Governance and Extractive Industries in Ecuador, Peru and Guatemala: the Mining Case

Jose De Echave

EXECUTIVE SUMMARY

Latin America is one of the regions of the world with the greatest abundance of natural resources and during the last decade, has experienced the expansion of extractive industries such as mining for metals, gas and oil. In this policy discussion paper we analyse the relevant aspects of this new stage of expansion, emphasizing on the cases of Ecuador, Guatemala and Peru.

We make reference to the policies related to the extractive industries that were implemented during the 1990s as part of a larger structural reform process, and to the conflicts generated as a consequence of the accelerated growth of the mining activity in these countries.

We also take on the overdue challenge of governance and the fact that rural communities continue to question central aspects of the implemented model, which holds the extractive industries as a privileged sector. The experiences of Ecuador, Guatemala and Peru are clear examples that there are still challenges in the areas affected by extractive industries, such as building relationships of respect which avoid any type of marginalization and strengthening strategies for reconciliation and tolerance.

RESUMEN

América Latina es una de las regiones del mundo con mayor abundancia de recursos naturales y en la última década ha vivido una etapa de expansión de industrias extractivas como la minería metálica, gas y petróleo. En el presente informe hacemos un análisis de los aspectos relevantes de esta nueva etapa de expansión, enfatizando los casos de Ecuador, Guatemala y el Perú.

Hacemos referencia a las políticas relacionadas con las industrias extractivas que fueron implantadas en la década del 90, como parte de un proceso mayor de reforma estructural y a los conflictos que se generaron como consecuencia del crecimiento acelerado de una actividad como la minería.

También abordamos el desafío pendiente de la gobernabilidad y el hecho que las comunidades rurales continúan cuestionando aspectos centrales del modelo implantado, que ha tenido como sector privilegiado a las industrias extractivas. Realidades como las de Ecuador, Guatemala y Perú, son un claro ejemplo que en las zonas de influencia de las industrias extractivas todavía se plantean retos adicionales para construir relaciones de respeto, donde se evite cualquier forma de marginación y se refuercen estrategias de concertación y tolerancia.

1 Prepared by José De Echave C.
The 1990s were a period of important changes in extractive industries, particularly in the mining of metals. To begin with, there was an important expansion of the geographical area dedicated to this activity as mining areas expanded not only in traditional mining countries, unusual activity appeared in new countries which opened their borders to mining investment. In Latin America, while investment grew in Chile, Mexico, Peru and Bolivia, it also grew in Argentina, Ecuador and Venezuela in South America, as well as in Honduras and Guatemala, among other Central American countries. Similar situations occurred in other regions of the globe.

Another important mining tendency of the 1990s was the redirection of investment flows, predominantly towards the South. For example, while Latin America barely received 12% of the world’s mining investment at the beginning of the 1990s, five years later it received 28%, and at the end of the decade and beginning of the 21st Century, it received around 33%.

The expansion and relocation of mining investment were brought about by different factors. Among the external factors we make mention the recovery of the price of minerals during the first half of the 1990s and the need to expand the reserves and identify new deposits after a decade during which many regions were closed to exploration. All of this contributed to increased investment flow.

Furthermore, this process was promoted by reform policies set forth in the majority of the countries of the South. During the 1990s, most of the emerging mining nations established structural reforms promoted among others by the World Bank, the International Monetary Fund, and regional development banks.

These policies favoured the privatization of public extractive industries and created very favourable conditions for the flow of investment, permitting international mining corporations to gain access to resources that had previously been limited. The World Bank advocated investment in mining and other extractive sectors as an important instrument in the fight to eradicate poverty, and there is no doubt that this organization’s role was pivotal. The roles can be summed up as follows:

- From a program perspective, it promoted the mining law reforms that allowed for an openness favourable to investment, especially for transnational companies. A result of the structural reform policies promoted by the World Bank was the support given to privatization processes, which substantially reduced the participation of state companies in the mining sector in the entire world during the 1990s.

- Direct endorsement and financing of major mining projects. It must not be forgotten that between 1993 and 2001 major mining projects were directly endorsed and financed by World Bank investments; for example, 27 in Latin America alone.

