelihoods, and the New Peruvian Mining Industry in Cajamarca," *Environment and Planning* 37 (2005): 221–239.

⁹ Anthony Bebbington, "The New Extraction: Rewriting the Political Ecology of the Andes?" *NACLA Report on the Americas* (September/October: NACLA, 2009), 12.

¹⁰ *The Economist*, "Protests in Peru: Honeymoon Over," November 19, 2011.

With central government support, investment in mining in the 1990s skyrocketed. Between 1990 and 1997, mineral exploration in Peru increased by 2000 percent.¹¹ The number of mining claims made annually rose from under 1,000 in 2001 to nearly 8,000 in 2007, and the area of those claims increased during that same period from under 500 hectares to 3,500 hectares.¹² Expansion in mining has taken place in both longstanding mining departments such as Cajamarca, as well as departments new to mining, including Piura.¹³

For its part, Bolivia is home to the largest natural gas reserves in Latin America.¹⁴ In 2007, state revenues from hydrocarbons totaled \$2.15 billion, 47 percent of the government's total revenue.¹⁵ Under Bolivia's neoliberal economic model, initiated in 1985, two major reforms passed under President Gonzalo Sánchez de Lozada (1993–97) encouraged private investment in Bolivia's hydrocarbon sector in the 1990s: capitalization of the state oil company Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) and the Hydrocarbons Law. Under the new regime, 50 percent of YPFB was sold off to multinational corporations,¹⁶ and transnational royalties to the state were cut from 50 to 18 percent in “new discovery sites.”¹⁷ As of 2002, 97 percent of Bolivian hydrocarbon reserves were located in new discovery sites, which meant that the state received a relatively small share of the profits from production.¹⁸

In 2006, the government—headed by Bolivia's first indigenous president, Evo Morales (2006–present), at the head of the social-movement-turned-multi-sectoral political party

¹¹ Anthony Bebbington, “Extractive Industries and Stunted States: Conflict, Responsibility and Institutional Change in the Andes,” *Corporate Social Responsibility: Comparative Critiques*, ed. K. Ravi Raman and Ronnie D. Lipschutz (New York: Palgrave Macmillan, 2010).

¹² *Ibid.*, 309.

¹³ *Ibid.*, 310.

¹⁴ Argentina is second, with 30 percent less, according to Allyson Benton, referencing British Petroleum data. Allyson Benton, “Political Institutions, Hydrocarbons Resources, and Economic Policy Divergence in Latin America,” Paper presented at the annual meeting of the American Political Science Association (Boston, MA: August 28–31, 2008), Table 2.

¹⁵ *Economist Intelligence Unit*, “Country Profile Select; Bolivia; Demographics and Resources: Natural Resources,” (June 17, 2008).

¹⁶ Derrick Hindery, “Social and Environmental Impacts of World Bank/IMF-Funded Economic Restructuring in Bolivia: An Analysis of Enron and Shell's Hydrocarbons Projects,” *Singapore Journal of Tropical Geography* 25, no. 2 (2004): 281–282.

¹⁷ *Ibid.*, 292.

¹⁸ Hindery, “Social and Environmental Impacts,” 292. The 1996 hydrocarbon law redefined “new” and “extant” natural gas fields in such a way that the very high percentage of hydrocarbons was located in the new sites, therefore enabling transnational companies to avoid significant royalty payments. Susan Spronk and Jefferey R. Webber, “Struggles against Accumulation by Dispossession in Bolivia: The Political Economy of Natural Resource Contention,” *Latin American Perspectives* 34, no. 2 (March 2007), 34. Concretely, as described by a YPFB official (Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 5, 2012) and an economist at the think tank CEDLA (Maiah Jaskoski, interview, La Paz, Bolivia, August 28, 2012), in fact these were not new discoveries at all: there were known to have existed, but the Bolivian state lacked paperwork to officially declare them or certify them as proven gas reserves. As I was told, the 18 percent rate was established specifically to appease the Brazilian company Petrobras, to facilitate the existing arrangement by which Brazil is committed to purchase a set percentage of Bolivian natural gas; negotiations for the arrangement were underway as of 1997.

Movimiento al Socialismo (MAS)¹⁹—shifted control of hydrocarbons back to the Bolivian state in important ways following the 2003 and 2005 “gas wars.” The 2003 protests involved indigenous peasants, miners, neighborhood associations, factory workers, students, and intellectuals demanding the re-nationalization of the country’s gas reserves. After four days of violent protests that resulted in more than 70 deaths, Sánchez de Lozada, then in his second presidency (2002–03), resigned from office.

Carlos Mesa, Sánchez de Lozada’s Vice President and successor, also faced major protests in the western highland cities of El Alto, La Paz, and Cochabamba.²⁰ In response to the hydrocarbon issue, Mesa sought unsuccessfully to satisfy demands for increased national involvement.²¹ He held a national referendum in July 2004 proposing, among other things, to renegotiate contracts with transnational companies to increase royalties and, specifically with regard to all future concessions, to increase royalties to at least 50 percent. The referendum approved the law, but many groups thought the project did not go far enough toward nationalization of the sector. Mesa resigned amid massive protests in March 2005.

Under President Evo Morales, the May 1, 2006 “Heroes of the Chaco” decree nationalized gas reserves, forcing oil and gas firms operating in Bolivia to turn over their production to YPF; and increased the tax rate on the largest gas deposits to 82 percent.²² Smaller gas and oil fields would be taxed at a rate of 50 percent. Private firms had 180 days to sign new contracts. The renegotiation process was successful in terms of continuity in gas production; Repsol-YPF and Petrobras, which together controlled over 70 percent of Bolivia’s hydrocarbon production, both accepted the new terms. Importantly, though Morales led and rose with the support of an indigenous movement, he is equally as “developmentalist” as prior, right-wing presidents. In fact, though the Morales government has maintained the support of Bolivia’s highland indigenous groups, it has faced substantial protest by lowland indigenous groups as a result of the expansion of hydrocarbon activities in the northern Amazon basin²³ and government support of new projects in the gas-rich Chaco region in the eastern lowlands. In recent months,

¹⁹ Raúl L Madrid, “The Rise of Ethnopoliticism in Latin America,” *World Politics* 60 (April 2008): 475–508; and Raúl Madrid, “Bolivia: Origins and Policies of the Movimiento al Socialismo,” in *The Resurgence of the Latin American Left*, ed. Steven Levitsky and Kenneth M. Roberts (Baltimore, MD: The Johns Hopkins University Press, 2011): 239–259.

²⁰ This paragraph is based on the following source, in addition to other referenced sources: Nancy G. Postero, *Now We Are Citizens: Indigenous Politics in Postmulticultural Bolivia* (Stanford: Stanford University Press, 2007), 213–214.

²¹ The 2005 protests did not stem solely from complaints over gas policy. For instance, some groups mobilized to oppose the privatization of water services in El Alto and La Paz, whereas others protested in defense of coca production. Thomas Perreault, “Natural Gas, Indigenous Mobilization and the Bolivian State: Identities, Conflict and Cohesion,” *Programme Paper* 12 (United Nations Research Institute for Social Development, 2008), 15.

²² This paragraph summarizes analysis in Perreault, “Natural Gas, Indigenous Mobilization, and the Bolivian State,” 16–18.

²³ Anthony Bebbington, “The New Extraction,” 14. For instance, Petrobras and Petroandina have contracts to conduct exploration for gas in the Aguaragüe National Park, which is co-managed by a Guaraní indigenous organization in Tarija that considers it to be Guaraní territory. Bebbington, “The New Extraction,” 15.

conflict between the government and lowland indigenous groups has led the government to seek to divide the region-level indigenous movement in the lowlands (see below).

The Peruvian mining and Bolivian hydrocarbon cases also present fertile ground for understanding how conflict is influenced by the tension between a community's interests in (1) blocking or altering future extractive projects based on environmental and social consequences of those projects; and (2) resources and investment brought to the region through resource extraction.

In both cases, there has been ample pressure to protect communities' livelihoods and thus challenge new projects altogether, or at least those elements of projects that appear most threatening to the environment or communities' way of life. Yet these cases also offer some variation in terms of the types of communities located in Peruvian mining and Bolivian gas zones, their degree of organization, and thus their participation in the approval or blocking of new projects.

As is clear from the trajectory of the rise of MAS to the presidency, Bolivian indigenous organization and mobilization in recent decades has been substantial, especially by the well-known Confederation of Indigenous Peoples of Bolivia (Confederación de Pueblos Indígenas de Bolivia, CIDOB), the indigenous organization that encompasses lower-level organizations in Bolivia's gas-rich, eastern lowlands, including the Asamblea del Pueblo Guaraní (APG), which represents the lowland Guaraní indigenous population that resides in the Chaco.²⁴

As evidence of how critical the CIDOB is as a political actor in Bolivia, just one month prior to my travels to Bolivia, the government had initiated a major effort to divide the CIDOB in order to gain support in the lowlands. In the city of Santa Cruz, the CIDOB, headed by the organization's elected president, had been removed from its central office and replaced by a parallel group that was aligned with the Morales government. According to a member of an APG technical team, at the time of the interview, four of the 13 organizations (*regionales*) that comprise the CIDOB had developed parallel, pro-Morales structures as well; the APG, renowned for its strong organizational linkages, had not.²⁵

In contrast to Bolivia, Peru historically has seen weak indigenous mobilization in spite of its large indigenous population. Indigenous mobilization in recent decades has been in the lowlands—most notably by the Interethnic Association for the Development of the Peruvian Rainforest (Asociación Interétnica de Desarrollo de la Selva Peruana, AIDSEP)—not in the mineral-rich highlands. Instead, peasant (*campesino*) communities dominate in Peruvian mining zones; mining concessions affect over one-half of the country's peasant communities.²⁶ This

²⁴ On the rise of the CIDOB, see Deborah J. Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (New York: Cambridge University Press, 2005).

²⁵ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 6, 2012. All indigenous group members interviewed for this study were in the original CIDOB and subordinate *regionales*.

²⁶ Bebbington, "The New Extraction," 15.

dynamic enables us to examine mining conflict where there is weaker organization among communities, as the Peruvian cases examined here do not involve a strong organizational structure comparable to the CIDOB that could unite groups across territory and provide resources during negotiations and conflicts.

Weak organization in Peru has not translated into an absence of conflict in the mining sector, however. While total annual social protests in the country amounted to less than 400 between 1994 and 1999, annual incidents approached 700 in 2000 and 2001 and surpassed 800 in 2002.²⁷ This conflict has primarily concerned Peru's mining and hydrocarbon industries. According to the national ombudsman's office's (Defensoría del Pueblo, or Defensoría) record of "social conflict" in the country, conflicts between companies that exploit natural resources and communities made up 21 percent of all 110 conflicts (each of which could involve multiple protests) reported in 2006, and 46 percent of the 57 new social conflicts in 2007.²⁸ During interviews conducted in Lima in 2006, a leader in the national mining, oil, and energy association and a private security official said that social protest was by far the greatest security concern for companies operating in the extractive industries. In March 2012, 72 percent of all active social conflicts registered in Peru by Defensoría were over natural resource issues.²⁹ In short, in both countries we see the capacity—through different structures—for communities to mobilize against the government, national extraction policies, and companies.

Yet while groups have some motivation to protest policies and new projects, there are also very real economic incentives in both countries for groups to support new investment in mining and hydrocarbon extraction. There are two main categories of such material benefits at the subnational level: the distribution of royalties and taxes to subnational governments, and direct company investments in the form of gifts or development assistance. A portion of royalties are directed to subnational levels in both Bolivia and Peru. Peru's "mining canon" allocates mining royalties to subnational political jurisdictions—i.e., regions, provinces, and districts—where mining operations are located.³⁰ With a 2001 law, Law 27506, the canon increased from

²⁷ Moisés Arce, "The Repoliticization of Collective Action After Neoliberalism in Peru," *Latin American Politics and Society* 50, no. 3 (Fall 2008), 42.

²⁸ Defensoría del Pueblo, *Décimo informe anual de la Defensoría del Pueblo enero–diciembre 2006* (Lima: Defensoría del Pueblo, 2007), 243; and Defensoría del Pueblo, *Undécimo informe anual de la Defensoría del Pueblo enero–diciembre 2007* (Lima: Defensoría del Pueblo, December 2008), 232.

²⁹ Defensoría del Pueblo, *Reporte de conflictos sociales*, no. 97 (Lima: Defensoría del Pueblo, March 2012): 11.

As noted by several interview subjects, the statistics maintained by the Defensoría del Pueblo are problematic in that they miss many conflicts and/or overemphasize some small conflicts.

²⁹ Javier Arellano Yanguas, *¿Minería sin fronteras? Conflicto y desarrollo en regiones mineras del Perú* (Lima: IEP, 2011): 171–179.

³⁰ The provincial level is located between the district and region. The vast majority of district resources come directly from the central government and not from the provincial level. Thus, we can think of provincial governments as district governments for the provincial capitals. Arellano Yanguas, *¿Minería sin fronteras?* 34–35.

20 to 50 percent of all company royalties.³¹ The canon has triggered conflict among subnational governments over their allotment as well as conflict between citizens and subnational governments that are ineffective in spending canon funds.³²

Since the 1940s, oil-rich departments in Bolivia have received more than other departments.³³ Most importantly, as of 2010, the Bolivian department of Tarija produced more than 60 percent of the country's natural gas and received 30 percent of Bolivia's total royalties and direct hydrocarbons tax revenue.³⁴ The direct hydrocarbons tax, or IDH, was created following the gas wars and increased the government's share of gas profits. The IDH rate was increased under Morales.³⁵

Beyond the distribution of state royalties from resource extraction, resource-rich zones benefit from direct company investment in development and/or in funds created for the purposes of development and monitored by communities. The conflict cases in Bolivia that are assessed below provide examples of how these direct payoffs work. In Peru, while the main cases analyzed in this report involve conflict over technical elements of projects rather than over compensation from companies, it is worthwhile to provide one example of such a direct transfer of resources to communities. In one case, a development fund was set up by the Swiss mining company Xstrata to channel resources toward areas in the vicinity of the Las Bambas mining project in the department of Apurímac. The company used the fund as a way to dissuade opposition by actors outside the immediate zone of extraction, in combination with direct relations with the most local communities. The primary conflict in the area centered around the question of how the *fondo de fideicomiso* was to be spent, a conflict that played out between the regional government of the Apurímac department and the provinces of Grau and Cotabambas within Apurímac.³⁶

³¹ The distribution of the canon among the regional government and municipalities in the resource-rich district, province, and region underwent some changes between 2001 and 2004. Arellano Yunguas, *¿Minería sin fronteras?* 43–45.

