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“Governance and the extractive industries in indigenous territories”



by Omaira Mindiola and Jean Pierre Chabot

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Seminar on Governance and the Extractive Industries in Indigenous Territories
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Executive Summary

This seminar organised by the Canadian Foundation for the Americas (FOCAL) on the Governance of the indigenous peoples as it relates to the Extractive Industries, drew the following two key recommendations: first, the need to ascertain more transparent information management and second, the need to set clear cut public policies regarding aboriginal peoples. The views contributed by the participants in the Seminar were used as the basis to identify meeting grounds for the prevention and resolution of conflicts connected to the extractive industries.

Key Recommendations

- More transparent Information Management
- Clear cut public policies regarding the indigenous peoples

The pivoting role that transparent information management plays in designing appropriate spaces for tripartite dialogue and consultation between the private sector, the government and the communities was stressed during the seminar deliberations. Adequate conditions to enable consultation processes are a must and should be capable of building trust among the parties. These conditions include the following

- Capacity building of the local communities and governments through training as a means to enable identification of the community's development priorities.
- Improved governance within public entities
- Clear cut public policies regarding the indigenous peoples.

If the above conditions are met during the consultation process they will act as enablers for the information to be duly disseminated, understood and used by decision makers. If information is appropriately managed, this would allow the indigenous communities to participate fully in the design of development plans, the surveillance of extractive industries and the creation of public policies.

The second recommendation urges implementation of a decentralized policy concerning indigenous peoples. A clear cut decentralized policy on Indigenous peoples could help establish the political mechanism needed in order to raise the priorities set by the indigenous peoples to the national level, protect indigenous rights and prevent conflicts between the communities and the extractive industries.

Preamble

As part of the "Indigenous Governance and Democracy in the Americas" Project, FOCAL worked collaboratively with CooperAcción and the consortium for Economic and Social Research (CIES) to hold a seminar on "Governance and the Extractive Industries in Indigenous Territories" between February 2 and 3, 2007 in Lima, Peru.

Two separate seminars were held in 2006. The first took place in March on "Indigenous Governance and Democracy" where the right to a territory was identified as a key right of the indigenous peoples enabling them to develop

politically and participate in the democratic renovation of the state.

Indigenous governance and Democracy

Indigenous territory, Natural Resources and Governance: Challenges

www.focal.ca/pdf/Indigenous_seminar_e.pdf

A second seminar on "Indigenous Territory, Natural Resources and Governance: Challenges"

was held in April in Guatemala. The challenge raised in this seminar was: How to make national development based on the exploitation of natural resources congruent with the development of aboriginal people's? It is to say, How to reach an

understanding between the parties? As this concern is still unsolved, the participants in the seminar suggested that Focal should continue its Project on Indigenous governance focusing on the extractive industries.

Background

During the first year, the Project on Indigenous Governance in the Americas identified the extractive industries (Mining, gas and oil) as the economic activities that have caused greater conflict among the aboriginal peoples in the past twenty years by reason of the strong impact they have had over the aboriginals' territory. Aboriginals have a holistic perception of the world, which places natural resources at the core of their vision of cultural, social and political development.

“Given the holistic perception that aboriginals have of their world, natural resources are viewed as the single most significant element of their vision of cultural, social and political development”

During the implementation of the Project, a review was made of the information on Indigenous governance and the extractive industries in indigenous territories existing in Chile, Peru, Bolivia, Ecuador, Guatemala, and Canada, where the aboriginal population ranges between 4.6% in Chile and 53.9% in Guatemala. One could be lead to believe that a greater proportion of aboriginal population would in itself

mean that there be greater participation and inclusion of the aboriginals in the democratic system. However, experience has shown that inclusive public policies on Indigenous Peoples have only become operational in countries where the indigenous movements, acting as advocates of the collective rights of peoples, have succeeded.

In the extractive industries scenario, the aboriginal peoples are more vulnerable in terms of the relationship existing with the other two stakeholders: the state and the companies. Sometimes, governmental regulations ruling the exploitation of natural resources are extremely weak while some other times they are not applied in instances where impact mitigation and social benefits should be enforced. Therefore, the companies are forced to sort out on their own, their relationships with the affected communities. The attitude of rejection on the part of the communities toward the extractive industries reflects the lack of clear cut public policies on conflict resolution guidelines and management as well as effective inclusion of the aboriginal peoples.

Numerous violations of human rights have taken place under the development banner, due not



only to a lack of knowledge of the collective right that aboriginal peoples have to partake and make decisions on matters that affect them but also through the repressive measures implemented against these communities every time they raise their claims because their protests are viewed as criminal acts.

Countries (of which 14 are Latin American) have tools such as the International Labour Office (ILO) Convention 169 on Aboriginal and Tribal peoples in Independent Countries that set the basis for the establishment of regulations to rule the relationship between the State and the Aboriginal Peoples. Nonetheless, one of the main sources of conflict with the extractive industries arises because they fail to previously consult the affected communities. The inherent right to self-determination that aboriginal peoples have enables them to promote their own vision of development and manage their own territory and resources. Dialogue could be one of the mechanisms chosen for purposes of setting in motion policies of understanding aimed at achieving sustainable development in the aboriginal territories.

International organizations among which the World Bank, the Inter-American Development Bank and the Permanent Forum of the United Nations on Indigenous Issues have developed initiatives to review the performance of the extractive industries and implement policies that contribute to the alleviation of poverty, the respect of indigenous rights and the protection of the environment.