---

2 The number of countries with mining activity increased from 105 in 1990 to 151 by the middle of the decade.

3 Traditionally considered mining countries.

4 Latin America, Africa, and Asia.
Additionally, to secure co-financing from the World Bank represented an important endorsement allowing the mining companies to obtain complementary resources from private international financing entities.

- It is also important to point out that the World Bank, through its financial arm, the International Finance Corporation, began stock participation in mining projects in the region.

**Latin America and the new policies related to extractive industries**

Latin America is a good example of all these tendencies. Throughout the 1990s, many countries in the region began wagering on the implementation of a set of policies directed mainly at opening their economies. The stabilization policies were followed by a series of structural reforms that redefined the operations of most of the economies of the countries in the region.

In this context, one of the central aspects of the process of structural reform was to set productive sector priorities that in principle presented advantages for competing in foreign markets. Within this strategy, activities related to the extractive industries would have a significant role in the productive emergence proposed by the new economic operations plan.

In this manner, Peru, for example, in one year only (1991), established a complete program of structural reforms. A series of legal mechanisms aimed at providing the investors with stability were put into effect, offering a variety of guarantees that ensured legal and fiscal stability, as well as clear rules at the moment of acquiring assets and stock from State companies, and a new policy that allowed more flexibility in labour relations. At the same time, the protection of environmental laws, of the land laws, and the laws of indigenous communities and populations, made way for a normative framework related with mining activity. This entire process led to the promulgation in Peru of the new General Mining Law and of the new Political Constitution of 1993 completed the consolidation of the reforms and promoted a more favourable environment for investing in extractive industries.

Guatemala, a country with little mining tradition in the region, promulgated a new Mining Law, Act 48-97, that declared the exploitation of hydrocarbons, minerals and other natural non-renewable resources as useful and of public need. The new law was aimed at amending the ongoing legal framework, perceived as excessively regulatory, and promoted the designation of special areas of mining interest, in order to facilitate the identification and evaluation of deposits and proceed to their immediate exploitation.

Ecuador, with an economy related more to hydrocarbon activities than to the mining of metals, passed a new Mining Law in 1991 aimed at directly promoting this activity. The later Political Constitution of 1998 specifies that all non-renewable resources belong to the State and their exploitation will be carried out in accordance with national interest and according to the laws on the subject.

---

5 On June 4, 1992.
In this context, the region began a new stage of expansion of mining and other extractive industries in general. A greater flow of investment in mining as well as in petroleum and gas exploration began in Latin America. (See following table.)

### Mining exploration budgets by region

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin America</td>
<td>26.5</td>
<td>28.2</td>
<td>26.0</td>
<td>27.9</td>
<td>27.2</td>
<td>28.1</td>
<td>28.3</td>
<td>28.8</td>
<td>25.8</td>
<td>23.6</td>
<td>21.8</td>
</tr>
<tr>
<td>Africa</td>
<td>9.7</td>
<td>12.1</td>
<td>12.3</td>
<td>15.8</td>
<td>16.4</td>
<td>14.7</td>
<td>12.5</td>
<td>13.8</td>
<td>14.8</td>
<td>17.1</td>
<td>16.1</td>
</tr>
<tr>
<td>Asia/Pacif.</td>
<td>8.2</td>
<td>9.4</td>
<td>11.5</td>
<td>10.5</td>
<td>9.3</td>
<td>7.7</td>
<td>8.5</td>
<td>6.6</td>
<td>4.9</td>
<td>4.2</td>
<td>4.4</td>
</tr>
<tr>
<td>Australia</td>
<td>21.0</td>
<td>20.1</td>
<td>19.8</td>
<td>18.5</td>
<td>19.0</td>
<td>19.3</td>
<td>17.3</td>
<td>17.5</td>
<td>17.6</td>
<td>15.5</td>
<td>14.7</td>
</tr>
<tr>
<td>Canada</td>
<td>13.6</td>
<td>12.8</td>
<td>14.0</td>
<td>11.5</td>
<td>12.0</td>
<td>12.1</td>
<td>14.9</td>
<td>16.6</td>
<td>18.3</td>
<td>21.5</td>
<td>19.6</td>
</tr>
<tr>
<td>United States</td>
<td>15.7</td>
<td>10.8</td>
<td>9.4</td>
<td>8.6</td>
<td>8.4</td>
<td>9.8</td>
<td>10.0</td>
<td>7.9</td>
<td>7.2</td>
<td>7.0</td>
<td>8.0</td>
</tr>
<tr>
<td>Rest of the World</td>
<td>5.3</td>
<td>6.6</td>
<td>6.9</td>
<td>7.2</td>
<td>7.7</td>
<td>8.3</td>
<td>8.4</td>
<td>8.7</td>
<td>11.4</td>
<td>11.1</td>
<td>15.4</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