³² Arellano Yunguas, *¿Minería sin fronteras?* 171–79

³³ The department is the largest subnational entity in Bolivia. Bolivia is made up of nine departments.

³⁴ Denise Humphreys Bebbington and Anthony Bebbington, "Anatomy of a Regional Conflict: Tarija and Resource Grievances in Morales's Bolivia," *Latin American Perspectives* 37 (July 2010), 147.

³⁵ In contrast to the Peruvian and Bolivian cases, very little of the royalties generated by oil extraction in Ecuador are directed toward subnational governments. Energy Sector Management Assistance Program, *Comparative Study on the Distribution of Oil Rents in Bolivia, Colombia, Ecuador, and Peru* (Washington, D.C.: World Bank, August 2005), ch. 4. See also Denise Humphreys Bebbington and Anthony Bebbington, "Extraction, Territory, and Inequalities: Gas in the Bolivian Chaco," *Canadian Journal of Development Studies* 30, nos. 1–2: 269.

³⁶ Bebbington and Bebbington, "Extraction, Territory, and Inequalities," 269. In contrast to the Peruvian and Bolivian cases, very little of the royalties generated by oil extraction in Ecuador are directed toward sub-national governments. Energy Sector Management Assistance Program, *Comparative Study on the Distribution of Oil Rents*, ch. 4. Other than the Las Bambas case, in which the fideicomiso consisted of \$59 million, the other most important cases of the fideicomiso model have been that of the Michiquillay mining project in Cajamarca, owned by Anglo America, of \$201 million; and of the La Granja mining project, also in Cajamarca and owned by Río Tinto, of \$11 million. Arellano Yunguas, *¿Minería sin fronteras?* 41.

A final, crucial characteristic is that detailed regulations governing subnational participation exist for both sectors in question. As we will see in the following section, the Bolivian regulations on “prior consultation” (*consulta previa*) encourage substantive input from communities on both the procedures of participation and the actual review of new project proposals. In contrast, subnational participation in Peru is structured according to a set procedural framework, and the regulations merely require community participation—not approval. Therefore, within Peru’s established structures, communities do not have the ability to block projects.

Stepping back, we see that the Bolivian case serves as a “most-likely” case,³⁷ in that we expect to observe substantial community influence on the trajectory and content of projects in Bolivia. This is particularly true for the traditional gas zone of the Chaco, where the APG and the CIDOB are well-established and have support networks to provide information, expertise, and resources to mobilize large groups during resource conflicts. Furthermore, the Chaco communities enjoy broad authority over project content and project approval, due to the regulations governing the *consulta previa*. In contrast, Peru’s mining areas have much more obvious divisions—especially between local communities in the immediate zone of extraction and “supracommunal” groups in the broader area. The latter groups are less affected by projects and also less targeted by companies seeking to buy off groups. Furthermore, Peru’s regulatory structure provides only very limited participatory rights to communities in mining zones.

Contrary to what these scenarios would predict, conflict in Peru has led to substantive revisions and even the halting of projects. Meanwhile, in Bolivia, conflict has remained merely about introducing procedures and gaining compensation from new projects, and conflict does not lead to substantial adjustments to new project proposals.

III. VARIED INSTITUTIONS GOVERNING SUBNATIONAL PARTICIPATION IN PROJECT APPROVALS

Specific regulations in Bolivia are sectoral but grounded in the concept of the *consulta previa*, which grants substantive decision-making powers to original communities residing in resource-rich areas regarding what extraction takes place in their territories; a 2007 presidential decree gave indigenous and peasant communities the opportunity to participate in decisions surrounding resource extraction. In contrast, in Peru, “the rules governing the granting of concessions... do not give communities the right of free, prior and informed consent to decide whether mineral exploration and extraction should proceed beneath the lands that they own.”³⁸ Instead, the

³⁷ Harry Eckstein, “Case Study and Theory in Political Science,” in *Handbook of Political Science 7*, ed. Fred I. Greenstein and Nelson W. Polsby (Reading, MA: Addison-Wesley, 1975), 79–137.

³⁸ Bebbington, “Extractive Industries and Stunted States.”

regulations governing participation in Peru's mining sector have been incorporated into the EIA approval process for new projects, specific moment in the project approval process. Furthermore, and critically, regulations grant Peruvian communities only the right to participate in the EIA process, but not the right to affect the substance of the EIA or project approval.

This section describes and compares these two regulatory frameworks and provides background on two characteristics of those contrasting structures. The analysis helps us to understand why participation in both cases has been defined at the sectoral level, rather than under a more general regulatory framework applicable to new development projects. The discussion also examines the conditions that would encourage participation in Peru to be situated specifically within the process of reviewing the environmental impact assessment, whereas in Bolivia participation has been conceived within the broad international norm of the *consulta previa*.

In both countries there have been major efforts made toward establishing regulations that grant traditional communities in zones of extraction the right to the *consulta previa*. In Bolivia, the project is ongoing, and in Peru, the law and regulations were established during 2011–12 and have not yet been tested. There has been increasing international recognition that people residing in resource-rich territories have the right to be consulted or at least notified prior to new extractive projects in those spaces. This consciousness played a major role in the creation of a variety of international regulatory structures, including the 1989 approval of Convention (Convenio) 169 of the International Labor Organization (ILO) under the United Nations and the 2007 United Nations Declaration on the Rights of Indigenous Peoples, both of which delineate the rights of indigenous communities, including “prior consultation” (*consulta previa*) before new projects are developed (e.g., Convention 169, Article 6).

Beyond these changing international norms, another international development worth noting but that has carried much less independent weight is the changing practices within international business communities in the extractive industries. Since the 1990s, international mining and oil companies themselves have come to accept the idea that they need a “social license”—i.e., positive relationships with and some kind of acceptance from local populations—in order to be able to operate in any given area.³⁹ Yet such acceptance has not been universal, nor has it been spurred by some cultural or institutional dynamic within the international business community. Rather, as discussed below, decisions by companies in both Peru and Bolivia to engage more with communities has been the result of direct pressures from the international financial community and especially from protest within the country.

³⁹ Bebbington and Bebbington, “Anatomy of a Regional Conflict,” 264; Bebbington and Bebbington, “Extraction, Territory, and Inequalities”; and Ximena Warnaars, “Why Be Poor When We Can Be Rich? Constructing Responsible Mining in El Pangui, Ecuador,” *Resources Policy* 37, no. 2 (2012): 225.

Peru's Formal EIA Process: Limited Subnational Participation

In Peru, progress in developing specific procedures for the *consulta previa* has gone in fits and starts. Through the 1993 Legislative Resolution 26253, which took effect in early 1995, Peru's legislature ratified Convention 169 of the ILO. In 2007, Peru was among the countries that voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples. Yet it took a major 2009 conflict in Bagua, in Peru's northern Amazonas department. In that case, 33 died during clashes between protesters and police, which prompted real progress toward a general law and accompanying regulations that would set in place procedures for a *consulta*.⁴⁰ During the Bagua conflict, indigenous and other communities rose up in opposition to a package of decrees under former President Alan García that were meant to open up the Amazon to development, but which left aside the process of negotiation with indigenous communities.⁴¹

The Bagua violence brought national attention to the issue of indigenous land rights. In 2011, this increased awareness led to the passing of a *consulta previa* law (Ley 29785), which granted rights of consultation to indigenous communities and triggered an intense political debate regarding how much power the *consulta* would give to traditional communities and what types of communities would qualify to have the right of consultation.⁴² The regulations of that law, approved in mid-2012 by Supreme Decree 001-2012-MC, gave specific timelines for beginning the consultation process and established a maximum of 120 days for the entire *consulta* process (Article 24). Critically, the state—not the communities—was granted the ultimate approval power (Article 23). The first *consulta previa* in Peru, in the hydrocarbon sector, is expected in early 2013.⁴³ Because the regulations granted only indigenous groups with the right to be consulted (Article 7), and because historically communities residing in Peru's mineral-rich highlands have identified and functioned as “campesino communities” without an indigenous affiliation, it seems unlikely that many communities confronting mining projects will be able to benefit from the new *consulta previa* legal structures.

These new *consulta previa* regulations notwithstanding, community participation at the project approval stage in Peru has been defined primarily through regulations pertaining to environmental impact assessments (EIA), specifically within the mining sector.⁴⁴ There are no

⁴⁰ Due Process of Law Foundation and Oxfam, *El derecho a la consulta previa, libre e informada de los pueblos indígenas: La situación de Bolivia, Colombia, Ecuador y Perú* (Washington, D.C. and Lima: Due Process of Law Foundation and Oxfam, 2011); and Maiah Jaskoski, *Resource Conflicts: Emerging Struggles over Strategic Commodities in Latin America* (Monterey, CA: U.S. Naval Postgraduate School Center on Contemporary Conflict, 2011).

⁴¹ Javier Aroca, “Proyectos de desarrollo minero y situación ambiental de pueblos indígenas en Perú,” *Artículo primero* 21 (2011), 146.

⁴² Maiah Jaskoski, interviews, Lima, Peru, March 2012.

⁴³ *Andean Air Mail and Peruvian Times*, “First Prior Consultation to be Implemented in Loreto,” August 31, 2012.

⁴⁴ Shifts toward more participation in Peruvian projects within the EIA framework took place at the sectoral level. This is logical given that regulations governing the EIA, introduced in the 1990s, began as sectoral regulations,

formal, built-in structures for popular participation in other parts of the approval process for mining projects,⁴⁵ making the EIA particularly important for local communities. The EIA is an internationally established process in extractive industries intended to identify possible environmental and social impacts of alternative models for the project as well as plans to mitigate those impacts.⁴⁶

Formally, the EIA process in Peru is highly technical and centralized, with very limited, procedural participation built in at the most local level. The EIA requirement, as well as the responsibility of the energy and mining ministry to review the EIA, was instituted in the early 1990s.⁴⁷ The Dirección General de Asuntos Ambientales Mineros (DGAAM) within the energy and mining ministry is responsible for approving the EIA, a practice that many have criticized as evidence of state capture by mining companies; according to a long-time expert on social conflict in Peru and head of the Social Conflict Management Office of the Council of Ministers, beginning in 2004, the energy and mining ministry's review of EIAs has been carried out by contracted third parties.⁴⁸

Some citizen participation has been introduced into the process since the 1990s, when increasing mining activity in Latin America triggered broader concern about companies' obtaining a "social license" to operate from local communities.⁴⁹ As a researcher specializing in mining and mining conflict explained during an interview, new regulations in the mid-1990s required that, once completed, the EIA be presented not only to the energy and mining ministry for evaluation, but also to the public at an *audiencia pública* (public meeting).⁵⁰ Initially the *audiencia* was to be held in the energy and mining ministry offices in Lima. However, according to the researcher, subsequent resource conflict led the energy and mining ministry to require that affected communities participate in *audiencias*, which were relocated to the zone of extraction.⁵¹

according to one researcher specializing in mining and mining conflict. Maiah Jaskoski, interview, Lima, Peru, March 29, 2012.

⁴⁵ Maiah Jaskoski, interview with official from the Defensoría del Pueblo, Lima, Peru, March 26, 2012.

⁴⁶ See Dirección General de Asuntos Ambientales, "Guía para elaborar estudios de impacto ambiental," sub-sector minería, Normas técnicas para diseño ambiental, Guías ambientales (Lima: Dirección General de Asuntos Ambientales, Ministerio de Energía y Minas, August 2009); and Fabiana Li, "Documenting Accountability: Environmental Impact Assessment in a Peruvian Mining Project," *Political and Legal Anthropology Review* 32, no. 2 (2009), 219.

⁴⁷ José De Echave et al., *Minería y conflicto social: minería y sociedad* (Lima: Instituto de Estudios Peruanos, Centro de Investigación y Promoción del Campesino, Centro de Estudios Regionales Andinos Bartolomé de Las Casas, and Consorcio de Investigación Económica y Social, 2009), 77.

⁴⁸ Maiah Jaskoski, interview with the head of the Social Conflict Management Office of the Council of Ministers, Lima, Peru, March 30, 2012.

⁴⁹ Warnars, "Why Be Poor," 225.

⁵⁰ Maiah Jaskoski, interview, Lima, Peru, March 29, 2012.

⁵¹ In particular, he mentioned two cases. There was a conflict surrounding the case of Lot 78 in the department of Madre de Dios, between local communities and Mobil, which sought to develop a natural gas project. In the late 1990s, the *audiencia* for that project was held in Lima, leaving out affected communities. In addition, the actual EIA was not provided to those in attendance. Second, there was the mining conflict in Tambo Grande, Piura in the late

In 2002, when decentralization in Peru was giving new voice to actors outside of Lima, an energy and mining ministry resolution (R.M. 596-2002-EM/DM) required that, in addition to the audiencia, informational talleres (workshops) be held before, during, and after the EIA's completion in the area of extraction in order to present to the public the mining project's environmental and social effects. During the thirty days following the audiencia, the public was also permitted to submit written comments about the project to the DGAAM, which was required to consider those documents when reviewing the EIA.

According to an official from the Office of Environment, Public Services, and Indigenous Peoples of the Defensoría del Pueblo, the model of the talleres and audiencias was not fully implemented until 2008, when May regulations and a follow-up June resolution further specified guidelines for the process, again, specifically with regard to the mining sector.⁵² Indeed, the 2008 energy and mining ministry regulations state that “notwithstanding the advances introduced in the Resolución Ministerial No. 596-2002-EM/DM with regard to citizen participation in the Energy and Mining Sector, currently it is necessary to have regulations specifically applicable to the mining subsector.”⁵³ The new regulations describe citizen participation as a public process that seeks to provide information regarding mining projects, obtain and channel the population's views, promote dialogue, build consensus, and incorporate the interests of affected populations when designing and executing mining projects.⁵⁴ Like the 2002 resolution, the regulations identify talleres and audiencias among other mechanisms of citizen participation (Article 6). For its part, the 2008 resolution echoes the more general, 2002 resolution (Resolución Ministerial No. 304-2008-MEM/DM, *El Peruano* June 24, 2008).

Though the 2008 regulations and resolutions provide space for public participation, especially in the most immediate area of extraction, this participation remains procedural from a legal standpoint. The 2008 decree explicitly denies populations the right to veto either mining operations or the decisions of the “designated authorities,”⁵⁵ i.e., the DGAAM and the energy and mining ministry's regional office, which answers directly to the ministry rather than to the elected regional president. Companies and the government are obligated to take communities' feedback on project plans into account, but this can ultimately consist of explaining away complaints.

Bolivia: Substantive Local Influence on the Fate of Projects

As in Peru, participation in new project approval in Bolivia has been defined by sector-level regulations. However, unlike in Peru, those regulations have been framed not within the EIA

1990s, a conflict that ultimately led to the Canadian mining company Manhattan Minerals Corporation to lose its exploration rights. Substantial protest erupted when the EIA for that project was approved without community input.