At the regional level, the Energy, Environment and Population (EEP) Program created under the initiative of the governments of the countries that make part of the Sub-Andean Basin, the hydrocarbons industry (OLADEⁱ, ARPELⁱⁱ) and the Indigenous peoples (COICAⁱⁱⁱ), has as its main objective to improve the relationship existing between the stakeholders with the purpose of developing the hydrocarbons industry in a manner compatible with the sustainable development principles of the Amazon basin. Tripartite dialogue is the instrument used to develop this program.

Governance and the Extractive Industries in Peru: mining and hydrocarbons

Governance

Within the context of the extractive industries Governance refers for the most part to the inclusion and engagement of the affected population in public policy making regarding decisions on the control and use of natural resources. In this domain, the relationships between the State, the private sector and the communities are not regulated giving way to a situation where conflicts arise easily between the parties. Concerning this subject, the hypothesis formulated by De Echave^{iv} indicates that the limited presence of the State in the areas where mining and hydrocarbon exploitation take place hinders their ability to manage and transform conflicts. Meeting the demands of the communities becomes the free will of the firms as part of their social responsibility undertakings. The lack of control mechanisms lends itself for the firms to develop schemes set out to benefit their own interests rather than considering the

socio-environmental conflicts among the affected communities.

Rights of the Indigenous Peoples

The protection of the collective rights of the Indigenous Peoples, as third generation rights, plays a key role in setting appropriate conditions to guarantee that civil, economic and political rights^v are respected. The notion of collective rights includes cultural rights (life style, for example), environmental and land ownership rights. All these rights, are deeply entrenched and fundamental for the indigenous peoples for which reason they make part of the guarantees that the Indigenous peoples seek vis-a-vis the extractive industries activities. The best practices on Indigenous governance involve that citizens engage in their capacity as citizens in the political and economic processes on grounds of their right to be consulted before implementation is approved of any such activities. Governments

must: "(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" (Art. 6.1 ILO169/89)

Lands and territories are of great significance to indigenous peoples since they are the basic units for social, economic, political, and spiritual relationships. Rodolfo Stavenhagen the Special Rapporteur of the United Nations on Indigenous Peoples, referred to this issue as "...a question of human rights essential to the survival of indigenous peoples..." (E/CN.4/2002/97). The United Nations Declaration on the Rights of Indigenous Peoples provides in article 26° that "indigenous peoples have the right to lands, territories, and resources that they own in relation to traditional property or from some other traditional form of occupancy or utilization, as is the case where they have been acquired by other means".

Given the proliferation of extractive industries in indigenous territories, natural resources have ceased to guarantee the survival of these human groups. The implementation of overlapping mining and hydrocarbon projects in lands where the aboriginal peoples have traditionally settled or of which they are the owners has caused conflicts due to the violation of their human rights. As a minimum communities would expect that there be an agreement protected under the right to be consulted before any such projects are implemented with sufficient anticipation to the exploration phase and sustained throughout the project's life cycle.

Policy on Indigenous Peoples

Despite the progress made in the regulations on indigenous rights in many countries in the last twenty years, there are frequent cases of violations of both individual and collective rights of the aboriginal peoples and communities. This is partly due to the fact that the regulations are not enforced as prescribed or else because they are nullified by contradicting standards..."^{vi}

There are conceptual gaps closely linked to the definition or interpretation of the standards set in

regard to the aboriginal peoples. The *development* concept for example, from the aboriginals' vision rests at the opposite end of the spectrum if compared to the market economy vision based on the exploitation of natural resources. One additional conceptual difference has to do with the notion of *free, informed previous consultation* commonly interpreted as the mere act of informing or disseminating information,^{vii} or as a procedure merely circumscribed to a formal requirement that must be regulated with the view to provide a legal foundation for the firms' operations and thereby secure their investments" (PFII/2004/WS.2/5)

One of the governance gaps has to do with the ambiguity embedded in the State policy on aboriginal peoples which makes it difficult to solve the overarching issue that underlies the conflictive relationship between governance and the extractive industries, the issue of lands and territory. There is no adequate decentralized representation of the aboriginal peoples. It may be worth recalling that the Special Rapporteur when referring to the implementation of the standards that regulate aboriginal rights in his address to the Fifth Session of the Permanent Forum on Indigenous Issues (PFII) stated that "the problem partly arises from the composition of the legislatures, the scarce representation and limited participation of the aboriginals in the legislative procedures or the absence of consultation with the aboriginal peoples and the biases and prejudices against the aboriginal rights which are found among numerous players of the political life."^{viii}

The self-determination right that indigenous peoples have to set their own priorities and be consulted calls for separate institutionalization that should act as their interlocutor at the local level. If so, the municipalities could incorporate on grounds of their autonomy, the cultures and standards existing in their jurisdictions. This would provide a means to engage aboriginals in setting development programs with identity while casting at the same time aboriginal participation at the national level. As mentioned José De Echave^{ix} in Peru there is a need to improve land management practices and include territorial zoning plans. These land issues that are

intimately linked with the guarantees that communities seek, among which for example, water quality, improved health conditions, economic opportunities and the need for stronger linkages tying management and regulation thereof. Mercedes Manríquez^x, who acts as legal counsel for CONAP, stated that one way to avoid indigenous peoples having their land be removed from them or their right to use it and administer

its resources in view of the development of mining and hydrocarbon projects is the establishment of a special regime providing legal protection. On the other hand, such a regime should guarantee that aboriginal peoples not be discriminated concerning the rights they are entitled to exercise over their land and to participate in the dialogue and negotiation processes.