**II. THE SOCIAL DIMENSION OF MINING EXPANSION**

The main social conflict faced by mining in the past years is without a doubt with the populations neighbouring its operations. Although strictly speaking this is not a new conflict, during the past years it has become a global one, surfacing with similar characteristics in many regions of the world.\(^6\)

The dispute between the mining companies and the rural communities over the control and management of natural resources has been at the core of the conflict. The populations and their organizations view themselves as protective wardens of the environment upon the arrival of an external factor, in this case the mining companies.\(^7\) Peasant and indigenous communities become the main social actor or resistance group facing the advance of mining and other extractive activities, spearheaded by transnational investment.

The negative perception of entire communities affected by the mining industry in countries such as Ecuador, Guatemala and Peru is clearly a consequence of no control over the territorial expansion of mining. There is an absence of mechanisms that will

---

\(^6\) Conflicts between mining companies and local communities have spread with the same intensity in different countries of Latin America, Asia and Africa.

\(^7\) DE ECHAVE, JOSÉ: "Construyendo un proceso de toma de decisiones frente a operaciones mineras". CooperAcción, 2001.
protect their rights the country’s natural resources have been inadequately managed.
The presence of companies, even during the exploration stage, places enormous pressure on the control and management of natural resources directly affecting the lives of these people.

The 2003 World Bank report that reviews its role in the promotion of extractive industries in different parts of the world, confirms this perception. The report indicates that “the mandate of the World Bank Group is to promote poverty reduction and sustainable growth in development. If the Bank is to play a role in the extractive industries, it must be a role that is consistent with its mandate. Consequently, the operations of the World Bank Group in the extractive industries sectors must meet strict criteria to ensure contribution to equitable and sustainable growth.” The report additionally indicates that an analysis sponsored by the World Bank itself, based on three case studies in Peru, Tanzania, and Indonesia, “countries that have gone through World Bank and IMF structural adjustment programs and institutional reforms related to the development of the extractive sectors,” presented the following results:

- In spite of the World Bank’s efforts to improve the social and environmental performance of extractive sectors, the expansion of these sectors within structural reform programs has resulted in unnecessarily high social and environmental costs, and in some cases, the exacerbation of macroeconomic vulnerabilities.

- The involuntary negative economic, social and environmental effects of the structural reform programs has been the result of market failures and of policies or norms that were either left unchanged or were created by structural adjustment and political/institutional reforms.

- The collaboration of the World Bank with the IMF regarding structural adjustment programs associated with extractive industries has not been effective regarding the objectives of social and environmental development.

A review of the legal framework involving mining, environment, and community rights in countries such as Guatemala, Ecuador and Peru confirms this perspective and endorses the position of communities and their organizations. The laws are too permissive and additionally diminish the basic rights of the communities: the right to community participation, the access to information and the protection of their resources.

In this setting, different conflicts related to the extractive industries in these countries surfaced: cases such as San Marcos in Guatemala, Tambogrande in Peru, and the recent conflicts in El Pangui, Zamora, in the El Condor mountains in Ecuador, are part of a long list of conflicts that have characterized mining expansion in those countries.

Communities’ responses have varied. Although at the beginning the communities faced the mining conflict in a disjointed manner, without much support or counsel, in time a few conflict cases became known, attracting the attention of organizations that deal with both environmental and human rights issues. Furthermore, a process aimed at the consolidation of community organizations by areas, regions, and in some cases, at a

---

national level, was set in motion. The networks being built made an enormous effort to support the communities in conflict in both old and new mining areas. The main focus was on the protection of the economic, social and cultural rights of the communities facing mining operations. In time communities started questioning the current legal framework that had generated the adverse setting, affecting their rights, and favouring the mining companies, particularly the transnational groups.