⁵² Maiah Jaskoski, interview, Lima, Peru, March 26, 2012.

⁵³ Decreto Supremo No. 028-2008-EM, *El Peruano*, May 27, 2008, p. 372903.

⁵⁴ *Ibid.*

⁵⁵ Decreto Supremo 028-2008-EM, 2.2 and 4.

process but rather through the broader *consulta previa* concept, which has granted much more weight to community decisions surrounding new projects.

There have been measures taken to develop a prior consultation framework that would apply to all sectors. In 1991, the Bolivian legislature passed Law 1257 ratifying the Convention 169; based on this law, the constitution was revised in 1995 to incorporate reference to informed prior consent.⁵⁶ Later, Bolivia became a signatory to the 2007 United Nations Declaration on the Rights of Indigenous Peoples, as well.

Nevertheless, efforts to create a legal structure to apply the *consulta* systematically across sectors have been unsuccessful thus far, though they are still ongoing. Currently, the executive is leading a project to develop a general law on the *consulta previa*. Based on interviews with two members of the project team, the group was drawing on case knowledge from officials in the hydrocarbon ministry who had experience with the *consulta previa* process in that sector (discussed below).⁵⁷ The project was being pursued amid a particularly tense moment for the *consulta previa* issue: the intense conflict over whether or not to construct a major highway through the protected forest, Territorio Indígena Parque Nacional Isiboro-Sécure (TIPNIS), had become centrally about the specific *consulta previa* process that was established for that case.⁵⁸

Though the direction of a general *consulta previa* law and associated regulations is still in limbo in Bolivia, in the specific area of hydrocarbons, the *consulta previa* concept has been adopted and defined according to specific procedures. Unlike in the mining sector, where “between the period from 2003 to 2007 there was not political will to develop regulatory instruments to effectively permit the exercise of collective rights and especially the right of prior consent,”⁵⁹ the process went farther in hydrocarbons.⁶⁰

Whereas in Peru the EIA regulations around community participation were developed in response to conflict on the ground, community agitation for the *consulta previa* in Bolivia was particularly effective because the hydrocarbon law was being rewritten anyway (see above discussion of the 2005 hydrocarbon law passed under President Carlos Mesa). The 2005

⁵⁶ Sanjinés Bascopé, *Lecciones aprendidas sobre consulta previa* (La Paz: Centro de Estudios Jurídicos e Investigación Social [CEJIS], 2010), 32. According to secondary sources and referenced regularly by indigenous activists, NGO officials, and other experts interviewed in Bolivia, these two steps were very important in establishing legal precedent for more specific laws and regulations governing a *consulta previa* process.

⁵⁷ Maiah Jaskoski, interview, La Paz, Bolivia, August 29, 2012.

⁵⁸ *El Deber*, “Ocho heridos están fuera de peligro y tres, graves,” June 20, 2012. The Minister of Government, Carlos Romero, who was heading up the executive project to develop a general *consulta previa* law, was viewed by people in the NGO and indigenous activist communities with whom I spoke as being concerned with development and not with indigenous rights. One such individual told me, in fact, that he spoke with Carlos Romero when the Tipnis conflict exploded in late 2011, and that Romero had told him that he was against a “cogobierno” that would happen were a *consulta* to take place. Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 5, 2012.

⁵⁹ Bascopé, *Lecciones aprendidas*, 33.

⁶⁰ In mining, the 1997 mining code explicitly referenced the relevant article in the constitution (Article 171) as well as Convention 169 and Law 1257. Bascopé, *Lecciones aprendidas*, 32–33. Nevertheless, with a lack of follow up with regulations, to this day in the mining sector there is no *consulta previa*.

Hydrocarbon Law (3058) outlines in impressive detail the rights of indigenous and campesino communities residing in zones of extraction, including the right to prior, informed consent.⁶¹

Bolivia's regulations pertaining to the *consulta previa* in hydrocarbons, passed by the February 2007 Supreme Decree 29033, are noteworthy for granting indigenous communities and campesino communities in zones of extraction a substantive say in what projects can and cannot be developed in their territory, in addition to a role in establishing the timeline of and participants in the *consulta* process itself, evincing respect for local customs and authority structures, as discussed here.⁶² The overall consensus among subjects interviewed about both the 2005 law, and its associated 2007 regulations on the *consulta previa*, was that indigenous groups were crucial in effecting the inclusion of the *consulta* in the new law as well as in developing the accompanying regulations.

The regulations open by referencing Article 171 of the Constitution in providing for “social economic, and cultural rights of indigenous peoples,” and Law 1257 (based on Article 7 of Convenio 169), for establishing the necessity of an evaluation of the social, spiritual, cultural, and environmental effects of development activities on indigenous peoples in order to carry out such activities. Subsequent sections of the regulations spell out the meanings of terms relevant to the *consulta previa*, including customs, territoriality, respect, prior information, participation, and representation.

Though these definitions are certainly important, it is the description of the *consulta* procedures that makes evident a high regard for customs and the wishes of indigenous communities. The full consultation process is to be carried out with indigenous peoples at two phases in a new project's implementation: prior to the granting of rights to conduct exploration activities, and before the approval of the EIA. As we will see below, this authority goes well beyond that granted to communities in Peru.

Indigenous communities are legally obligated to participate in the consultation process—that is, they cannot legally refuse to engage in discussions about new projects with the state—but do have a formal say in the timeline and structure of the meetings, which are to respect their customs and authorities. To initiate the *consulta*, the energy and mining ministry must submit in writing a proposal to hold an informative meeting about the project, which begins the process of the consultation. The ministry must send copies of the invitation to the indigenous communities' regional, departmental, and national representatives. In addition, all of the public information

⁶¹ In fact, there is a contradiction between the hydrocarbons law 3058 and other legal structures. In 2006, the Tribunal Constitucional de Bolivia found that the hydrocarbon law's requirement of “achieving the consent of the communities of indigenous and originario pueblos” was unconstitutional, and that the *consulta* was to quantify the harm done to communities but not obtain consent. Due Process of Law Foundation and Oxfam, *El derecho a la consulta previa*, 37.

⁶² The significant degree to which Bolivia's legal framework recognizes the *consulta previa*—especially in the hydrocarbon sector—is evident in other analyses of the regulatory framework, including comparative research on the *consulta previa* in the Andes. Due Process of Law Foundation and Oxfam, *El derecho a la consulta previa*.

about the project must be enclosed (Article 10, Section a). The indigenous community then has seven calendar days to respond in writing to set a place and date for the meeting, which must be held within ten days of that response (Article 10, Section b). At that first meeting, the hydrocarbon ministry is to present more information about the project. The indigenous and/or campesinos communities must communicate to the ministry within ten calendar days after the meeting to present their written proposal for the consultation process, to include the timeframe and methodology of community activities, workshops, meetings, and assemblies, as well as the location of those events. The hydrocarbon ministry, in coordination with the communities and their upper-level officials, is to set a meeting in the area of influence of the project within seven days to analyze the proposal and any counterproposal of the ministry, to arrive at an agreement and sign an “acta de entendimiento” to guarantee the consulta process.

The hydrocarbon consulta regulations grant indigenous communities a real voice in deciding whether or not any given project moves forward. The consultation process concludes with a signed document between the hydrocarbon ministry and the indigenous and campesino community representatives, which fulfills the requirement for “prior acceptance and express authorization of the original indigenous and peasant communities likely to be affected” (Article 13). The consulta can be nullified if information about the project provided during the consulta is false, if the process deviates from the regulations or from the original written acta de entendimiento, or if the signing of the final agreement is carried out irregularly, for instance involving pressure, threats, or bribes (Article 18).

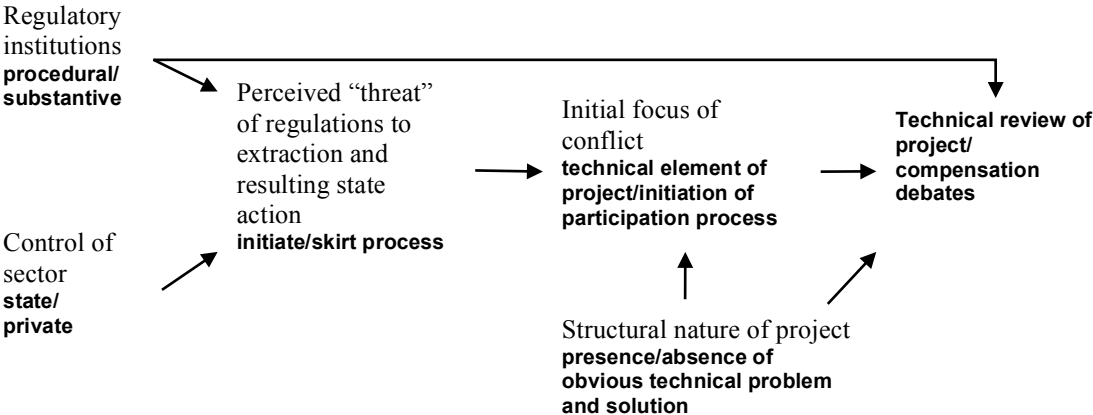
IV. FINDINGS

The following analysis of mining and hydrocarbon conflicts in Peru and Bolivia, respectively, will demonstrate that institutions, represented by regulations governing local participation in project approval, in conjunction with structural aspects of the project—specifically, the presence or absence of a technical problem to which there is an obvious solution— help explain the following: when we should see conflict, whether conflict is oriented toward technical aspects of projects or towards compensation from the effects of projects, and whether conflict leads to rigorous oversight of project designs.

A key piece of the conflict story is established at the beginning: whether or not communities must protest in order to kickstart the participatory process. The procedural or substantive nature of the regulations, in conjunction with the public-private balance of control of the sector, influences the state’s decision whether or not to initiate the consultation process. In Peru, the strictly procedural nature of community participation in the EIA process means that the process is not, on its face, threatening to investment and extraction. Furthermore, with the private sector dominating mining, private companies are accustomed to some degree of consultation with communities. In Peru, therefore, companies and the state voluntarily initiate the

participatory process without the added inducement of community protest. In contrast, the substantive nature of the regulations in Bolivia in conjunction with the state’s dominant role in hydrocarbons means not only that the regulations threaten investment by creating the possibility for communities to block projects, but that the key actors include state companies (in partnerships with private companies). Historically, these state companies have not had the experience of consulting with communities, according to interview subjects describing the pre-capitalization era in Bolivia. In Bolivia, therefore, companies seek to skirt the regulations by defining projects as being outside the purview of those regulations or by ignoring the consulta process altogether. Communities often respond with aggressive protests, setting the tone of the conflict and future negotiations.

Figure 1: Institutions for Local Participation in Project Approval and Implications for Conflict and Project Oversight



There is also a structural element that influences the focus of conflict: the degree to which a project poses obvious environmental and social effects to communities and the extent to which there is a clear alternative project design that would prevent or offset those threats. When both pieces are present, communities are more likely to rally around a single issue, as communities face the conflicting pressures of enjoying the material benefits and investments from resource extraction and also defending their way of life, livelihood, and health. That is, communities can mobilize against the obvious technical problem knowing that, should the alternative option be chosen, the project can still go forward, generating both revenue and investment for the region and also causing less adverse implications for their way of life.

In Peru, the divergence of massive volumes of water for mining projects has clear adverse consequences for people’s wellbeing and livelihoods. Furthermore, in the cases analyzed below, there have been one or more alternatives to using the water that is relied upon by the local

community: constructing dams, reservoirs, and/or desalination plants. Communities have mobilized around technical aspects and demanded that an alternative, less-threatening option be chosen. Ultimately, however, protests that initially involved technical fixes to potentially lucrative projects for the region have escalated into protests against the project altogether.

In contrast, though communities in Bolivia's Chaco region are all too familiar with the adverse effects of gas exploration and extraction—including seismic explosions that ruin infrastructure and disturb wildlife and human activities; pipelines that pass through communities; and the seepage of gas into drinking water sources—there have been no obvious technical fixes that would ameliorate these threats.⁶³ This structural characteristic of the projects, together with the necessity of community mobilization to start the consultation process in the first place, has helped to deter major protest around technical issues in gas projects in the Chaco.

In Peru, where the purely procedural characteristics of the regulations leave communities powerless to block projects, protests instead have generated oversight of the project at higher levels. In contrast, Bolivian regulations grant communities a legitimate say in the future of projects, thus keeping discussions within the structure of the consultation process. Communities are thus limited to discussing matters about which they are experts in, and as they lack the expertise to delve into technical options in the EIA or to measure quantifiable project costs, they tend to focus on compensation for nonquantifiable project costs, such as potential impacts on their cultural practices and way of life.

Paradoxically, then, the more inclusive framework in Bolivia has led to a free ride for projects on the technical front. In contrast, what initially appears to be an easier road for companies has actually triggered true technical oversight in Peru.

V. PERU: SUBSTANTIVE EFFECTS OF PROCEDURAL PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENTS

In a context in which formal participation in the EIA process is informative and procedural and only involves residents living in the immediate area of extraction, scholars have criticized Peru's EIA process for being highly technical and administratively centralized, even after participation was introduced into the process.⁶⁴ In her research on Yanacocha's expansion project in the mid-2000s, Fabiana Li argues that mining companies control the existing participatory spaces and stifle the voice of communities by using their technical expertise to frame discussions of impacts and mitigation and taking advantage of talleres and audiencias to build support.⁶⁵ Asymmetric

⁶³ This claim that no obvious fix exists is based on interviews with indigenous leaders, technical experts, and outside consultants who have supported indigenous groups in the Chaco in consultas and in direct negotiations with companies.

⁶⁴ De Echave et al., *Minería y conflicto social*, 40.

⁶⁵ Li, "Documenting Accountability."

power relations make it very difficult for communities to challenge elements of the EIA effectively within the structure of public meetings.⁶⁶

Consistent with Li, I find that companies have used EIA participatory spaces—i.e., talleres and audiencias—to sell communities on mining projects and to build positive community relations more broadly. This strategy is particularly effective because local groups lack the technical expertise required to effectively challenge EIA content when confronted with officials from mining companies or mining consultants. However, acknowledging the weak voice of participants *during* talleres and audiencias, I emphasize the dynamics *surrounding* these formal structures to explore how the framework for subnational procedural participation in fact can prove crucial in effecting substantive EIA outcomes.