Governance, corporate social responsibility and best practices

Regulations governing the Extractive industries

The regulations established in Latin America for purposes of enticing investments especially in mining and hydrocarbon projects has not accorded the same weight to standards dealing with sustainable development as concerns the need to strike a balance between the economic, the social and the environmental aspects. New mining and environmental codes have been approved however no legal framework framing the relationship with the affected communities or any conflict prevention, management and resolution mechanisms have been foreseen. The ratification of ILO's Convention 169 by itself cannot produce the expected outcomes unless it is accompanied by the relevant standards and regulations at the national level. The land holding policy is closely linked to the regulation of extractive industries moreover because the main source of conflict with the aboriginal peoples relates to the collective right they are entitled over their territory. Furthermore, the dialogue processes turn around this concept which serves as the overarching right for all other rights (their own development, autonomy, participation, identity). In actual practice, in some countries like Peru the ability of aboriginal peoples to negotiate is limited to a large extent because land and territorial issues are yet to be solved.

Self-regulation of the relations with the community is one of the initiatives of the new corporate responsibility vision that firms have. Regardless, the voluntary self-regulation approach is outside the realm of governance because it is not inserted in the national political system where, assumedly, the indigenous

peoples are to participate in the decision-making levels.



Social responsibility as part of the code of conduct of the firms has become the navigation chart for their investments because their strategies set the grounds for social acceptance. One of the challenges they face is to meet the community demands and resolve the conflicts that embassies so rarely, if at all, mention when promoting the exploitation of their country's natural resources. The firms can contribute to the community's development nonetheless they cannot solve the land holding issues because these are solely the states competency.

An operational structure that implements best practices facilitates the relationship with the communities and creates appropriate conditions for agreements between the actors while building trust among foreign investors. If things move in the opposite direction, rejection and confrontation could be the potential outcomes not only with the affected communities but also with supportive solidarity groups.

Civil society participatory approaches to the extractive industries

The good practices of governance require that citizens participate as the subjects of their own rights. The reaction of the affected communities to the impacts caused by the socio environmental impacts resulting from the extractive industries' activities are an indicator of the exclusion they suffer since their ability to make their own decisions concerning matters that affect them is overlooked.

It is non-sense stating that indigenous peoples are part of the civil society participatory mechanisms unless they are fully inserted in the decision making process of the political system. As has been previously mentioned "to participate" does not mean simply to "attend" a public hearing to receive information about the implementation of any given project and far less participatory it is when they are warned that they cannot exercise the right citizens have to veto the project.

Given that the highest risks that firms are called to face are social risks^{xi}, the private sector is incorporating civic engagement when managing their investments so as to guarantee that social responsibility becomes part of their corporate conduct. In the case of indigenous peoples, participation has been envisaged in three levels: free and informed previous consultation, participation in the economic benefits, and participation in the projects' monitoring, it is to say, before, during and after the project's life cycle.

The implementation of these practices in Latin America has been very slow due to the equally slow learning process. According to the Social Capital Group (SCG)^{xii} the Peruvian experience is the most advanced notwithstanding the numerous conflicts existing in the relations with the communities.

All actors including corporations, the state, NGO's, and communities play a key role in the construction of participatory mechanisms allowing for participation in the field of

sustainable development.^{xiii} Support for ongoing management, training and the implementation of public policies and negotiation alternatives can provide the institutional framework needed to carry out concerted work between the actors.

For participatory approaches to become real, there is a need to establish clear cut rules governing the relationship, which in turn build the foundations for the trust needed. If the firms listen to what the communities have to say from the first time contact is established and not as a reaction to pressures for social demands, it is very likely that the road will be paved for further dialogue to take place. Likewise, if the state institutions accompany this dialogue as facilitators of the relationship and follow up on their dynamics, the communities will feel that their rights are being protected.

Regarding participation in the economic benefits, expectations are a key player. One of the most commonly found sources of conflict is the perception that the indigenous communities have of the impact to social benefit ratio resulting from the extractive industries' activities in their territory. This perception is linked to the debate on the contribution of extractive industries to identity-linked development of the aboriginal communities and poverty alleviation.

Managing community expectations is a key challenge in the relations with the state and the corporations since it rests at the foundation of the need to establish an ongoing participatory process with the aboriginal peoples. This process includes promoting among the communities a culture of investment, long-term savings and transparent use and management of resources.

Regarding shared benefits, some firms do not feel committed with this process and argue that they comply by paying the state taxes, creating jobs and providing support to the communities with services that the state should provide.^{xiv}

Case presentations and guarantees that communities seek

Both the communities and the government attempt to build participatory mechanisms for decision making purposes, each from their own one sided perspective

The Camisea Case (Shell / Pluspetrol)

The Confederation of Peruvian Amazon Nations of Peru Confederación de nacionalidades amazónicas del Perú (CONAP)^{xv} together with other federations of communities has lead interlocution with the trans-national firms involved in the Camisea Gas Project.

Past experience has shown that:

- The firms underestimate the communities potential ability to sustain relationships
- Gaps of information on both ends result in misunderstandings and further on in time, create a divide inside the grass roots organizations
- Listening to the initiatives of the communities facilitates negotiations and agreements
- Management capacity building is required by the communities in order for them to draw sustainable long term benefits
- Local development relies on the CSR of the firm when required to comply with its agreements with the communities
- In spite of the fact that the State receives revenues from the canon^{xvi}, it is absent from the local development plan
- The fact that the presence of these firms in the area is only temporary limits the flow of the financial resources needed to meet the demands of the communities, which are thereafter forced to strive to find viable mechanism for their inclusion in the local, regional and national development plans.

“Mining promotes migration and contributes to family disruption in instances where no sound economic alternatives leading to improved living conditions are set in motion.”