Types of conflict, popular movements against mining and citizen consultations

The conflicts that have surfaced during the previous decade in these countries can be classified in the following different ways: by scale and type of production, by impact (environmental, social, economic, cultural etc.), or by type of population (rural and urban). Another classification could be useful in simplifying and grouping conflicts for analysis would be conflicts occurring in old and in new mining areas.

As previously indicated, mining activity grew in the last decade in old mining countries such as Peru and in other countries where this activity had not been relevant, as in Ecuador and Guatemala. In general, in old mining areas, in spite of strongly criticising the mining companies’ activities, populations demanded drastic changes in the existing conditions and the acknowledgement that their economic, social and cultural rights were being affected by the presence of mining. The objective was to build a relationship of respect that would permit the activities to match the populations’ aspiration, the improvement of their living conditions. A number of cases in Peru stand out in this first type of conflict. The case of the Yauli province in Junin, recently designated one of the ten most contaminated areas on the entire planet, where the shore communities of Lake Junin, between the Junin and Paco regions, were affected by old mining operations, and the case of Espinar in Cusco, neighbouring the Tintaya mine, now owned by the Swiss mining group Xstrata.

A second type of conflict emerged in areas where there was no background of mining activity and where the communities seriously resist mining on their territories. Cases such as Tambogrande in Peru or Sipacapa in the department of San Marcos, Guatemala, and the previously mentioned case in El Pangui, in Zamora, Ecuador, are good examples of communities that say “no” to mining activity. The vision of these communities is that mining is not a part of their approach to development and, on the contrary, its presence will have a negative impact on them.

The rejection of mining activity there implied that different activities and mobilization mechanisms, such as citizen consultations, had to be developed. The first citizen consultation related to mining activity in Latin America was carried out at Tambogrande, Peru, in June 2002. The result was an overwhelming rejection of the mining project that the Canadian company Manhattan Minerals endeavoured to develop on their territory. This example was followed in Esquel, Province of Chubut, in Patagonia, Argentina, where a referendum was carried out in March 2003 that resulted in the rejection of the gold mining project of Meridiam Gold, a Canadian company.

The “NO” obtained 25,381 votes, 93.95% of total votes (including null and blank votes). There was 26.8% of absenteeism, an acceptable average considering that voting was not compulsory – contrary to the case in official elections – and that the absenteeism rate in the district during the 2001 general elections was 15%. RIGHTS AND DEMOCRACY (Canada): Observation mission of the Tambogrande, Peru, citizen consultation.
Finally, in Sipacapa, San Marcos, Guatemala, the local population voted against the gold and silver project of Montana Exploradora, a subsidiary of Glamis Gold on June 18, 2005.

The organization of consultations and debates about these cases, significant for the entire region, put the need for serious discussions for governance issues in the extractive industries on the agenda. Communities and their organizations raised the controversy regarding ongoing legal frameworks and the need for true mechanisms of citizen participation.

Although Guatemala, Ecuador and Peru respectively ratified International Labour Organization Convention No. 169, consultation mechanisms have not been applied by the public authorities in the areas affected by the extractive industries. For example, in Guatemala Convention No. 169 was ratified in 1996 as part of that country’s Peace Accords, guaranteeing the rights of the Maya peoples. However, the exploration and exploitation licenses given in Guatemala’s 22 departments are mostly on indigenous lands. The case of Glamis Gold’s operations in the highlands of the department of San Marcos is a good example. The National Indigenous Council of Guatemala denounced that the company’s activities violated the rights protected by ILO Convention No. 169. In May 2005, the Human Rights Office in Guatemala issued a report that questioned whether the mining license should be revoked due to the Government’s non-compliance with the said convention.10

In Ecuador, although the Political Constitution (1998) expressly recognizes – in Article 6 of ILO Convention No. 16911 – the right of the indigenous people to be consulted regarding exploration and exploitation of natural resources located on their traditionally-held territories, the extractive industry companies indicate that this provision collides with equally important Article 247 of the same Constitution. This article states that all non-renewable resources are State property and their exploitation will be carried out in accordance with national interests and the laws on the matter. As a result, consultation mechanisms have not been applied by the Ecuadorian authorities when granting concessions for mining and energy-related exploration and exploitation. In August 2000, Ecuador issued Decree-Law 2000-1, which amended the Hydrocarbons Law by incorporating an article referring specifically to the implementation of citizen consultations12. This norm, however, was declared unconstitutional by the Constitutional Tribunal of Ecuador in ruling No. 193-2000-TP, published on December 29, 2000.