I focus on two key processes for effecting change to EIAs. First, local activists can take action. Though technical expertise for evaluating EIAs is scant at the local level, communities residing near mining projects are well aware of the fundamental adverse environmental impacts of mining operations based on prior exposure and observing the experiences of other communities. In these cases, local communities have demanded adjustments to company plans and have even mobilized to prevent the required audiencias from happening at all, thereby pausing the EIA process and reminding us that even highly procedural requirements presume a considerable degree of cooperation between communities and companies.⁶⁷ In cases where talleres and audiencias take place without incident, groups excluded from the process may protest their exclusion by challenging the degree to which the subnational procedures of the EIA process were followed.

In both cases, subnational groups have clear substantive as well as procedural complaints regarding the EIA. Once community-company conflict escalates to a certain level, company efforts to comply with the initial technical demands are often insufficient to resolve the tensions. National political leaders have responded to subnational mobilization by authorizing careful review of the EIAs. Such critical scrutiny—hardly standard in Peru, given the energy and mining ministry’s (Ministerio de Energía y Minas, MINEM) role in promoting mining investment—has interfered with projects. Thus subnational EIA evaluations can serve as a critical juncture, whereby dissatisfaction can lead to a national-level reexamination and even rejection of the EIA and the project. Additionally, the regional government can play a particularly important role; this report will examine one case in which the regional president brought together actors at the subnational level to revise the content of the EIA.

⁶⁶ Li, “Documenting Accountability,” 220.

⁶⁷ Similarly, Li describes a case in which protesters outside a public hearing delayed its start through confrontations with the police. Li, “Documenting Accountability,” 230.

Actors and Processes

The regional and local governments as well as “supracommunal” actors serve as the focus of this analysis on subnational EIA processes. Most obviously, the local communities in the “direct area of influence,” an area defined by the EIA, participate directly in the subnational EIA process. These are the communities identified as most critical both by the EIA and by mining companies, which historically have targeted those communities with gifts and land-purchasing plans, as made plain in De Echave et al.’s analysis of six well-known mining conflicts in Peru since the 1990s.⁶⁸ This focus on local spaces is logical if we consider companies’ immediate need to gain access to the land under which the minerals are located. In an interview, a mining company consultant who has worked in Peru since the 1980s recalled his work with the large Antamina copper mine in the northern department of Ancash in the late 1990s. He explained that in order to obtain the land for the project, the company bought off the same communal land parcels three or four different times due to the complicated land titling situation.⁶⁹ For their part, local communities may view state institutions as too weak to meet their needs and instead may prefer to use direct interaction with companies to negotiate greater compensation.⁷⁰

In practice, EIA talleres have taken on a different function than that articulated in regulations and official resolutions. Instead of serving as opportunities to discuss technical aspects of the EIA, talleres have become as a hub for broader relations between communities and companies. The meetings serve as a space for mining companies to identify opposition to the project within communities and to buy off actors using gifts that may not relate to the EIA. In turn, talleres are an opportunity for community actors to make demands on companies. A consultant for mining dispute resolutions said in an interview that many local agreements resulting from the talleres are not documented at all—in the EIA or elsewhere.⁷¹

⁶⁸ De Echave et al., *Minería y conflicto social*. This practice of targeting local communities is by no means limited to the Peruvian case. For instance, referencing the practices of the company Inti Raymi (under Newmont) in one of Bolivia’s two largest mines, the Kori Kollo mine in Oruro, a World Bank publication observes that “the company considers these [local] communities part of its area of strategic action. Interaction with such communities was much more structured than with the other communities [in the broader region] targeted by the foundation.” Fernando Loayza, Ismael Franco, Fernando Quezada, and Mario Alvarado, “Bolivia: Turning Gold into Human Capital,” in *Large Mines and the Community: Socioeconomic and Environmental Effects in Latin America, Canada, and Spain*, ed. Gary McMahon and Felix Remy (Washington, D.C.: World Bank, 2001), 72.

⁶⁹ Maiah Jaskoski, interview, Lima, Peru, March 22, 2012.

⁷⁰ Ibid.

⁷¹ Ibid. Such dynamics are not limited to the EIA structure. One mining executive interviewed who had worked for Southern Copper explained the general policy of the company since the early 2000s as being to ask to attend one or more of a community’s regular *asambleas* (assemblies), a political structure used by communities in the highlands to make decisions. Southern officials use the assemblies to resolve issues, specifically to propose projects such as roads and health campaigns and to promise jobs. He said that it is in the assembly where “the shopping list comes out”—that is, where community members put forth their demands. Maiah Jaskoski, interview, Lima, Peru, March 30, 2012.

Beyond local communities is the “supracommunal” level.⁷² In supracommunal spaces, actors may have more organizational resources and be less willing to accept company pay-offs. The most vocal mobilization against mining company practices in Peru has come in the form of fronts (*frentes*), which consist of various civil society organizations and occasionally subnational government actors. For example, in the well-known case of conflict in the department of Piura involving the company Minera Majaza and the Río Blanco mining project (currently owned by Río Blanco Copper), provincial and district mayors, communities, and other groups, including other, existing *frentes*, joined to form the Frente por el Desarrollo Sostenible de la Frontera Norte in 2005.⁷³

Within these supracommunal spaces, subnational governments do not simply respond to immediate popular complaints about mining practices. As Kent Eaton has noted in his research on “subnational economic nationalism” in Peru, subnational governments also are constrained by the need to bring in resources from the same private transnational actors that popular movements may oppose.⁷⁴ Beyond the mining canon, described in Part II of this report, supracommunal actors may seek out resources from companies directly (similar to local dynamics). One example of such a direct transfer of resources to the supracommunal level is a development fund set up by the Swiss mining company Xstrata to channel resources toward areas in the vicinity of the Las Bambas mining project in the department of Apurímac. The company used the fund as a way to dissuade opposition by actors outside the immediate zone of extraction, in combination with direct relations with the most local communities. The main conflict in the area became the question of how the *fondo de fideicomiso* was to be spent, a conflict that played out, for instance, between the regional government of the Apurímac department and the provinces of Grau and Cotabambas within Apurímac.⁷⁵

A final subnational actor is the regional government, the territorial jurisdiction of which is the department. Like provincial and district governments, regional governments can find themselves caught between the pressures to respond to mobilization against a mining company’s practices (or planned practices) on one hand and to acquire campaign and development funds on the other hand. However, unlike lower levels of government, regional governments are the

⁷² Anthony Bebbington, “Organizations and Intensifications: Campesino Federations, Rural Livelihoods and Agricultural Technology in the Andes and Amazonia,” *World Development* 24, no. 7 (1996):1161–1177; and Anthony Bebbington, Denise Humphreys Bebbington, and Jeffrey Bury, “Federating and Defending: Water, Territory and Extraction in the Andes,” in *Out of the Mainstream: Water Rights, Politics and Identity*, ed. Rutgerd Boelens, David Getches, and Armando Guevara-Gil (London: Earthscan, 2010), 316.

⁷³ De Echave et al., *Minería y conflicto social*, 62.

⁷⁴ Kent Eaton, “Subnational Economic Nationalism? *The Contradictory Effects of Decentralization in Peru*,” *Third World Quarterly* 31, no. 7 (2010): 1215–1219.

⁷⁵ De Echave et al., *Minería y conflicto social*, 149–171. Other than the Las Bambas case, in which the fideicomiso consisted of \$59 million, the other most important cases of the fideicomiso model have been that of the Michiquillay mining project in Cajamarca, owned by Anglo America, of \$201 million; and of the La Granja mining project, also in Cajamarca and owned by Río Tinto, of \$11 million. Arellano Yunguas, *¿Minería sin fronteras?* 41.

logical next step towards aggregating different supracommunal interests, given that, as noted, frentes can bring together provincial and district mayors. In fact, regional presidents may find themselves competing with leaders of different frentes for popular political support, as we will see below in the case of the Conga mining project. Importantly, the regional level is also the last stop before the national level of government, which is consistently pro-mining.

The following analysis will show how subnational EIA participation has proven more consequential than would be expected from a procedural element in a technical, centralized process. This report uses a path-dependent framework, whereby subnational debates taking place within and surrounding the EIA process serve as a “critical juncture,” potentially sending the EIA on a path toward national-level scrutiny, which can halt the project altogether.⁷⁶ During the critical juncture, there may be considerable uncertainty, specifically because it is not predetermined which technical plans will be adopted or the extent to which communities will need to be appeased by mining companies. However, if company-community tension has not been resolved within the structure of the talleres and audiencia, backtracking proves hard, and later efforts to gain community approval are generally unsuccessful. The cases analyzed below will demonstrate that though subnational conflict may be spurred by technical characteristics of the EIA—along with complaints about the participatory processes—subsequent company efforts to address the technical concerns have proven insufficient to obtain subnational approval of the project and avoid greater scrutiny at higher levels.

This report identifies two mechanisms by which subnational conflict in the EIA process can escalate. First, there is the issue of relations between local communities and companies during the EIA process, in which the local actors are included. Should those relations be tense, we observe the scaling up of opposition to the EIA and mining project altogether. Second, positive local community-company relations in the EIA process can trigger or reinforce opposition to the EIA and project among supracommunal actors left out of the EIA process. In both cases, mobilization can lead to the involvement of the regional government, which jumps on board when anti-EIA or anti-mining sentiment becomes strong within the department. Indeed, the pressures on regional governments have been so substantial that there is evidence that regional governments may be taking the lead in heading up EIA negotiations in a working group setting in order to preempt anti-mining mobilization.

Case Selection

This report is particularly concerned with events occurring after local EIA talleres and audiencias became standard practice. It focuses on three major conflicts mentioned frequently by interview

⁷⁶ On the critical juncture framework, see Ruth Berins Collier and David Collier, *Shaping the Political Arena* (Princeton, NJ: Princeton University Press, 1991); and James Mahoney “Path-Dependent Explanations of Regime Change: Central America in Comparative Perspective,” *Studies in Comparative International Development* 36, no. 1 (Spring 2001): 111–141.

subjects around the mining projects of Conga, Tía María, and Quellaveco. The projects provide variation in the companies involved, the department’s mining history, the regional president’s political position toward mining, and the result of the project’s EIA process (see Table 1).⁷⁷

Table 1: The Mining Projects

Project	Owner	Departmental Characteristics			EIA Outcome
		<i>Department</i>	<i>Large-scale mining</i>	<i>Regional president</i>	
Tía María	Southern Copper	Arequipa (south)	Since 1970s	Moderate	EIA rejected (April 2011)
Conga	Yanacocha (Newmont, Buenaventura)	Cajamarca (north)	Since 1990s	Anti-mining	EIA approved (2010); project paused (November 2011); changes to EIA demanded (May 2012)
Quellaveco	Anglo American	Moquegua (south)	Since 1970s	Pro-mining	EIA being developed within regional forum (March 2011–present)

The \$4.8 billion Conga gold and copper mining project is in the department of Cajamarca, which has been heavily mined since the 1990s. Cajamarca’s regional president Gregorio Santos (2011–present) has a history of having union ties and touting anti-mining sentiments.⁷⁸ Conga is owned by Yanacocha, which is controlled by Newmont (with 51 percent of shares) and in which the Peruvian company Buenaventura is an important partner (with 44 percent of shares).⁷⁹ Another large Yanacocha-owned gold mine in Cajamarca, which has been in production since the 1990s, has brought the company a poor reputation in terms of its social and environmental practices. One mining consultant said that Yanacocha’s approach has been the “old way,” without taking seriously community relations.⁸⁰ Several interview subjects emphasized Buenaventura’s role, highlighting how, despite being a junior partner, the company has exceptional power in Yanacocha and in Peru’s mining ministry due to the influence of the owners, the Benavides family.⁸¹

⁷⁷ The analysis of the Peruvian mining cases is based on information collected on the cases through May 2012.

⁷⁸ *RPP noticias*, “Cajamarca: El presidente regional y los conflictos sociales,” November 13, 2011.

⁷⁹ De Echave et al., *Minería y conflicto social*, 76.

⁸⁰ Maiah Jaskoski, interview, Lima, Peru, March 22, 2012.

⁸¹ There was strong consensus among interview subjects that Southern and Buenaventura control Peru’s national mining association.

Tía María and Quellaveco are mines in Peru's dry south, where mining took root beginning in the 1950s.⁸² In Arequipa, home to the longstanding Cerro Verde mine, the \$950 million Tía María project has the potential to produce 120,000 tons of copper annually.⁸³ Tía María is being pursued by Southern Copper, which was a U.S. company until Grupo México gained control of it in 1999. Southern is unique in that it managed to continue operating through Peru's nationalization of mining in the 1970s. The company has operated in the departments of Tacna (the Cuajone mine) and Moquegua (the Toquepala mine) since the 1950s and 1970s, respectively⁸⁴ and is known for neglecting the community relations dimension of mining.⁸⁵ Arequipa's president Juan Manuel Guillén Benavides (2007–present) has been moderate and aligned with business and mining interests. However, as mayor of Arequipa, popular pressure pushed him to take the lead of a major antiprivatization movement (the *Arequipazo*, in opposition to electricity privatization) and then to head groups opposing the low tax rate granted to the private Cerro Verde mining company under his first administration as regional president.⁸⁶

Finally, the Quellaveco project, located in Moquegua between Cuajone and Toquepala, is expected to produce 225,000 tons of copper annually for 28 years.⁸⁷ Quellaveco is owned by Anglo American, which, like Yanacocha, is one of the “new mining” companies investing in Peru since privatization. Yet unlike Yanacocha, Anglo American has a very positive reputation among mining experts for its approach to community relations. Moquegua's regional president, Martín Vizcarra Cornejo (2011–present), has an engineering background and has been an ally of mining companies.⁸⁸

The EIA at the Local Level: a Political Process

As a first step in exploring subnational EIA politics, we begin at the local level, with the highly political nature of the talleres and audiencias. These meetings often encompass broader company-community relations that can go beyond the EIA.

⁸² Juana R. Kuramoto, “Las aglomeraciones productivas alrededor de la minería: El caso de minera Yanacocha S.A.,” Documento de Trabajo 27 (Lima: Grupo de Análisis para el Desarrollo [GRADE], 1999).

⁸³ Robert Kozak, “Peru Locals Vote against Southern Copper's Tia Maria,” *Mines and Communities* and *Dow Jones*, September 28, 2009.

⁸⁴ On the history of Southern's investment in Peru, see Kuramoto, “Las aglomeraciones productivas alrededor de la minería.”

⁸⁵ Across all interview subjects, there was agreement about Southern's poor treatment of communities. Some emphasized Southern's longstanding presence in Peru and how it has maintained a philosophy of “controlling territory,” in the words of a mining conflict expert who said that this approach was supported during military rule. Interview subjects frequently blamed the fact that Southern was transferred to Grupo de México, which they said for cultural or other reasons is behind in terms of respecting communities. One mining company executive pointed out, for instance, that Grupo de México is not a member of the International Council on Mining and Metals (ICMM), created in 2001 “to advance the mining industry's commitment to sustainable development.” Warnaaars, “Why Be Poor,” 225. A private mining consultant simply said that Southern “plays by different rules.” Maiah Jaskoski, interviews, Lima, Peru, March 2012.