- The communities lack the management capabilities needed to achieve insertion in the development plans

CONAP's Expectations

- Training on human rights and other domestic and international laws dealing with aboriginal matters
- Compliance by the State of ILO's Convention 169
- Special legislation for the indigenous peoples of the Amazonia
- Training on management and negotiations

Political management: The National Confederation of Communities Affected by Mining (**CONACAMI**) made up by 1,650 peasant communities (Andean aboriginals) maintains a critical position vis-a-vis Peru's economic policy on extractive industries. CONACAMI was created as a reaction of the communities to the conflicts arising from the extractive activities developed in their territory. Their optic is that agriculture being their core economic and traditional foundation should be strengthened and that ownership rights over their land must be guaranteed. Mining encourages migration and contributes to family disruption if no sound economic alternatives leading to improved living conditions are set in motion.

One of CONACAMI's lines of action is capacity building at the organizational level for the exercise of individual and collective rights through training and legal support to the communities. This opens a window for the organization to set the grounds for open dialogue with the State and the corporations under conditions that facilitate the settlement of mining related disputes

Institutional management: The National Institute for the Development of Andean Amazon and Afro-Peruvian Peoples – Instituto Nacional de Desarrollo de los Pueblos Andinos Amazónicos y Afroperuanos (INDEPA), is a policy making but not a policy implementing

entity of the national policies on projects and programs for the defence and affirmation of the rights of peoples. Aside from being a decentralized body (DPB) it is the only government institution that has representatives from the indigenous peoples (Amazon and Andean peoples), as well as Afro-Peruvian who promoted its creation within the framework of the constitutional reform in the year 2003. The support provided to conflict resolution is one of the lines of action that together with the

promotion of identity-linked development is sought by the vision of INDEPA for the social inclusion of these peoples. A pending task it must tackle in its capacity as aboriginal policy making organization is to implement inside the government a regulatory framework for of ILO's Convention 169. This is the challenge that the aboriginal and afro- Peruvian organizations tackle together to strengthen INDEPA.

Conflict Prevention and Resolution Initiatives

The interaction between humans and the environment because of the appropriation, use and control of natural resources articulates relationships of incompatible interests and needs among the stakeholders. This interaction known as socio-environmental conflict may be managed through dialogue with a view to facilitate mutual understanding between the parties until transformation is achieved.

Attempts have been made to implement varying mechanisms with the extractive industries with the view to achieve improved performance within the framework of socio-environmental values.



As an illustration, Canada has attempted to implement a **preventive initiative**; the Mining Association of Canada (MAC) has been implementing a dialogue based integration program with the social stakeholders including the aboriginal peoples who are affected one way or another by the mining operations. The most

important MAC commitments with the communities are:

- Respect for the rights of aboriginal peoples
- Recognition of the social, economic and cultural interests
- Cross-cultural relations (involvement) including mutual understanding of the traditional practices and business principles of the communities
- Negotiation of participatory agreements and endorsement of the development programs in coordination with the local government whereby recognition is made of the priorities of the communities concerned.

Concerning **conflict prevention and management** Pontificia Universidad Católica del Perú through Its Center for the Analysis and Resolution of Conflicts has implemented a working methodology to provide support for the dialogue and agreement processes between the actors involved in the socio-environmental conflict.

Practice has shown that the presence of extractive industries when not preceded by information causes distrust and ungrounded expectations in the communities. The lack of appropriate responses may result in socio-environmental conflicts.

¿How can distrust and ungrounded expectations be avoided?

Some of the potential approaches are:

Empowering the stakeholders:

- Building the capacity of the communities
- Providing information on the legal and operational aspects of the project while solving any concerns that the communities may have

Getting the stakeholders involved

- Exchanging knowledge on the Firm and the culture of the social groups living in the project's area of influence

Implementing preventive tools: (Training level)

- Early participatory evaluation

- Participatory environmental studies and monitoring
- Information on potential future development
- Local participatory development (Firm-State-Community)

Using conflict management tools in socio-environmental conflicts:

- Facilitation
- Negotiation
- Mediation/conciliation
- Environmental arbitration
- Dialogue rounds

Experiences on Governance and the extractive industries in Guatemala and Ecuador

Representatives from Guatemala and Ecuador presented their experience with the extractive industries as a contribution to the seminar's deliberations.

Mining in Guatemala

(From the address by Jorge Antonio Garcia Deputy Minister of Mining and Energy,)

Mining exploitation had a pause during the war period (36 years) and later during the peace building process up to 1996 when a process of invitation to foreign investors was started in view of the existence of gold, silver, copper and zinc and nickel. Mining mainly of metals was reactivated with the enactment of the new Mining Law in 1997 at the time that the explorations that had already reached 700 licenses by 2002 were started.

The area that has mining potential is in the territories occupied by the indigenous peoples while it is at the same time the area that shows the highest poverty levels in the country. It is a volcanic area that exhibits scarce topsoil unfit for agriculture. For this reason there are only a limited number of jobs available. It is worth noting that in Guatemala there still remain issues relating to land holding rights yet to be solved and that the most productive soils are in the hands of a few.

The most important mining Project is the Marlin project located in the Province of San Marcos,

and belongs to Glamis Gold Limited, that was granted a license for gold exploitation in 2003. The information disseminated on the potential socio-environmental impacts awakened concern in the population and gave rise to controversies because of the poor information given to the aboriginal peoples on the Project that caused the escalation of pacific resistance into a conflict involving violent actions against mega projects.

In order to remedy the information unbalance, the Ministry of Mining and Energy has undertaken various activities such as a forum on mining, the use of didactical materials on mining and metals in elementary schools and more significantly, it has created a High Level Commission on Mining with the participation of all sectors (civil society, church, corporations, community leaders) As a result of the work in this Commission, the guidelines for the Mining Policy were outlined so that further on in time the legal framework that regulates mining could be revised accordingly as regards mining and the environment in a manner such that it incorporates the issues of consultations and royalties.