12 “Art.- … Consultation. Before the execution of plans and programs related to the exploration or exploitation of hydrocarbons, located on lands assigned by the State of Ecuador to indigenous and black or Afro-Ecuadorian communities and that could affect the environment, Petro Ecuador, its affiliates or contractors or associates, the ethnic groups or communities must be consulted. Public assemblies or hearings will be promoted for this purpose, to explain and expose the plans and objectives of the activities, the conditions under which they will be developed, their duration, and the possible direct or indirect environmental impact on the community or its inhabitants. Acts, agreements or accords generated as a consequence of the consultation regarding the exploration and exploitation plans will be duly recorded in writing, in a notarized document. After the consultation, the pertinent ministry will adopt the decisions that are most convenient to State’s interests.
In Peru the indigenous populations’ right to consultation is not expressly recognized by the Peruvian legislation. However, ILO Convention No. 169 was ratified\(^\text{13}\), becoming a Law of the Republic, by Article 55 of the Constitution. The Peruvian sector norms establish general administrative procedures for citizen consultation to ensure community participation. Hence, the Environmental Regulations for Mining Exploration Activities, passed in Supreme Act No. 038-98-EM, establishes in Article 6 the approval procedures of Environmental Evaluation surveys (EA, Spanish initials) as a requirement for the approval of exploration activities. According to this resolution, the General Direction of Mining Environmental Issues (DGAAM, Spanish initials) of the Ministry of Energy and Mines (MEM) must have an outline of the request for EE approval available for the stakeholders during a twenty-five (25) day period. The term begins with the publication of the establishment of the consultation process in the *El Peruano* Official Newspaper and in the newspaper of the region where the exploration will be carried out. Citizens may present their comments on the EA within this term.

In Peru, as well as in most of the countries of the region, communities have severe limitations for free, prior and informed participation. Administrative procedures are carried out in cities far from where they live\(^\text{14}\); the term is too short, and they do not have the background or technical counselling required to process the information contained in the complex technical dossier and their broadcasting power within the affected region is limited.

In essence, a review of the provisions in place in Ecuador, Guatemala and Peru confirms that citizen participation is not guaranteed and existing mechanisms are insufficient for obtaining informed consent from the communities neighbouring on the extractive companies’ operations.

**The companies’ perspective: the social license proposal**

Mining companies have strictly defended the legal framework and propose that the rules remain unchanged, continuing to ensure a climate favourable to investment and development of new projects. The mining groups’ alternative is aimed mainly at creating voluntary mechanisms of self-regulation, such as codes of conduct, that define rules of conduct in the development of their activities in a favourable environment.

These voluntary or self-regulatory mechanisms of the mining industries acknowledge the existence of negative external effects as a result of their activities, which can be addressed without the need for creating new public regulation mechanisms. This definitively calls for an in-depth debate on how to deal with different conflicts surfacing in areas affected by mining activity. The debate is between self-regulation and legislated mechanisms.

Most mining companies in Latin America have codes of conduct that deal with matters such as transparency, equity, respect for ethnical diversity, dialogue, occupational health and safety, the harmony between company and productive interests and the sustainable development of society. A comprehensive review of voluntary codes of conduct carried out by the companies or industrial groups could give us an idea of the effectiveness of

\(^\text{13}\) Legislative Decree No. 26253 published in the *El Peruano* Official Newspaper on December 2, 1993.