⁸⁶ Kent Eaton, “Subnational Economic Nationalism?”

⁸⁷ Yuko Inoue, “Mitsubishi Outbids Rivals to Win Peru Copper Mine Stake,” *Reuters*, February 17, 2012.

⁸⁸ *Perúeconómico.com*, “Dossier regional: Moquegua—Política,” July 2010.

A glance at the Antamina case illustrates just how distant talleres can be from addressing EIA content. A former mining company official who had worked as a consultant for Compañía Minera Antamina (CMA) in the late 1990s described the audiencias that the company held in the zone of extraction, noting that in audiencias people not only discussed issues pertaining to the direct economic, environmental, or social effects of the mining project but also unrelated “pedidos,” or material demands, such as requests for infrastructure items such as bridges. Though he found these pedidos to be irrational and irrelevant to the EIA, he said that the conversations were useful for the company to hear about local demands and how to secure positive community relations so as to move forward with the mining project.⁸⁹

One major issue in the Antamina mining conflict was whether the company would construct either a highway or, alternatively, an underground pipeline to transport the minerals from the mining site in the inland district of San Marcos to the port city of Huarmey. While an environmental organization pressed for the underground pipeline, Huarmey residents sought a long-awaited highway that they hoped would provide employment for drivers, the development of businesses, and greater access to markets for farmers. At a 1999 company-led meeting in Huarmey, CMA described to local authorities and residents from Huarmey and surrounding areas the contributions the mine would make to socioeconomic development in the zone. Afterward, CMA provided the energy and mining ministry with the attendance list and characterized the meeting as having been about recent EIA modifications to introduce the pipeline plan. Citizens of Huarmey thought the company misrepresented the meeting, which they thought had nothing to do with the EIA. It was that misrepresentation that ultimately soured relations between CMA and the city.⁹⁰

Tía María: Local Opposition

Tía María also shows how the local EIA process can mean something other than procedural, informative participation as outlined in the regulations. Opposition to the Tía María EIA intensified to such a degree that it proved impossible to hold the mandated audiencia, demonstrating how even satisfying the procedural requirements demand a substantial degree of cooperation of local communities with companies.⁹¹

⁸⁹ Maiah Jaskoski, interview, Lima, Peru, March 29, 2012.

⁹⁰ De Echave et al., *Minería y conflicto social*, 116–117.

⁹¹ Two other cases in which opposition interfered with holding audiencias include Tambo Grande (De Echave et al., *Minería y conflicto social*, 17–44), and the more recent case of Southern Copper’s expansion of the Toquepala mine. In the latter case, as described by an official from the Defensoría del Pueblo, local opposition to technical aspects of the EIA prevented the company from holding the audiencia in a public location. Maiah Jaskoski, interview, Lima, Peru, March 26, 2012. See also *El Comercio*, “Cientos de Manifestantes Bloquean vías de Acceso a Tacna,” September 21, 2011.

Following some early and, according to mining officials interviewed, highly limited efforts to build positive relations with local communities near the Tambo River in Arequipa,⁹² Southern held its first taller in November 2007 in Cocchacra, Islay, the location of the project.⁹³ During the drafting of the EIA, a second taller was held, and the final taller took place in July 2009.⁹⁴ A mining official highly knowledgeable about the case said that at all three talleres the company presented two options for obtaining water for the project: to draw water either from existing waterways or from underground water sources. He said that at the third and final taller, the company presented to communities another possibility, for the first time: to rely on sea water, using a desalination plant.⁹⁵

According to the mining company official, conflict over the project first emerged at the audiencia scheduled for August 2009, where the completed EIA was to be presented. The EIA outlined all three options, but it heavily favored using river water, which angered citizens who, by that point, expected the desalination project to go forward. A nongovernmental organization (NGO) official who moderates mining conflict depicted Southern Copper as having “lied” to the population by promising the desalination plant and then going back on its word.⁹⁶ Before the company could present the EIA, attendees threw chairs and tried to stone mining officials, leading to police intervention that only fed the conflict. The audiencia was suspended due to the violence.⁹⁷ Even the regional president, Juan Manuel Guillén—who, as discussed below, bent over backwards to make the project happen—asked in September 2009 that the company pursue the desalination plant option for the project.⁹⁸

Despite the opposition, Southern continued resisting the desalination plant option, claiming that it was not economically viable and citing electricity and construction costs. Southern hoped to convince the population of the technical viability of alternative means of

⁹² Maiah Jaskoski, interviews, Lima, Peru, March 2012. One interview subject said that Southern has “rogue idiots” handling its social work. He said that the Southern company official in charge of social work, known as the “Montesinos of Southern,” put his nephew in charge of capacity building in the zone of the Tía María project. It turned out that while on the assignment, the nephew stalked young women. He subsequently was protected by his uncle from facing charges. Maiah Jaskoski, interview, Lima, Peru, March 27, 2012.

⁹³ *Enlace nacional*, “Realizan taller previo al inicio de la mina Tía María,” November 16, 2007. A mining company official close to the events stated that this first taller was held, in accordance with regulations, before the EIA was drafted.

⁹⁴ *Revista la punta*, “Southern relanza proyecto Tía María,” July 29, 2009.

⁹⁵ Other than the water question, opposition to the Tía María project was also due to residents’ negative experiences with mining, specifically, according to a mining company official, the air pollution blown from the longstanding smelter in Ilo, on the coast of Moquegua. Maiah Jaskoski, interview, Lima, Peru, March 27, 2012.

⁹⁶ Maiah Jaskoski, interview, Lima, Peru, March 28, 2012.

⁹⁷ *Perú 21*, “Una audiencia pública terminó en batalla campal en Arequipa,” August 28, 2009. The energy and mining ministry’s 2008 resolution states that an audiencia can be canceled or suspended due to “unexpected” circumstances, violence, or “any other cause that could put at risk the health or integrity of participants or members of the Board of Directors.” Resolución Ministerial No. 304-2008-MEM/DM, June 24, 2008, Art. 26.

⁹⁸ *Mines and Communities*, “Peru Pushes Southern Copper to Get Community OK for Tia Maria,” September 15, 2009.

obtaining water for the project,⁹⁹ but was unsuccessful: later that month, in a non-binding referendum in Cocachacra, 90 percent of participating voters opposed the project, which was also unpopular in surrounding voting districts.¹⁰⁰

All parties involved treated the subnational EIA process as critical and as a method of resolving the broader issue of the company's social license to pursue the Tía María mining project. Vice Minister of Energy and Mines Fernando Gala expected Southern Copper to strengthen local relations in order to gain permission for the project.¹⁰¹ A mining company executive close to the case specified that the energy and mining ministry had asked the company to give radio presentations about the project, discuss the project on television, provide interviews to newspapers, and hold meetings with the public, all of which the company did.¹⁰²

These efforts, however, proved insufficient. After the original August audiencia ended in violence, the required audiencia was repeatedly postponed and eventually cancelled in April 2010 after an “indefinite strike” began in Islay in response to a letter from Southern to the DGAAM that stated that the Islay provincial mayor had declared the selected location for the audiencia to be unfit.¹⁰³

Conga: Supracommunal Opposition

The case of Conga exemplifies the deep divisions that can exist between local and supracommunal actors in the EIA process and in mining conflicts more broadly. In particular, in the Conga case supracommunal actors opposed the project partly as a reaction to their exclusion from—and local actors' inclusion in—the EIA process.

The Conga EIA defines the immediate area of influence as encompassing 32 communities located in the provinces of Cajamarca and Celendín. An official with the Office of Conflict Prevention under the President of the Council of Ministers said that there were three or four talleres in the area of influence during the EIA process.¹⁰⁴ The talleres and the audiencia, held in the district of La Encañada in Cajamarca province, went smoothly. The EIA was approved in October 2010, and local approval was taken seriously; the regional vice president of

⁹⁹ *Biznews.pe*, “Southern Descarta Usar Agua de Mar Para Tía María,” September 15, 2009; and Kozak, “Peru Locals Vote against Southern Copper's Tia Maria.”

¹⁰⁰ Kozak, “Peru Locals Vote against Southern Copper's Tia Maria.”

¹⁰¹ *Mines and Communities*, “Peru Pushes Southern Copper.”

¹⁰² The mining executive said that Southern completed the interviews, four or five public meetings, three panel presentations on television, and five or six radio presentations, during which it answered listeners' phone calls.

¹⁰³ *El Comercio*, “Gobierno canceló audiencia pública sobre proyecto Tía María en Islay,” April 17, 2010.

¹⁰⁴ Maiah Jaskoski, interview, Lima, Peru, March 30, 2012. According to another interview subject who has worked for two decades on conflicts, mediating conflicts, and broad issues of governability and natural resources, Yanacocha held between 200 and 300 small talleres in the immediate area of influence during the EIA stage. Maiah Jaskoski, interview, Lima, Peru, March 30, 2012. Presumably he was referring to less formal talleres to gain support for the project, rather than the official talleres detailed in official EIA documents.

Newmont's South America office acknowledged that the communities had some degree of EIA review authority, stating that the communities had "approved" the Conga EIA.¹⁰⁵

Not all residents in Cajamarca were as supportive of the project as those 32 communities. The main opposition to the EIA and to the Conga project more broadly has come from the districts of Huasmín and Sorochuco in Celendín.¹⁰⁶ The Frente de Defensa Ambiental de Cajamarca, led by activist Wilfredo Saavedra, has proven particularly visible. Supracommunal actors initially opposed two central elements of the Conga EIA. On procedural grounds, they claimed that the EIA wrongly placed them outside the project's area of direct influence and thereby excluded them from the talleres and audiencias, which should have been held in Huasmín and Sorochuco.¹⁰⁷ In addition, activists simply did not believe the company would follow the technical procedures laid out in the study to address the project's impact on four lagoons, which had been the central issue surrounding the EIA.¹⁰⁸

The March 2010 audiencia saw substantial opposition from these supracommunal actors (and not from the local actors who had been included in the EIA process).¹⁰⁹ At the time, Yanacocha's response to concern for the lagoons was that the company would construct four reservoirs to replace the water from the lagoons, and that doing so would provide three times more water for human consumption and agricultural needs than what was presently available.¹¹⁰ Shortly thereafter, in May 2010, Cajamarca's regional president Gregorio Santos met with Yanacocha officials, after which he proposed a revision of the EIA "so that the communities would calm down," but the proposal was not taken seriously.¹¹¹

Subnational EIA Politics as a Critical Juncture

In the cases of Tía María and Conga, subnational EIA politics served as a critical juncture that set these projects on a particular path; once on that path, it proved difficult for the mining company to reverse course. The following analysis will show how the initial conflicts over

¹⁰⁵ Elizabeth Prado, "Diálogo sobre proyecto Conga se entrapa," *La República*, October 29, 2011.

¹⁰⁶ *Ibid.*

¹⁰⁷ *La República*, "Caso Tía María: Autoridades dejarían de lado a la minería," March 31, 2011. Another limitation to the participatory nature of the audiencia, for instance, was that participants included Yanacocha workers and people brought in from other zones by the company. Procedural issues beyond the local level also raised concerns. For example, the head of the DGAAM was a former Yanacocha official when the office approved the Conga EIA. *La República*, "Por qué Conga no va," Suplemento especial, March 4, 2012, 3.

¹⁰⁸ Jorge Loayza, "Debate: La posición a favor y en contra del polémico proyecto minero," *La República*, November 20, 2011; Juan Arribasplata, "Conga: Cronología de un conflicto," *Voces* 38 (December 2011), 10–13; and Christian Reynoso, "Minas conga va a ser el nuevo espacio del conflicto socio ambiental," *Voces* 37 (October 2011). Subsequent analysis raised larger environmental questions regarding the implications of the company's proposal for connected rivers and the broader ecosystems in Cajamarca. *La República*, "Por qué Conga no va," 3; and Gustavo Gorriti, "De lagunas a desmontes," *IDL reporteros*, November 25, 2011.

¹⁰⁹ Arribasplata, "Conga: Cronología," 11.

¹¹⁰ *Ibid.*

¹¹¹ *El Comercio*, Vanessa Romo Espinoza, "Gregorio Santos sobre Conga: 'Ahora es un tema de licencia social,'" January 3, 2012.

technical aspects of the projects could have been addressed through stronger communication and, in the case of Tía María, technical adjustments to the project. However, when those issues were not resolved within the structure of the local EIA talleres and audiencias—or in the case of Conga, immediately afterward, through communications between the company and supracommunal actors—conflict escalated, and subsequent efforts on the part of the company to address the technical concerns proved fruitless. Ultimately, the EIAs received national and international scrutiny, with serious consequences for the projects.

Tía María: Escalation from the Local Level

Poor relations between Cochacra and Southern Copper, combined with an EIA proposal that the community disliked on technical grounds, led to sufficient opposition to the mining project in Islay that subsequent company plans to adjust the EIA and satisfy the initial demand for a desalination plant failed to resolve the conflict. Shortly after the audiencia was canceled in April 2010, Southern finally changed its position on the desalination plant. Hoping to reduce fears about water shortages, the company announced that the desalination plant was viable. The government put the project on hold for 90 days and formed a *mesa de diálogo* (roundtable) for the government and farmers to review the EIA and enable the project to move forward.¹¹²

Neither the government's efforts nor the company's adoption of the desalination plant model reduced tensions, however. In November 2010, after Southern's plan to spend \$50 million on the desalination plant was publicized, protest in Islay broke out.¹¹³ Members of the Tambo Defense Front that brought together various groups opposed to the project interrupted a ceremony in which the vice minister of agriculture, along with the head of the national water authority, presented equipment valued at \$1.2 million to the Tambo Agricultural Association. Protesters claimed that Southern had purchased the equipment in an attempt to buy farmers' cooperation with the Tía María project.¹¹⁴ Days later Tambo Valley Defense Front leaders announced that they would restart their protests against Tía María, which triggered the national police to prepare to send 4,000 personnel to the zone. The Front's president said, "We don't want them to explain from where they will get the water, nor the technology that they will use to avoid pollution; we only want them to leave the valley and let us live peacefully." He said that the protests would continue if the central government did not send a commission to Tambo to hold a popular referendum on the project.¹¹⁵

¹¹² *El Comercio*, "Tía María traería US\$5 millones anuales de desarrollo social," May 2, 2010; and *El Comercio*, "Southern ve viable planta desalinizadora para proyecto Tía María," Lima-Reuters, May 24, 2010.