Under the new legal framework, the standards ruling the operations of mining corporations are more restrictive than five years ago. "It is preferable to have less mining but higher quality mining than to open doors indiscriminately as was done in past years" said the Deputy Minister of Mining and Energy"

Pending actions:

- Revision of the Mining Law
- Regulation of the consultation process with the communities
- Mining control and supervision
- Establishment of a new mining model that has been implemented and tested by an aboriginal mining cooperative which has been granted a license to exploit lead, zinc, gold and silver with the support of a Canadian firm.

Fondo de Desarrollo Indígena Guatemalteco (FODIGUA) (GUATEMALAN Indigenous Development Fund)

(From the address by Marco Antonio Curuchich and Rut Serech Icu^{xvii})

Four peoples (Maya, Xinca, Garifuna and Non-Mayan) co-exist and make up a multi-ethnic, culturally pluralistic and multilingual nation capable of articulating strategies aimed at enhancing the quality of life within the framework of identity-linked development.

In aboriginal governance, Fodigua is the institution that acts as enabler for the participation of aboriginal peoples in public administration working jointly with government officials. Even though it does not have any bearing regarding policies on extractive industries, this institution is committed with the democratic strengthening and the respect for the aboriginal rights contemplated in the ILO's Convention 169. The main objective sought is the support and strengthening of the human development of the Mayan Peoples through funding of their programs and projects and meeting the priorities of the communities. It also, promotes the Mayan cultural identity and peace building efforts.

Autonomy of the Achuar peoples in Ecuador

(From the address by Anibal Santi Gualinga, one of the leaders of the Achuar Nation of Ecuador)
In the past two decades oil related activities have increased in the Ecuadorian Amazon region with grave environmental and social consequences. The two opposing "development" visions conflict with one another as relates to the concept of territory which is, in turn, closely linked to the

autonomy of these peoples. New organizational approaches on the part of the aboriginal peoples provided for greater interlocution capacity in the demands that recognition be given to the cultural and national pluralism of the State and above all, recognition of the indigenous rights enshrined in ILO's Convention 169.

The Achuar and Shuar communities affected by the presence of oil firms without having been consulted previously and given the lack of conflict resolution implementation by the state were involved in confrontations with the firms and the military intervention of the State.

In 1990 seven nations of the Achuar peoples of the Province of Pastaza, became independent from the larger organizations and decided to group themselves under a common front organization with the view to defend their land and prevent the ingress of foreign firms. The conflict gained a political dimension when the communities demanded that the Achuar nation's territory be recognized.

Self Development alternatives

- Strengthen culture as the foundation for integration and decision making
- Health, education and economic policy management and leadership
- Implement training on corporate management
- Develop ecotourism as an economic activity
- Set Airline equipped with three aircrafts initially
- Implement appropriate Technologies for traditional crops

Medium Term Goals

- Train community members to become pilots of the airline
- Obtain full recognition by the State of the Achuar Nation's territory, covering an approximate surface of 700,000 hectares
- Complete the granting of ownership deeds for the community blocks in the land reconstitution Project
- Complete the granting of Title deeds for the community blocks in the land reconstitution Project

Workshop I: Building a relationship where ongoing dialogue takes place between the aboriginals, the peasants, the government, the academia and the private sector within the social responsibility context

The so called tripartite dialogue used in some sectors, is not common place in the aboriginal communities yet. This explains why they seek a unified approach to set the appropriate conditions leading to an adequate and efficient dialogue and consultation process.

The discussions during the workshop focused on the decision making power inside the corporations when dealing with consultations with the communities. The communities' perception is that the decision-making authority rests with the owners of the multinationals. However, a representative from the private sector replied by stating that in actual practice this would be difficult and managers do have the authority to make decisions

It is required that in the event the owners are unable to take part in the consultations there be a mechanism whereby a corporation may grant greater decision making power to the country managers who are responsible for implementing the investment projects concerned. One of the aboriginal representatives indicated that managers have budgetary constraints leading to conflictive priorities in regard to policy issues.

The following is a summary table of the contributions made by the workshop's participants:

SUMMARY TABLE 1: Workshop I

Working Groups	Group 1	Group 2	Group 3	Group 4
Dialogue Structure	<ul style="list-style-type: none"> ▪ The dialogue must include preliminary preparation so that sufficient time can be allowed for internal community consultations ▪ The dialogue must incorporate different cultural codes ▪ There must be an institutional space allowing for wider representation and broader information ▪ Every single currently existing 	<ul style="list-style-type: none"> ▪ The dialogue must be defined as a space where information exchange or conflict resolution can take place <p>Conditions required:</p> <ul style="list-style-type: none"> ▪ TRUST and knowledge ▪ Equal information level ▪ Training for participants ▪ Communication → native tongue, culture 	<ul style="list-style-type: none"> ▪ An neutral independent facilitator is required for the dialogues (could be the universities) <p>Conditions required</p> <ul style="list-style-type: none"> ▪ Build trust among stakeholders <p>Clear cut rules to be followed by all actors</p> <ul style="list-style-type: none"> ▪ The spaces for dialogue must meet the interests of all parties involved in order to achieve effective results within specific 	<ul style="list-style-type: none"> ▪ Functionality: It encourages greater participation and dialogue ▪ It must transcend the national regional and local levels ▪ Participants in the dialogue must have decision making power ▪ The dialogue must be build on sustainable proposals where civil society plays active role