\(^\text{14}\) The Capital or else at the more important cities of the region.
these mechanisms. A report published by Oxfam Australia\(^{15}\) provides insight on the matter, as it presents a balance of the voluntary code issue. Among the main positive aspects, the report underlines that voluntary codes:

- Raise the acceptable threshold for industry performance and standards.
- Provide some leverage upon which stakeholders can hold companies accountable if a company fails to implement its own code.
- Can bring about long-term behavioural change in employees of the company by raising their awareness of factors outside regular business activity.
- Can extend responsibility to account for the activities of suppliers.

Among the deficiencies identified, the report states that there is frequently a substantial difference between what is stated in the code and what is actually done in the affected areas. They do not include sanction mechanisms or independent monitoring and evaluation systems as it is the representatives of the companies themselves that act as legislators, judges and juries of their own activities, with no participation by third parties\(^{16}\).

Furthermore, the same Oxfam Australia report provides an OECD\(^{17}\) analysis of 246 voluntary codes, which points out that these codes do not incorporate basic universal established by international human rights systems. It also indicates that these codes do not provide the stakeholders with access to independent complaints mechanisms.

Regarding the debate between self-regulation and legislated mechanisms, the Oxfam report clearly indicates that it does not consider the voluntary mechanisms to be an alternative to legislated regulation. The truth is that despite the concepts voiced, the declarations and signing of pacts, mining companies continue to find it difficult to implement policies and systems that are coherent with responsibility and social operating license. The list of mining conflicts has continued to grow in several countries in spite of the codes of conduct developed by companies and corporations.

It is possible that one of the main limitations is that the sense of corporate social responsibility and social operating license are one-sided. They come from the companies themselves and aim to reach the communities after different stages. The sense of social responsibility is designed to make the development of mining viable, and in practice is not conducive to intense participation or to inverting the process, i.e. the dynamic could also come from the communities thereby shifting the balance of power.

The current challenge, therefore, is to continue to move forward in the development of new tools that allow for the transformation of conflicts. In this manner, in areas where mining development is feasible, activities may be carried out in a climate of respect between the people and extractive companies.

\(^{16}\) For example, the Mining, Oil and Energy National Society of Peru Code, a Consulting Committee formed by past presidents of this organization is in charge of compliance.
\(^{17}\) Organization for Economic Co-operation and Development, which includes the most important industrialized nations.
III. THE GOVERNANCE CHALLENGE AND BUILDING A DIFFERENT SETTING

The World Bank Extractive Industries Review asked if the role of the extractive industries could be modified. The answer provided by those responsible for the process was that there is no other choice, it must be changed.\textsuperscript{18} To do this they propose that the extractive industries incorporate social and environmental costs within the boundaries of the ecosystems and revenues should be distributed in an equitable manner in the regions, and should serve to contribute equally to the development of human and environmental capital. It is evident in the Latin American cases that these criteria have not been applied, which largely explains the ongoing discontent and the multiplication of conflicts associated with the extractive industry in the past decade.

The challenge is to promote a process to redefine the global vision on mining and the role it can have in regional development. What are the possible fundamental ideas of this initiative? What can be asked of the States, the mining companies and the communities themselves?

Everything indicates that the working agenda should be defined with the objective of building a legal and institutional framework that, identifying the existing voids, promotes a new social commitment in areas affected by extractive industries. This implies designing complementary regulatory mechanisms, developing new and improved capacities within the different mining stakeholder groups, and generating the resources necessary to face the challenge of eradicating poverty and development in mining regions.

Governance is a determining factor in the new extractive industries sector agenda. The manner in which mining and other activities have evolved recently is evidence of serious governance problems and the lack of adequate institutional systems that can promote mining activity based on national development objectives.

Weak governance is visibly present in countries such as Ecuador, Guatemala and Peru at both government and private sector levels. The institutions directly related to mining, environmental management and the promotion of development in these countries do not have the capacity nor the tools to adequately manage conflicts and turn them into opportunity.

The challenge, therefore, is to build institutionalized systems in accordance with current demands, with real capacity to manage the social and environmental dimension of sustainable development in areas affected by mining activity. This implies, for example, the review of the roles played by different State dependencies in relation to mining issues.