¹¹³ *Minera y progreso*, "Southern Perú invertirá \$50 millones en planta desalinizadora en Tía María," November 12, 2010.

¹¹⁴ *El Comercio*, "Arequipa: nuevas protestas en Islay por proyecto minero Tía María," November 15, 2010.

¹¹⁵ *El Comercio*, "Huelga Indefinida Contra el Proyecto Minero Tía María se Iniciará este Lunes," November 20, 2011.

This local mobilization set in motion national and international processes that ultimately led to a rigorous examination of the EIA and the halting of the project. Amid protest against the project in late 2010, the energy and mining ministry contracted a team from the United Nations Office for Project Services (UNOPS) to review the Tía María EIA, a move that temporarily reduced protests.¹¹⁶ However, protest exploded again in mid-March 2011 when the report was leaked to the leader of the Tambo Defense Front. The report raised 138 problems with the EIA, including a lack of details on the desalination plant option. Through the end of March 2011, the energy and mining ministry's response to protesters demanding the project's termination was to suspend review of the EIA for 180 days.¹¹⁷ Protest against the project grew, and by early April three people had been killed and several others were in critical condition. Finally, in this context of violence, the energy and mining ministry canceled the project on the grounds that the EIA contained "unsalvageable elements."¹¹⁸

Conga: Escalation from the Supracommunal Level

Like the Tía María case, subnational conflict over the Conga EIA intensified, closing off the possibility that technical solutions to protesters' initial complaints could reduce tensions. In addition, Conga illustrates how subnational opposition to a mining project can be exacerbated by tensions between local communities that support the project, on one hand, and supracommunal actors pushing back against that support, on the other.

After Newmont announced in July 2011 that Conga's financing had been approved, opposition actors mobilized in the form of meetings and marches. In October 2011, protesters blocked an important highway in La Encañada, and over 2,000 people marched from the Huasmín district to the lagoons threatened by the project, demanding that Yanacocha remove company equipment from the zone within eight days. On November 2nd, the ministers of environment, agriculture, and energy and mines arrived at the project in an effort to address the conflict.¹¹⁹

¹¹⁶ According to the head of the Social Conflict Management Office of the Council of Ministers, the contract with PNUD was in accordance with the energy and mining ministry's standard practice of hiring third parties to review EIAs. Maiah Jaskoski, interview, Lima, Peru, March 30, 2012. However, as reported on by IDL Reporteros, the crisis surrounding Tía María seems to have influenced the agreement with PNUD. Whereas the contract outlined PNUD's obligations to review many EIAs, subsequent direction from the energy and mining ministry led the organization to begin with a thorough review of the Tía María EIA, which in the end was the only EIA that the PNUD reviewed under the contract. Milagros Salazar, "El silencioso escándalo de la UNOPS, el ministro y Tía María," *IDL reporteros*, March 30, 2011.

¹¹⁷ Salazar, "El silencioso escándalo"; Asistencia Técnica Especializada para la Revisión de los Estudios Ambientales del Ministerio de Energía y Minas del Perú Proyecto Aterea, *Revisión "ad hoc" del estudio de impacto ambiental, proyecto Tía María*, (Lima: United Nations Office for Project Services [UNOPS] and Programa de Naciones Unidas para el Medio Ambiente [PNUMA], March 2011).

¹¹⁸ Prado, "Diálogo sobre proyecto Conga se entrapa."

¹¹⁹ Arribasplata, "Conga: Cronología," 11.

In reaction to the protests, the environment ministry reviewed the EIA. The report, released on November 24, 2011, criticized the assessment on several grounds, including the EIA's inappropriately narrow definition of the area of direct influence, and emphasized the adverse effects on the environment of the destruction of the lagoons. The scathing report contradicted an energy and mining ministry statement three days earlier that said the EIA "is correct and has the approval of the Ministry of Environment."¹²⁰ Conflict escalated, and in response to a government request, Yanacocha temporarily suspended the project.¹²¹ In December, amid increasing violence, the government declared a state of emergency and sent a national delegation to Cajamarca to resolve the conflict.

The government's delegation failed, and 10 ministers resigned.¹²² In late December, Cajamarca's regional president, Gregorio Santos, declared the Conga project illegal on environmental grounds, arguing that the project would harm watersheds and pointing to a national law that prohibits mining in or around watersheds.¹²³ During the "National March in Defense of Water" in February 2012, protesters marched nine days from Cajamarca to Lima in opposition to the Conga project.¹²⁴ Though ultimately Peru's constitutional tribunal nullified Santos' declaration on the grounds that the regional president had no legal jurisdiction in the large- or medium-scale mining sectors,¹²⁵ opposition leaders in Cajamarca, including Saavedra and Santos, continued trying to stop the project, threatening an indefinite regional strike if the national government had not canceled the project by the end of May 2012.¹²⁶ The MINEM hired consultants to review the EIA, and in response to the content of the report, the government demanded that Yanacocha revise its plans for the project, including its plans for two of the four lagoons in question.¹²⁷

During the conflict, the opposing positions of the local and supracommunal actors, including Saavedra and Santos, hardened. In December 2011, 93 community leaders attended a mesa de diálogo with representatives of the national government, in which attendees discussed the terms of the international consultants' EIA review. Following the meeting, which Santos refused to attend, the public prosecutor of the campesino community of Sorochuco said that

¹²⁰ Gustavo Gorriti, "De lagunas a desmontes," November 25, 2011.

¹²¹ *El Peruano*, "Proyecto Conga suspendido," November 30, 2011.

¹²² Bryan Finlayson, "Conga Mine Protests Continue as Peruvians Await Court Decision," *NACLA*, January 12, 2012.

¹²³ *Ibid.*

¹²⁴ Deborah Poole and Gerardo Rénique, "Peru: Humala Takes Off His Gloves," *NACLA Report on the Americas* (Spring 2012): 4–5.

¹²⁵ *El Comercio*, "Gobierno Canceló Audiencia Pública."

¹²⁶ *El Comercio*, "Antimineros dan plazo al Gobierno hasta el 31 de mayo para declarar inviable Conga," April 24, 2012.

¹²⁷ *El Comercio*, "Peritaje al EIA de Conga propone evaluar la preservación de dos de cuatro laguna," Lima-Reuters, April 19, 2012; and *La República*, "Yanacocha todavía evalúa nuevas condiciones al proyecto minero Conga," May 9, 2012.

Santos was unwilling to recognize the high level of support for the project among communities in Conga's area of direct influence.¹²⁸

As opposition to Conga grew, it moved beyond the technical realm. As noted by mining conflict analyst Javier Torres, there was a strong consensus among all factions that water availability must be guaranteed and that Yanacocha's reservoir plan would not meet those needs. However, Torres also emphasized that, even if the technical problems were resolved, Yanacocha lacks the necessary legitimacy in Cajamarca to develop the Conga operation; residents simply do not trust the company's promises.¹²⁹ President Santos himself has emphasized that irrespective of any potential technical solutions that Yanacocha may put forth, the conflict had intensified to the point where the company simply could not obtain the "social license" for Conga: "Now the Yanacocha problem has become a theme of consent and social license. That is the fundamental problem...The people don't want Yanacocha to expand. It doesn't matter what experts may come, whatever happens [the people] won't want [the expansion]."¹³⁰

In summary, this analysis has shown that despite fairly lax regulations, Peru's local EIA process carries real political importance. In each of the two cases analyzed, subnational actors opposed both the EIA's content and the process by which subnational actors were included (and excluded). Subnational spaces for the EIA to be discussed served as a window of opportunity, and once that window was closed, the EIA and the project at large faced greater scrutiny by experts at the national level.

The Rising Importance of Regional Governments

A recurring theme that arises in both the Tía María and Conga cases is the pressure that subnational conflict has placed on regional governments. This final section highlights how Presidents Guillén and Santos of Arequipa and Cajamarca, respectively, positioned themselves against the projects in important ways in response to popular pressures from below. I then discuss a third case, that of Anglo American's Quellaveco project in Moquegua, to illustrate how one regional president has led a region-level initiative to shape the EIA, thereby preempting local and supracommunal conflict against the EIA and the mining project more generally. These cases reveal that subnational EIA processes—which formally emphasize the local level, at the actual mining site—in fact have brought in supracommunal actors and thereby have made the regional government an increasingly important player in mining politics in Peru.

Opposition to Tía María at the local level translated into the project's absolute lack of legitimacy, as Southern could not even gain the support of the people residing in the immediate zone of extraction. Ultimately, massive protest forced the pro-mining regional government, 80

¹²⁸ *Perú 21*, "Santos no puede desconocer acuerdos con el gobierno," December 28, 2011.

¹²⁹ Javier Torres, "Conga: ¿Batalla final?" *Diario 16*, April 10, 2012.

¹³⁰ Romo Espinoza, "Gregorio Santos sobre Conga."

percent of which was funded by the mining canon, to oppose the EIA, though regional President Guillén tried to salvage the project even after the outbreak of violence. For example, after the UNOPS' scathing report on the EIA was leaked in late March 2011, Guillén proposed establishing a regional ordinance that would downplay mining and emphasize agriculture and industry as the main economic activities in Arequipa in an effort to reduce conflict over Tía María.¹³¹ Not until April 2011, when conflict peaked, did the president finally ask for the first time that the project be canceled.¹³²

In contrast to Guillén, Cajamarca's President Santos consistently took anti-mining positions and, unsurprisingly, opposed the Conga EIA since the conflict began. According to Santos, he took the stance that Yanacocha's plan for the lagoons was unacceptable shortly after his May 2010 meeting with company officials about the EIA.¹³³ Nonetheless, as noted by Javier Torres, the consolidation and radicalization of the anti-Conga position in Cajamarca has been driven more by political competition between politicians seeking support—specifically, between President Santos and activists Marco Arana and Wilfredo Saavedra—than by substance.¹³⁴ Therefore, even in Cajamarca we see how the regional government has responded to bottom-up political pressures to address complaints about EIAs and subnational EIA participatory processes.

In terms of regional governments' roles in the EIA process, Anglo American's Quellaveco project in Moquegua stands out as a key case: Moquegua's regional president has led a collaborative initiative to revise the EIA at the regional level, an effort that has preempted massive mobilization and moved the mining project forward. Initially Southern had owned the concession, which was located between its mines in Tacna and Moquegua.¹³⁵ Anglo American then acquired the Quellaveco concession from the Peruvian government in 1992.¹³⁶ The region's history of mining and local frustration with the resultant pollution have made communities in the vicinity of Quellaveco wary of the mining project, which is still in its early stages due to opposition.¹³⁷

As in the Tía María and Conga cases, the issue surrounding the Quellaveco project consistently has been the question of water. Anglo American's initial plan involved drawing underground water, constructing a dam, and implementing an irrigation system.¹³⁸ Following

¹³¹ *La República*, "Caso Tía María: Autoridades dejarían de lado a la minería."

¹³² *El Comercio*, "Presidente regional de Arequipa pidió cancelar proyecto Tía María," April 7, 2011.

¹³³ Romo Espinoza, "Gregorio Santos sobre Conga."

¹³⁴ Javier Torres, "Conga: ¿Batalla final?"

¹³⁵ According to a private consultant in the mining industry who worked with Southern during the 1980s, Southern surrendered Quellaveco to the government during the mining nationalizations in the 1970s as a way for Southern to maintain ownership of Toquepala and Cujajone. Maiah Jaskoski, interview, Lima, Peru, March 22, 2012.

¹³⁶ Arellano Yanguas, *¿Minería sin fronteras?* 152.

¹³⁷ *Ibid.*

¹³⁸ The information on Quellaveco in this section was provided by a mining company official with close knowledge of the case (Maiah Jaskoski, interview, Lima, Peru, March 27, 2012) and by other cited sources.

company communications with the central government, the Quellaveco EIA was approved in 2000 prior to political decentralization, but in June 2002, popular pressure led the central government to instruct Anglo American to revisit the EIA, blocking the company from obtaining formal water rights for the project. In late 2002 company representatives met with the newly elected regional president, who had commissioned an independent study of the water issues. When the study proved inconclusive, the company paused its efforts.

In 2008, Anglo American began working on a new plan to use existing river water and to construct a dam that would increase available surface water. The energy and mining ministry approved revisions to the project's EIA in 2010,¹³⁹ but local opposition to the project continued. When the company presented the EIA revisions to the central government, it also began compensation negotiations with the Moquegua regional government in exchange for permission to develop the project.¹⁴⁰ Nevertheless, ongoing conflict with residents of Moquegua again blocked the project at the water-permit stage.

Beginning in March 2011, Moquegua's new regional president convened a regional "mesa de trabajo" that brought together various government, company, and civil-society actors in Moquegua to resolve the water issues and move the project forward. Between March 2011 and January 2012, the mesa met 12 times and proved so successful that in March 2012 the national government began participating, and an energy and mining ministerial resolution formally made the mesa de trabajo a "mesa de diálogo."¹⁴¹ Experts on mining conflict knowledgeable about Quellaveco—including researchers, independent consultants, and private company officials—widely viewed the regional government's efforts as highly effective in bringing different actors together for real debate. According to a mining official close to the case, these regional discussions led Anglo American to adjust its original plan for the dam such that it would provide more than double the water initially planned.¹⁴²

VI. BOLIVIA: SUBSTANTIVE LOCAL STRUCTURES THAT SEAL OUT PROJECT OVERSIGHT

In contrast to the Peruvian case, communities in Bolivia's Chaco region have focused on compensation for new projects' unquantifiable effects rather than on potential oversight of or

¹³⁹ *La República*, "Este viernes en mesa de diálogo pedirán revisar EIA de Quellaveco," April 11, 2011.

¹⁴⁰ *Ibid.*

¹⁴¹ Gobierno Regional Moquegua, "Mesa de diálogo: Resumen de las doce primeras sesiones," n.d.; and *Los Andes*, "Instalan mesa de diálogo que analizará problemática minera en Moquegua," March 13, 2012.

¹⁴² See also Dirección Regional, Energía y Minas-Moquegua, "Se realizó taller participativo sobre tercera modificación del EIA de proyecto minero Quellaveco," n.d. As of April 2012, it was still being debated what entity would review the latest modification to the EIA, one proposal being to hire UNOPS—the same entity assigned to review the Tía María EIA—the task. See for example, *Tiempominero.com*, "Próxima semana se reinicia el diálogo en proyecto Quellaveco," April 2, 2012; and *La República*, "Desestiman que UNOPS revise estudio del tajo de Quellaveco," April 21, 2012.

adjustments to technical elements of the projects themselves. In explaining this dynamic, this analysis emphasizes the importance of the regulatory instruments governing the consulta previa in the Bolivian hydrocarbon sector, the role of the Bolivian state in the hydrocarbon industry, and a structural characteristic of the gas projects: that there was no obvious identifiable technical “fix.”