	<p>stakeholder must be taken into account and accorded due significance</p>	<ul style="list-style-type: none"> ▪ Representative actors ▪ Agenda ▪ Codes of conduct, norms, rules <p>Will to reach an agreement</p>	<p>deadlines</p> <ul style="list-style-type: none"> ▪ True will on the part of stakeholders to dialogue ▪ Dialogue based on collective interest over individualistic ▪ Transparent dialogue 	<ul style="list-style-type: none"> ▪ Building trust before the dialogue takes place ▪ All stakeholders must contribute to the process' funding (this way we will all feel committed) ▪ For agreements to be legitimate they must be reached in assemblies that gather more than a majority of their members (as per their own statutes)
<p>Frequency and flexibility</p>	<ul style="list-style-type: none"> ▪ It must reflect the geographical limitations ▪ Ongoing results-driven dialogue 	<ul style="list-style-type: none"> ▪ The dialogue must commence before a concession is granted ▪ The dialogue must be maintained through the entire process 	<ul style="list-style-type: none"> ▪ Dialogue at the local, regional and national levels ▪ Ongoing dialogue since the Project is started rather than dialogue only when tensions arise, 	<ul style="list-style-type: none"> ▪ As permanent as possible and as needed in the reality concerned and in dialogue among all actors involved
<p>Main Stakeholders and their roles</p>	<ul style="list-style-type: none"> ▪ The State must provide Basic services for the general population, facilitate spaces for dialogue, implement a national mining policy ▪ The State must encourage unity among the stakeholders and bring divisive processes to an end 	<ul style="list-style-type: none"> ▪ That the parties be truly representative ▪ State, firm, community / Civil Society Organizations (CSOs) ▪ The level at which the state participates may vary depending on the type of dialogue and the objective sought by the main stakeholders 	<ul style="list-style-type: none"> ▪ Truly representative stakeholders ▪ The State must defend the rights of the communities ▪ Civil society includes NGOs, trade associations, affected communities, universities, etc ▪ The civil society and the government must seek the support of international organizations for the trust building process 	<ul style="list-style-type: none"> ▪ Participation should be limited to authorities, representatives of the firms and leaders that do have decision making power ▪ The local authorities must participate ▪ The community representatives must consult with the peoples directly effected (through their assemblies) ▪ Only representatives who have decision making power should participate

			<ul style="list-style-type: none"> ▪ Universities and professional schools must service the communities and remain neutral <p>Mining firms must comply with the agreements reached</p>	
The role of the NGOs	<ul style="list-style-type: none"> ▪ NGOs must meet the functions of accompaniment, resources and research ▪ NGOs should not speak for the leaders 	<ul style="list-style-type: none"> ▪ Civil society's participation should go beyond NGOs participation ▪ Community training (among actors) 	<ul style="list-style-type: none"> ▪ Provide facilities for the defence of their rights ▪ Accompany the communities with transparency 	<ul style="list-style-type: none"> ▪ Technical support ▪ Advise and facilitation ▪ Strengthen the participation of the civil society organizations <p>Avoid protagonist attitudes during the dialogue</p> <ul style="list-style-type: none"> ▪ Encourage and assist the organizations to become adequately informed
Dialogue priorities	<ul style="list-style-type: none"> ▪ National Policy on indigenous peoples 	<ul style="list-style-type: none"> ▪ Broader knowledge of the lifecycle of a project and the search for commonalities ▪ The role played by the state in the creation of programs for the communities and the role that the civil society must play 	<ul style="list-style-type: none"> ▪ Environmental control and independent surveillance of the mining activities ▪ Right to previous consultation ▪ Review the procedures established to grant mining and hydrocarbons concessions (inform and consult the population previously) 	<ul style="list-style-type: none"> ▪ Creation of a facilitating level as neutral as possible and sufficiently experienced ▪ Guarantee the community's right to use their territory with bargaining rules arrived at by consensus ▪ Legal security (regulated participatory and consultation frameworks) ▪ Changes in the canon to accommodate the individual priorities of each community

				<ul style="list-style-type: none"> ▪ Comply with the canon investment as provided by the law ▪ Know the meaning that land has in the eyes of the communities ▪ Adequate participation in environmental monitoring
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Workshop II: Mechanisms enabling indigenous and peasant communities to participate in the benefits produced by extractive industries (minerals and hydrocarbons) in their territories

Even though the exercise made an attempt to identify elements for the inclusion of aboriginal peoples in the potential benefits that the extractive industries might produce, the discussion focused more on the political aspects of the participatory levels sought and the creation of appropriate conditions beyond the mere distribution of economic revenues. These benefits must be accompanied by solid management and administration capabilities by the communities for which purpose training is required. The direction taken by the workshop helps illustrate the degree at which trust and shared approaches exist between the parties in regard to the attainment of these benefits.

The three working groups in the workshop indicated that monitoring and assessment as well as social responsibility and the recognition of rights contribute to mechanisms for the participation of the aboriginal peoples in a dialogue on the potential benefits that the extractive industries may produce. The following table shows the conditions segregated as per the three stakeholders, i.e. the aboriginal community, the firms and the government. These conditions correspond to the assumptions related to each one of the main stakeholders together with other variables discussed by the groups during the workshops.