This analysis draws on interviews conducted in La Paz and Santa Cruz about gas conflicts involving the Guaraní, organized under the APG, in the Chaco region. First it argues that companies have considered Bolivia’s consulta previa a major hurdle to project development. Public companies, which have become increasingly important in recent years, have been particularly resistant to the consulta—a troubling development given the state’s historical lack of attention to company-community relations in extraction zones. Second, the analysis demonstrates that in spite of the fact that the Guaraní are “most likely” to have capacity to raise technical issues given their organizational strength and resources and supplemented by outside technical support, there has not been a single technical issue that has been both a primary focus of complaints and viewed as easily fixable through technical alterations. Third, the analysis describes three cases in which the Guaraní used direct action to initiate the consulta process, which then remained at the local level and ultimately focused heavily on compensation.

Conflict to Initiate Consulta

For companies, especially the state YPFB subsidiaries (which have served as the state partner in joint ventures since nationalization), the consulta process is viewed as a major barrier to moving projects forward, and as a result the companies tend to look for loopholes and ways to avoid the consulta process. Communities in the Chaco have therefore had to mobilize at the early stages in new projects in order to pressure the state to begin the consulta process at all. While the 2007 regulations have added structure to negotiations between communities and companies and have changed the forms of compensation, communication between companies and communities has often required significant pressure from the latter.

At a higher level, starting in the 1990s—during Bolivia’s natural gas boom and when private companies dominated the sector—the international community in the form of international financiers of private gas projects, specifically, the U.S. Government’s Overseas Private Investment Corporation (OPIC) and the World Bank, has also pressured companies to obtain a social license before operating in a given area in Bolivia since the late 1990s, according to a former employee of private hydrocarbon companies that spanned the extraction and transport sectors.¹⁴³ She said that the World Bank exercised true oversight of these local communications with communities.

¹⁴³ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 6, 2012.

In spite of these pressures, consultations in the last two decades have hardly resulted in arrangements that could be considered “fair” for Guaraní communities. A former private sector official said that when private companies entered the Chaco to begin projects in the late 1990s, they encountered communities that did not even know where to begin to ask for compensation for the projects. She gave an example of the Transboliviano pipeline, which runs to Brazil, constructed by an Enron-Shell consortium in that period. She said that company employees entered the territory and began conversations about compensation with community members, but people in the area did not know what the company meant by compensation. They would ask for sums of roughly \$100, and the company would pay it. She explained that compensation was unknown before privatization; previously, the state was the only actor engaged in hydrocarbon projects, and would therefore enter and do projects without offering anything directly to communities in return.

International pressures were insufficient to ensure that companies addressed community demands fairly. As of the early 2000s, the common pattern was that direct action by communities—usually blockades or occupation of new projects to halt their progress—was necessary to pressure private companies into engaging in negotiations over compensation. Interview subjects across the board—from the private sector to YPFB to NGO representatives to indigenous activists and experts on the consulta—confirmed this, and company officials emphasized the high cost of these mobilizations, which meant paying subcontractors who remained on standby. In response to such mobilizations, companies generally chose to pay communities off through direct negotiations.

The introduction of the consulta process, which formally grants communities a say in approving new projects, has made companies even more resistant to engaging with communities. Not only is the communication process higher stakes, but as a result of nationalization, the companies are now state-led consortiums. This means that the state has had to engage in negotiations with communities regarding gas extraction for the first time, both in the form of the energy ministry, which leads the consulta, and through the YPFB corporations, which attend the consulta and have new interest in and responsibility for making progress on new projects. Intense company resistance to the consulta explains why, in the cases described below, popular mobilization has continued to be necessary to begin the consulta process.

A former executive who had worked in the gas transportation sector, both in a private company and then in the newly nationalized YPFB Transportes, illustrated plainly the ineptitude of the state in communicating with communities about new projects within the consulta framework.¹⁴⁴ When discussing the changes that resulted from the 2007 regulations, she said that it transferred responsibility for developing relations with communities from the companies to the state, particularly the hydrocarbon ministry. She explained that the ministry had no knowledge of

¹⁴⁴ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 7, 2012.

projects nor any understanding of the details of a given EIA as it was still the private partner that had mastery of the technical elements of projects. Furthermore, she noted that the ministry had no knowledge of how to interact with communities, a skill that private companies had mastered to some degree or another.

She explained how the state's inability to carry out consultas eventually led to the reentry of the private sector in the negotiation process for new gas projects. From 2007 through 2009, private companies were not invited to the meetings during the consultation process. This proved unworkable; the private companies themselves began arguing that the process was failing to provide the social license for projects. Yet another critical factor, she said, was that YPFB had started conducting its own projects, whereupon it realized the mistakes incorporated into the laws. Due to nationalization in 2006, YPFB was a corporation and therefore had to maneuver the laws from the company side, but YPFB did not have the skills to operate in the consulta or interact with communities.¹⁴⁵ As a result of YPFB's ineptitude in engaging in the consulta, YPFB and private companies have adjusted the process. Companies are now usually allowed to attend consulta meetings so as to help present the EIA and answer questions.¹⁴⁶

It is not surprising, then, that it has been YPFB that has sought most aggressively to avoid the consultation process altogether, though as shown below, the private sector also has preferred to circumvent the regulations where possible.

Lack of Obvious, Alterable Technical Issue

While many project aspects were identified as being highly worrisome environmentally and culturally, there were no cases where a single issue was overwhelmingly the most obvious problem, and where, in addition, the issue had an obvious solution, visible to non-experts, that would avoid major, adverse environmental and social effects while also allowing the project to go forward. This structural element of the projects themselves has meant that popular mobilization surrounding the project, which was already oriented toward *achieving* negotiations to begin with, has not turned to focus on technical aspects of the project.

The Guaraní would seem well positioned to have the capacity to recognize basic technical challenges and solutions surrounding hydrocarbon projects, to the extent that it is possible for a group of non-experts (in hydrocarbon matters) to do so. The Guaraní, organized under the APG, are really a “most likely case” for having access to basic technical

¹⁴⁵ The interview subject described how, within the new YPFB companies, many of the workers initially did stay on from the private sector companies. However, there were political pressures due to high-level political appointees in the newly nationalized companies—both in terms of new company presidents and politically appointed staff. Communicating with people who remained in YPFB companies as of 2010 and 2012, they described how politics permeated the companies, affecting their capacity and effectiveness.

¹⁴⁶ Other interview subjects agreed with her assessment that, with nationalization, the state suddenly had a new interest and responsibility in communications with the populations and were ill-prepared to engage with communities, for example, a lawyer working for the CIDOB in environmental disputes. Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 3, 2012.

understandings of projects, given their substantial organizational resources and supplementary outside support. This section describes these resources, and in particular the training of APG “técnicos,” networks developed within the APG to distribute lessons learned from prior gas projects, and ongoing technical support from outside consultants. However, as this discussion will demonstrate, there are limitations to these support factors: gas projects are simply too complex for even the APG to recognize the correct technical solution to given project challenges.

Beginning in the late 1990s, members of the CIDOB, including the APG, received technical training in monitoring projects and in negotiating and resolving conflicts, according to multiple indigenous group members who have participated in consultations.¹⁴⁷ Though the training was funded by the World Bank, it built on experiences of the Mojeño, an indigenous group in the Bolivian department of Bení, which mobilized against Repsol’s investment in TIPNIS in 1998.¹⁴⁸ The CIDOB and the Mojeños acquired substantial experience in and knowledge of carrying out consultas. Supported by CIDOB funds, the Mojeños worked with the APG to share their experience of the consulta previa concept with other indigenous groups.

In 1999, a World Bank project funded by the Canadian government built on these foundations to develop a program to provide comprehensive training in conflict resolution and technical matters, including in the consulta. The program, implemented by the Canadian firm E2, reached five groups, or “regionales,” under the CIDOB. To illustrate how effective the training was, one interview subject named several current leaders in Bolivia’s national legislature and at the highest levels of the CIDOB who had gained their political skills and technical knowledge through the E2 training as part of the original group of “técnicos” trained through the program.¹⁴⁹ The World Bank project lasted until 2002.

With this training in the consulta concept as a baseline, the APG has continued supporting the training of small technical teams to deal with land use issues. They have received some assistance from local and international NGOs as well as from independent consultants and lawyers sponsored by international entities—including the United Nations and foreign government agencies—and from companies, in the form of indigenous monitoring funds established for new projects as part of the community negotiation process.

¹⁴⁷ Details presented here on this training, and the Mojeño case before it, were provided by an APG technical expert involved in consultas. Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 6, 2012.

¹⁴⁸ On prior indigenous mobilizing in TIPNIS in the face of investment by REPSOL, BHP, ELF (of France) and MAXUS (of Canada), see Zulema Lehm, “Bolivia: El Parque Nacional Isiboro-Sécure,” in *Derechos Indígenas y conservación de la naturaleza: Asuntos relativos a la gestión*, ed. Andrew Gray, Marcus Colchester, and Alejandro Parellada (Copenhagen: Grupo Internacional de Trabajo sobre Asuntos Indígenas, Programa para los Pueblos de los Bosques, and Asociación Interétnica de Desarrollo de la Selva Peruana, 1998), 82–11, esp. 93.

¹⁴⁹ The original six técnicos trained by the program were members of the APG and the CPEMB (Central de Pueblos Etnicos Mojeños del Beni).

Though permanent consultant staffs have been lean, and interviews suggest that outside support has dwindled in recent years,¹⁵⁰ the networks and organization of these técnicos remains impressive. A current employee of YPFB with extensive experience working in consultas and in indigenous land rights issues, both in and out of government, said in an interview that the técnicos, and especially outside consultants, are critical players in consultas, and that in most consultas, there is an outside consultant.¹⁵¹ In terms of permanent técnicos, within the APG, each of the 27 communities that is more affected by extractive projects has técnicos in “natural resources and environment.” These teams are lean, and the técnicos are generalists who are expected to manage all issues regarding environmental questions; they are not consulta specialists per se. In addition, they rotate to help other communities in the APG, according to the APG técnico whom I interviewed, as well as a CIDOB member working on questions of the consulta.¹⁵² According to that same CIDOB representative, there has been an diffusion of knowledge across indigenous communities, which learn from others’ experiences to develop positions on potential problem areas. For example, after learning of projects where there were long-lasting environmental problems, such as when drilling or seismic explosions take place near a water source, groups started demanding in consultas that water sources be protected.

Critically, even though indigenous groups were given intense support that should enable them to grasp technical elements and costs of projects and training in negotiating solutions, actually debating the technical dimensions remained impossible. There was widespread agreement among interview subjects about the lack of focus on technical aspects of projects during trainings, leaving the indigenous groups unable to recognize the scope of the technical challenges or to negotiate optimal solutions.

Multiple interview subjects explained that the projects were too complicated for real technical debates to take place in the consulta setting. One representative of an international NGO working on issues pertaining to megaprojects as they affect the CIDOB said that projects generally involve extraction, transportation, and complicated technical issues at every step.¹⁵³ A lawyer and former consultant for indigenous groups during conflicts in the 1990s in the Chaco described what he considered a typical case: in the late 1990s, a project involved the construction of a new gas pipeline near a river used heavily for fishing by the Guanayek community in Villa Monte. There was a question about whether to construct the pipeline above or underneath the river, but as the consultant explained, his team lacked the expertise necessary to evaluate which option was the best in terms of avoiding contamination of the water.

¹⁵⁰ One subject attributing the reduction to the fact that with an indigenous president, international actors have presumed that the indigenous peoples of Bolivia no longer require outside support. Maiah Jaskoski, interview with NGO representative, Santa Cruz, Bolivia, September 5, 2012.

¹⁵¹ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 5, 2012.

¹⁵² Maiah Jaskoski, interviews, Santa Cruz, Bolivia, September 4 and 6, 2012.

¹⁵³ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 4, 2012.

A CIDOB representative provided another example of the complicated nature of these issues. There is strong demand within indigenous communities for companies to deal with *pasivos*, which are areas of past extraction that seemed stable at the project's conclusion but later cause serious problems for the community. He explained that it can be hard to tell if there are gas leaks that could contaminate water tables at the conclusion of drilling. Because the Chaco is very dry, it is only after the rare heavy rains that gas can overflow and spread, leading to contamination. This contamination, then, may not be evident until long after the project has concluded.

When technical dimensions are discussed in the consulta, they led to very small changes at most, and the debates themselves are focused on very minor project changes. The lawyer referenced above said that throughout discussions in the 1990s, his team was not able to change the location of seismic explosions.¹⁵⁴ Others, with experience working in consultas since the regulations were passed, said that changes have been made, but that they have been very minimal. The most common changes achieved have been small deviations in original plans for gas duct routes in order to avoid passing through spiritual spaces in communities.¹⁵⁵ The CIDOB representative also noted that in some cases plans were changed so as not to drill or conduct seismic explosions too close to specific water sources, but this was not always possible, as noted above.¹⁵⁶ In one 2007 consulta case, the indigenous communities achieved a guarantee that there would be no explosions in “critical zones;” equally significantly, they increased the standard distance between explosions and water sources by 20 percent.¹⁵⁷

The Cases

Resource conflict involving the Guaraní has been analyzed in depth elsewhere.¹⁵⁸ The goal of this analysis is to review some central conflicts that have played out since the passage of the 2007 regulations. The following three cases will illustrate how companies, and especially YPFB, have resisted the consulta to the point of defining projects outside the purview of the consulta regulations. This avoidance, in conjunction with the structural characteristic of gas projects—

¹⁵⁴ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 4, 2012.

¹⁵⁵ Maiah Jaskoski, interview with YPFB subject, Santa Cruz, Bolivia, September 5, 2012; and Maiah Jaskoski, interview with CIDOB representative, Santa Cruz, Bolivia, September 4, 2012.

¹⁵⁶ Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 4, 2012.

¹⁵⁷ Jannette Giné L. and Fruc Villarroel F., *Total E&P Bolivia y sus impactos en los derechos humanos del pueblo guaraní de la capitanía de Muyupampa: El caso del Proyecto de Prospección Sísmica del Bloque Ipati-Aquío* (Cochabamba: Centro de Estudios Aplicados a los Derechos Económicos, Sociales y Culturales [CEADESC], 2011), 44–45.

¹⁵⁸ See, for example, Denise Humphreys Bebbington, *Understanding the Relationship between Extraction, Territory, Inequality/Inequity and Conflict in the Bolivian Chaco*, Working Paper (Edinburgh: Ecosystem Services for Poverty Alleviation Programme (ESPA), University of Edinburgh, 2011); Bebbington and Bebbington, “Anatomy of a Regional Conflict”; Bebbington and Bebbington, “Extraction, Territory, and Inequalities”; Hindery, “Social and Environmental Impacts”; and Perreault, “Natural Gas, Indigenous Mobilization and the Bolivian State.”

which lack an obvious, reparable technical problem—has meant that the major focus of community mobilization in these cases has been to force the state to initiate the consulta process. This starting point, combined with regulations that encourage all substantive project issues to be addressed within the consulta framework, has meant that the debate in the consulta itself has focused not on technical characteristics of the projects but rather on compensation.

These three cases involve APG communities in the Chaco region and were described in an interview with a técnico who has been working in the APG for 25 years, specifically on issues of consultation since the late 1990s.¹⁵⁹ These cases describe conflicts over new projects, two in Santa Cruz and one in Tarija, since the 2007 regulations were ratified. By way of background, the Chaco region crosses into Tarija as well as Chuquisaca and Santa Cruz. The conflicts involve the Guaraní communities of Takovo Mora and Yaku Igua, in Santa Cruz, two of 27 communities organized under the APG.

As subsidiary groups within the APG, the two communities enjoy the resources of the APG technical team, which is trained in consultations, as well as support from networks of leaders and técnicos that have shared experiences and knowledge to facilitate a greater understanding of threats and possible alternatives with regard to new gas projects (see above). The two communities are highly affected by gas extraction. The Takovo Mora TCO (originary communal lands, *tierra comunitaria de origen*, TCO—that is, lands that are legally communally owned) encompasses five oil fields. This situation has meant that APG técnicos focus more on Takovo Mora (as well as on the other APG TCOs with intensive extraction).¹⁶⁰ Finally, as noted below in the case analysis, Takovo Mora, independent of the CIDOB or the APG, in fact has been highly effective in holding up projects due to its organization and extensive knowledge of regulations.

As a final introductory note about the cases, two of them involve the question of land surveying (“saneamiento”). In Bolivia, the bureaucratic and resource hurdles to surveying have meant that property lines and territorial boundaries are highly uncertain for many indigenous communities. In fact, the demand for saneamiento has been so central that it has been included in compensation packages during hydrocarbon conflict. A former employee of the Enron-Shell consortium that constructed the Gas Transboliviano pipeline to Brazil in 1997 explained that the final development plan, valued at around \$5 million and agreed to by the affected indigenous communities, included the surveying and titling of land. The company worked with INRA (the government’s national agrarian reform institute, Instituto Nacional de Reforma Agraria) and local representatives to complete the surveying, resulting in the first titling of land for Bolivian TCOs.

¹⁵⁹ Maiah Jaskoski, interview with APG técnico, Santa Cruz, September 6, 2012.

¹⁶⁰ Ibid.

Percheles and El Dorado Gas Fields (Santa Cruz, community of Takovo Mora): August 2007–October 2008

Shortly after the passage of the 2007 regulations for the consultation in hydrocarbons (Supreme Decree 29033, February 16, 2007), the private company Chaco pursued several projects to develop the Percheles and El Dorado gas fields.¹⁶¹ Two of those projects were within the Takovo Mora TCO: seismic studies and the construction of gas lines. The other projects were well perforations, to be made outside of indigenous territory, and the Perchele plant, bordering the TCO. A former employee of Chaco, who had worked in the company at the time, noted that this project marked the start of ministerial involvement in conflict cases, but only as a result of the initial conflict itself; indigenous groups, she said, were so highly attuned to the regulatory changes that they used the regulations to ensure that the state was involved.¹⁶²

This case shows how Bolivian lowland indigenous groups have had to navigate the larger national political landscape in order to have their demands met. At the time of the conflict, the APG was aligned with the national government of Evo Morales, which supported Chaco's projects and has been a staunch supporter of gas development in the Chaco region more broadly. Because of this alliance, the APG did not participate in the conflict, and in fact broke with the Takovo Mora community entirely, stating publicly that the APG would resolve the issue through talks with the government. The alliance between the APG and the government meant that no public, anti-government statements were made in the press and that Takovo Mora was left on its own to push for the full consulta process.

In accordance with the environmental law, Takovo Mora learned of the projects when Chaco entered Takovo Mora territory without permission to get sand for the Percheles plant construction in August 2007. In response, the Takovo Mora community, along with campesinos and the local municipality of Cabaza, blocked the plant for several months. The municipality sent a letter of complaint to the company (Chaco), as Chaco had also crossed municipal boundaries without permission to collect the sand. The groups also denounced the trespassing to the ministry of environment, which responded by insisting that the company should have consulted with the local communities as well as the municipality. On September 8, 2007, there was a meeting between community leaders and the company, at which time the company acknowledged the two projects that were located in indigenous territory.

Subsequently, the consulta process was followed from December 2007 into February 2008. In all, the process involved over 100 meetings, some of which lasted 48 hours. Takovo Mora led the negotiations, though the campesinos and the municipal mayor's office were also

¹⁶¹ In January 2009, Chaco was nationalized, and became the 99% state-owned YPFB-Chaco. Maiah Jaskoski, interview with CEDLA researcher, La Paz, Bolivia, August 28, 2012.

¹⁶² Maiah Jaskoski, interview, Santa Cruz, Bolivia, September 6, 2012.

involved in the process. Once the final “acta” for the consulta was signed in February 2008, Chaco was able to obtain the environmental license. At that point, negotiations began over the question of compensation, which ultimately came in the form of a social investment plan consisting of \$300,000 per year for five years, to be divided among the three groups (the indigenous community, the campesinos, and the municipality). In addition, a development plan and a fund for indigenous monitoring of the project were established.

Within APG communities the case is viewed as a success due to the cooperation of the indigenous community, the municipality, and the campesino community; their ability to force the company to participate in a true consulta through the successful complaint process; and the size of the compensation package.

Rio Grande Plant (September 2011–April 2012)

A second conflict, which also involved the Takovo Mora community, was also referenced by multiple interview subjects. In this case, YPFB was interested in developing an oil field that was located entirely within indigenous land. In addition to being a high profile, intense conflict, this case also demonstrates the complex issue of land ownership and titling. Further, in contrast to Percheles, the considerable press coverage was fundamental in pressuring the ministry of hydrocarbons to initiate and lead the consulta. In terms of indigenous organization, the APG again proved unhelpful, splitting from the Takovo Mora and claiming that the APG would work the issue out directly with the government. However, Takovo Mora did receive support from the CIDOB.

Though the conflict took place in 2011 and 2012, the issue of land rights and the uncertainty surrounding ownership of the land on which YPFB plant was constructed stretches back much further. According to the APG expert, based on surveying of the area, INRA concluded in 2005 that 100 percent of the oil field was inside indigenous land. Later that same year, a private company (Andina S.A.) filed a complaint that the land be reassessed, claiming that in fact it owned 20 hectares within that area. INRA changed its assessment, granting the company the 20 hectares. After what the APG expert described as “irregular” decisions by INRA in 2008 and 2010, and running counter to Takovo Mora’s understanding that 230 hectares were going to remain with the community, the ministry of rural development and lands in August 2011 (Supreme Resolution 05788) in which it declared that 201 hectares would go to YPFB, 21 hectares to Andina, and 76 hectares to Takovo Mora.

YPFB initially treated the land as belonging to Takovo Mora, approaching the community to establish a meeting to set up the process for the consulta in mid-2011. In September, before the consultation meetings had even begun, YPFB decided to move forward with the project without waiting for approval from Takovo Mora in spite of a prior YPFB-Takovo Mora agreement, overseen by the hydrocarbons ministry, that YPFB would wait for an unrelated Takovo Mora protest activity to conclude before beginning the consulta process.

At that point YPFB “militarized the plant,” in the words of the APG expert. The military was present as the company cleared 11 hectares of land to construct the plant. Still engaged elsewhere, Takovo Mora submitted a complaint to the environment ministry on September 11th. On October 7th, the hydrocarbon minister came to the zone and signed an act that the consulta would begin, which happened on October 10th. The final “acta” that would conclude the consulta was expected to be signed at a November 11th meeting. At that meeting, Takovo Mora asked for the land ownership question to be clarified. In particular, Takovo Mora viewed the land, though not fully surveyed, as belonging to Takovo Mora, and that after the project was completed the land would revert back to the community. This view conflicted with the above-mentioned supreme resolution of August 2011.

Even though the final acta had not in fact been signed and thus the consulta had not been concluded, YPFB issued a public announcement that the consulta had been finalized successfully, and in December 2011 the company was granted the environmental license for the project. In January, perhaps recognizing their mistake, the company contradicted itself and stated that a consulta was not required, on the grounds that the land was not in fact indigenous land.

In January 2012, the hydrocarbon ministry invited Takovo Mora to a meeting to discuss the issue. When the ministry representative failed to show after 24 hours, the community resolved to occupy the plant, which they did, beginning on January 16th. The community controlled the plant for almost three weeks. In spite of a visit by the hydrocarbon ministry, no progress was made. Finally, in late January, the new hydrocarbon minister signed the act to initiate the consulta. The final agreement ending the consulta process was signed February 2nd, and on April 10th, the agreement regarding compensation was signed for 7 million bolivianos (approximately \$1 million).

This case illustrates clearly just how important the procedures of the consulta have been for indigenous communities and for the pattern of conflict itself. The environment ministry, which had granted the environmental license to YPFB on the same day that the community took over the plant, denied the Takovo Mora’s request to nullify the environmental license. Within one sector of the Takovo Mora community, there existed a strong preference *not* to re-inaugurate the consulta, because the environmental license had been granted prior to the signing of the consulta acta, which went against the legal structures of the consulta. The division over whether or not to agree to engage in the consulta after the environmental license was granted created tension within the Takovo Mora community that continued throughout the negotiations and lasted even after the final acta was signed.

YPFB Liquid Separation Plant in Yacuiba(November 2011–present)¹⁶³

The third and final conflict case is ongoing, and provides further evidence of how YPFB has sought to define projects outside the purview of the consulta regulations to avoid engaging in conversations with affected communities at all. This case also raises the issue of land ownership. The project, which is estimated to cost \$700 million, would entail the construction of a plant to separate liquid gas. According to the APG técnico, a consulta process began on November 25, 2011, when communities and leaders were invited to a meeting. Ten days later, however, the hydrocarbon ministry declared that the project no longer required a consulta because the project was actually a Category II project instead of Category I, implying that the project was less harmful to the environment than initially believed and placing it outside of the requirement for consulta. According to the técnico, the reclassification did not involve the scientific analysis required for categorizing projects; that more rigorous analysis had been used, she said, when the project initially was determined to be a Category I.¹⁶⁴ Alongside the declaration that the project no longer required a consulta due to its technical specifications, the ministry claimed that the affected land did not in fact belong to the Yaku Igua (or to any other indigenous group), and for that reason, too, there was no need to consult with indigenous groups. The environmental ministry agreed with the hydrocarbon ministry's decision.

This decision was disputed in Yacuiba, the center of the Yaku Igua TCO, and in late August 2012, the indigenous community took the land, paralyzing the project. As of early September, the ministries had not sent officials to discuss the issue with the indigenous community. There was a general APG mobilization event planned for September 10th; as part of this, the Yacuibe case was to be protested. As of September 11, according to the CIDOB website, the route between Yacuiba and Santa Cruz was being blocked to oppose the governments failure to comply with agreements, including the lack of a consulta in Yacuiba, the failure to address environmental harm from past projects in the Aguarague Park, and the failure to adequately survey Guaraní TCOs.¹⁶⁵

CONCLUSION

To summarize, this report has sought to explain the different dynamics and outcomes of resource conflict in critical extractive industries in Peru and Bolivia. In both countries there are tensions in zones of extraction between, on one hand, a strong interest in protecting the environment and

¹⁶³ For more analysis of the Yaku Igua TCO and its experiences with land titling and the gas industry, see Bebbington, *Understanding the Relationship between Extraction, Territory, Inequality/Inequity and Conflict in the Bolivian Chaco*, 13–17.

¹⁶⁴ She also believed that according to a more accurate interpretation of the regulations, the category II classification would not actually clear the company of the requirement to hold a *consulta*.

¹⁶⁵ CIDOB, “La APG inicia bloqueo de camino a las 0 horas ante la ruptura de diálogo con el gobierno,” September 11, 2012).

communities' livelihoods, health, and cultural practices; and, on the other hand, receiving investment through the mining and hydrocarbon sectors via the distribution of royalties and direct company investment in resource-rich zones. In this context, in the Peruvian cases, mining conflict stemming from community complaints about technical dimensions of projects has escalated to the point of triggering outside oversight and sometimes the cancellation of projects. In contrast, in the Bolivian hydrocarbon cases analyzed here, conflict revolved around achieving dialogue with the state and companies and obtaining compensation for projects.

This analysis has observed, surprisingly, that participatory procedures that lack “teeth” to shape a project may in fact have more influence in affecting the substance and technical review of projects than structures that grant communities a say in whether or not new projects go forward. For Peru, the report has shown how the EIA has become a highly political process in which subnational actors prove central in developing and approving the EIA and, ultimately, the mining project—in spite of regulations that formally limit local participation to empty procedures. More than just a technical assessment, the EIA process is really a political institution that encompasses much of the political relations between mining companies, local communities, and subnational governments. Subnational political dynamics surrounding the EIA in fact can serve as a critical juncture in determining national-level dynamics surrounding the project. In Bolivia, in contrast, regulations give communities a substantive say in the fate of new projects, and influence in the process by which those projects are evaluated. However, by granting such substantive power to communities, those regulations ultimately have helped to limit the scrutiny of projects on technical grounds, due to the limited technical expertise available to communities and companies' unwillingness to engage in the process from the start.

A key structural factor has also been emphasized. In Peru, the projects noted here had the potential to divert critical water sources away from communities and toward the mining project, and yet there were clear technical solutions to this issue: companies could build desalination plants, dams, or reservoirs to offset the loss of water. In Peru, then, groups could mobilize against an obvious technical problem while knowing that the company could address the issue and continue the project, bringing necessary investment to the region. In contrast, in Bolivia's natural gas cases, no single technical problem acted as a central rallying issue; the more complicated nature of gas extraction left communities unfocused and unable to demand the obvious solution.

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APPENDIX: INTERVIEW SUBJECTS IN PERU AND BOLIVIA, 2012

Category	Lima, Peru <i>March 18–30</i>	La Paz and Santa Cruz, Bolivia <i>August 27–September 7</i>	Total
Researchers, journalists	9	7	16
Mining/hydrocarbon sector	7	5	12
Conflict expert-practitioner	2	4	6
Government official	2	4	6
Indigenous activist*	0	1	1
Total	20	21	41

*Members of indigenous groups interviewed for their technical knowledge of the consulta previa were classified in the “conflict expert-practitioner” category.