SUMMARY TABLE 2: Workshop II

Assumptions	Conditions	Monitoring and Oversight	Social Responsibility vs Community Rights
<p>The communities</p> <ul style="list-style-type: none"> ▪ Assuming that the communities have accepted implementation of the extractive activities 	<ul style="list-style-type: none"> ▪ Generate projects and proposals for them to be incorporated in the participatory budgets ▪ Technical training on the use of resources derived from the canon and the management of the SNIP ▪ Strengthen community leaders so that they be heard and comply with the law 	<ul style="list-style-type: none"> ▪ Oversight and monitoring of the financing as well as of the technical component are a shared responsibility between the state, the industry and the community ▪ The most important component of oversight and monitoring is training 	<ul style="list-style-type: none"> ▪ Respect for the culture of peoples and communities ▪ Jointly with the State, training programs so that the communities may anticipate the consequences and create ombudsman mechanisms
<p>The Industry</p> <ul style="list-style-type: none"> ▪ Some firms are not complying with previous, free and informed consultation ▪ Most conflicts arise because communities have not been called upon to participate and their right to be consulted has not been respected 	<ul style="list-style-type: none"> ▪ Manage information in their communities and in their mother tongue ▪ Advisory services for the communities, under the leadership of a neutral and trustworthy entity. The adviser must be knowledgeable of the national and international laws. ▪ Training on topics related to lands, identity, and ancestral customs. 	<ul style="list-style-type: none"> ▪ Monitoring reports must produce binding proposals ▪ The state must participate in the training processes ▪ Clearly specify the supervisory entity and review the environmental code ▪ The supervisory entity must be independent from the Ministry of Mining and Energy ▪ That the monitoring conducted by the communities be legally recognized ▪ A clear cut and well defined idea of the monitoring and surveillance responsibilities should be defined. The State? The firm? ▪ There is a need to establish independent monitoring committees (universities, specialized technicians) 	<ul style="list-style-type: none"> ▪ Respect for the culture of peoples and communities ▪ That the process not be a divisive one for the organizations ▪ Respect for the active participation of affected communities ▪ Without substituting the State in the compliance of its obligations, the firms and the communities must prepare a sustainable regional and national development plan ▪ Policies that accord priority to the local job opportunities ▪ Code of conduct that the workers must comply in their relations with the communities
<p>The Government</p> <ul style="list-style-type: none"> ▪ The boundaries set by the government are not the same as those that the communities have ▪ Laws (including the Charter of Rights) favour foreign investment ▪ The decisions made by the regional and local authorities favour the Corporations 	<ul style="list-style-type: none"> ▪ Changes in behaviour on the correlation that must exist between the political constitution and the ILO's Convention 169 ▪ Changes in the regulations ruling the use of the canon allowing for investments in human and organizational development 		<ul style="list-style-type: none"> ▪ Respect for the culture of peoples and communities ▪ Implement development strategies agreed with the communities and including gender equity ▪ Respect the use-value of land that the affected communities place on their land ▪ Improve the indicators used in rating the corporate social responsibility performance of firms

Conclusions

- The challenge for National governments is to design a domestic policy based on the constitution and the protection of collective rights.
- The privatization policies implemented together with the granting of concessions to the extractive industries have had a negative impact on the land ownership rights of the aboriginals.
- Inequity and exclusion from the market economy rules, together with the weak institutional framework of the state agencies to see that the social and environmental laws are complied render the conflict with the aboriginals more acute when mining and hydrocarbons concession permits are granted in the indigenous territories.
- A monitoring system to monitor compliance with ILO's Convention 169 is needed in the Andean region for purposes of monitoring continuously and systematically that aboriginal rights are respected.
- The direct link existing between National and local priorities for the development of the aboriginal peoples congruently with the Development Goals for the Millennium must be raised to the formal level.
- The lack of appropriate mechanisms to consult and encourage participation of the aboriginal peoples results in discrimination, exclusion and social marginalization.
- The mining canon created by the extractive industries produces a shock (accrued balances) in the municipalities because no investments have been planned.
- Agriculture continues to stand as the economic activity that makes aboriginal communities sustainable. The impacts caused by the extractive industries are assessed by the communities in regard to the use and contamination of water bodies and soils.
- It is crucial to avail the time preceding the exploration and construction of projects to establish relationships and build trust among the firms and the affected communities.
- The information that embassies distribute as a means to promote a country's natural resources for purposes of encouraging foreign investors to invest in their country lacks data on the communities that may be potentially affected by these projects. There is a strong need to manage information appropriately so that the investor firms are already equipped with highly performing conflict prevention practices as of their arrival.
- Given that some conflictive experiences with the communities have arisen in the past, the extractive industry investors are currently implementing social management mechanisms within the context of Corporate Social Responsibility as a means to render civil society engagement viable in the local development processes.
- No efficient policy to prevent conflicts in the relations with the communities has been implemented so far by the State or the firms operating in the aboriginal territories. This causes the affected communities to maintain a defensive attitude regarding their rights vis-a-vis the other two stakeholders which they do not fully trust.
- It is not clearly defined where the responsibility lies of the development of the aboriginal communities when extractive firms operate in their territory. Is it the State? The private sector? Or yet the communities?

Recommendations

- As a good practice, firms must obtain as much information as possible on human development in the area where they plan to invest taking into account the specific context of the relevant country for purposes of implementing good practices in the relationships they maintain with the communities.
- It is a pressing need that the Peruvian State regulates the relationship between the extractive industry and the aboriginal peoples within the framework of human rights and the standards consistent with ILO's Convention 169 on the rights of Indigenous and Tribal Peoples in Independent Countries.
- As a new approach to prevent conflict, both the State as well as the firms must promote dissemination of the information concerning mining or hydrocarbons projects long before the exploration stage initiates so that trust may be built and it be possible to prepare collaboratively a community development plan prior to training on management and monitoring.
- Implement training programs for the creation of new economic alternatives giving way to new jobs for the communities.
- Provide the support required in order to promote tripartite dialogue (as a means to prevent and resolve conflicts) among the stakeholders involved in the development of extractive industries.
- Earmark greater economic aid resources for the implementation of training programs at the municipal and local government levels that help acquire the skills required to design, implement and monitor participatory development plans at the local levels with broad participation, including the aboriginal peoples and also that can be sustained in the long term.
- Provide support for training programs on environmental monitoring including members of the aboriginal communities.
- Create incentives for firms that have developed "clean Technologies" and negotiate agreements aimed at facilitating import/export of such technologies.

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To see the complete texts of the presentations made during the Seminar please refer to :
www.focal.ca/projects/governanceanddemocracy/indigenous/events_e.asp



“Managing expectations”

- Aboriginal governance -

“Improving practices”

- Extractive industries -



SUMMARY TABLE 3: Governance priorities

Stages	Responsibility of the main stakeholder	¿Who to consult?	Economic source of the project	Programs and activities
Prior to the ingress of a firm in aboriginal territory	<ul style="list-style-type: none"> ▪ The national government must enact environmental regulations ▪ The national government must enact standards regulating the implementation of ILO's Convention 169 ▪ Local governments must consult communities in order to identify priorities for a local identity-linked development plan ▪ Local governments must provide training programs focusing on the management of local development 	<ul style="list-style-type: none"> ▪ Representatives of local indigenous communities ▪ Indigenous communities directly ▪ The local, regional, and national governments 	<ul style="list-style-type: none"> ▪ National and local government budgets 	<ul style="list-style-type: none"> ▪ Consult the communities in order to become acquainted with their points of view on the potential Project and identify community development priorities ▪ Insert the local development plan in the national plan on indigenous peoples. ▪ Create a space for dialogue between the government and the communities
Initial phases of the Extractive project	<ul style="list-style-type: none"> ▪ Firms must consult the communities in regard to the potential impacts that the projects may cause and their local development priorities ▪ Firms must take part in the already established spaces for dialogue ▪ Firms must implement local development projects based on corporate social responsibility principles i 	<ul style="list-style-type: none"> ▪ Representatives of local indigenous communities ▪ Indigenous communities directly ▪ The local government 	<ul style="list-style-type: none"> ▪ The Firms own economic resources ▪ Local government budget 	<ul style="list-style-type: none"> ▪ Conduct consultations in order to coordinate programs and projects consistent with the previously identified local development plan ▪ Train the communities on extractive industries monitoring ▪ Implement economic, social and cultural development projects
Through the life cycle of the extractive project	<ul style="list-style-type: none"> ▪ The local government and the firms must coordinate efforts in order to maintain local development programs and projects ▪ The local government and the firms must maintain a space for dialogue with the aboriginal communities in order to update the participatory dynamics 	<ul style="list-style-type: none"> ▪ Representatives of local indigenous communities ▪ The local government and companies 	<ul style="list-style-type: none"> ▪ Canon linked economic resources ▪ Local government resources 	<ul style="list-style-type: none"> ▪ Training programs on new trades for the communities ▪ Monitor the extractive industries activities with the participation of the aboriginal communities ▪ Assess the sustainability of the local development projects in the community assembly
After the extractive Project has ended	<ul style="list-style-type: none"> ▪ Local governments must continue to support the local community's development plan ▪ Local governments must maintain a space for dialogue with the communities 	<ul style="list-style-type: none"> ▪ Representatives of the communities and the communities directly 	<ul style="list-style-type: none"> ▪ Economic revenues from the canon ▪ Local government budget local 	<ul style="list-style-type: none"> ▪ Strengthen productivity projects ▪ Training updates on public management and r administration of the canon resources at the local level

References

- ⁱ Organización Latinoamericana de Energía (OLADE) Latin American Energy Organization
- ⁱⁱ Asociación Regional de Empresas de Petróleo y Gas Natural en Latina América y el Caribe (ARPEL) Latin-American Association of Gas and Oil industries
- ⁱⁱⁱ Coordinadora Indígena de la Cuenca Amazónica (COICA) Indigenous Coordinator of the Amazon Basin
- ^{iv} Jose De Echave is the Executive Director of CooperAcción, which is a Peruvian NGO working with communities affected by the mining activities in Peru
- ^v Agustín Grijalva, Doctor en Jurisprudencia a la Universidad Andina Simón Bolívar, Campus in Ecuador in his Article “¿What do Collective Rights mean?”
- ^{vi} Rodolfo Stavenhagen, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, in his address during the Fifth Session of the Permanent Forum on Indigenous Issues (PFII); May 2006
- ^{vii} Wulle Ruiz Figueroa; address at the “Governance and the Extractive Industries on Indigenous Territories” Seminar; Lima 2007
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- ^{ix} Executive Director of CooperAccion; address during the “Governance and the Extractive Industries on Indigenous Territories” Seminar; Lima 2007
- ^x Legal counsel for CONAP and Independent Consultant on Indigenous Rights; address during the “Governance and the Extractive Industries on Indigenous Territories Seminar”; Lima 2007
- ^{xi} Alan Dabas, General Manager of the Social Capital Group (SCG); address during the Governance and the Extractive Industries in Indigenous Territories seminar; Lima 2007
- ^{xii} The Social Capital Group (SCG) is a private consulting firm
- ^{xiii} Juana Kuramoto, researcher for Grupo de Análisis para el Desarrollo (GRADE) Analysis for Development Group; address during the Seminar on “Governance and the Extractive Industries on Indigenous Territories” Seminar; Lima 2007
- ^{xiv} Wulle M. Ruiz, Legal Counsel for Paz y Esperanza; address during the “Governance and the Extractive Industries on Indigenous Territories” Seminar; Lima 2007
- ^{xv} CONAP originated as a defender of indigenous rights and represents 750 communities of the Amazon Region
- ^{xvi} “Canon” is the fiscal framework in Peru that governs transfers of tax revenues from specific industries: Mining, Oil, and Gas
- ^{xvii} Marco Antonio Curuchich and Rut Serech Icu are members of the Steering Council of FODIGUA