Companies often indicate that they are being required to do things which should be done by the State. At the same time there is no indication that the States do not comply with these obligations due to their own weakness or their level of competency. The strengthening of public administration in relation to the extractive industries is a determining factor in building a setting of equilibrium, independence and collaboration among different stakeholder groups. This is the only manner in which the Peruvian State dependencies in charge of environmental and social management in the areas

\textsuperscript{18} World Bank Extractive Industries Review. August 21, 2003 version.
affected by extractive industries, such as mining, can regain the trust of the people and overcome the perception that their actions are incompetent or not neutral.

The following serve as examples:

- The country must recover the trans-sector focus of its environmental policy. The World Bank Extractive Industries Review indicates that the structural reform programs have weakened environmental norms. As we have been able to demonstrate, the cases of Ecuador, Guatemala and Peru are good examples of this.

  A clear objective is to have autonomous and efficient environmental authorities that can monitor and ensure the implementation of environmental protection mechanisms to lend credibility to public administration. This implies that environmental management of mining activities does not depend on the Ministry of Energy and Mines, the entity which promotes mining investments, as it currently does.

  New environmental management of mining activities additionally implies the strengthening of the capacity to prevent impact from the initial phases to the projects’ end, aimed at impeding increased environmental liabilities, promoting integrated evaluations, developing severe methodology guidelines, incorporating new mechanisms for territorial organization and economic and environmental zoning, and improving the quality of environmental surveys in accordance with superior international standards. Furthermore, financial resources for dealing with potential environmental costs must be set aside. As a precaution, an efficient environmental policy should forbid high-risk technologies.

- Effective grievance mechanism must be created to deal with complaints made by communities, local authorities and other stakeholders in the areas affected by extractive industries. The most evident void during these years has been the absence of effective mechanisms for dealing with and transforming the conflicts related to these industries, which has often resulted in the untimely, unstrategic and inefficient intervention of relevant authorities. Furthermore, the competence of different State authorities has not been clearly defined. In the countries of study, the Ministries of Energy and Mines, environmental authorities and the Public Defenders Offices have not unified their strategies and in many cases have ended in competition with each other, proving themselves inefficient in handling social conflicts.

  The World Bank report on extractive industries mentions the need to create a position of Grievance Officer that would provide timely attention to the conflicts and turn them towards dialogue and consensus. There are interesting examples of bodies dealing with mining issues, such as the Mining Ombudsman of Oxfam Australia’s Community Aid Abroad, which takes on cases involving Australian companies throughout the world and has prominently intervened in different countries.

  Although conflicts in the areas affected by extractive industries involve different populations, the World Bank report emphasizes the situation of the indigenous
people. These populations today perceive the advance of activities such as mining as a threat they face without any mechanisms of control or protection of their rights. After a few years of mining expansion, it is evident that many projects have been developed without adequate evaluation of the economical, social, environmental and cultural consequences to the land occupied by indigenous communities. The multiculturalism existing in Ecuador, Guatemala and Peru presents additional challenges for building an adequate relationship among the different groups affected by extractive industries that avoid any type of marginalization and strengthen reconciliation and tolerance strategies, promoting the informed participation of these communities.

A new institution capable of generating reliable mechanisms to deal with complaints of different communities and of the local authorities themselves could be very useful for managing conflicts and improving relations among communities, companies and the State.

- Mechanisms must be created to reduce poverty levels in mining regions and match the presence of these activities with the expectations in place for improved living conditions in these communities. This means improving current distribution mechanisms of royalties and privileges, consolidating good practices upon transferral of mining project contracts and ascertaining agreements between communities and mining companies through a process of dialogue.

- Financial transparency also promotes better practices in the administration of extractive industries revenues. For example, the Extractive Industries Transparency Initiative is currently in place to promote revenue transparency of the extractive sectors in countries where these activities are pivotal. EITI was launched by Tony Blair, Prime Minister of the UK, at the Sustainable Development World Summit at Johannesburg in September 2002 with the support of the World Bank. The initiative proposes that governments, extractive companies, international organizations, non-government organizations and others work together to develop transparency in government revenue reporting and subsequent investment in development. Another similar initiative is Publish What You Pay developed by a group of non-government organizations at an international level with the support of the Soros Foundation.

- Mining sector labour conditions must be improved. The 2002 International Labour Organization (ILO) report on labour conditions and occupational health, safety and security in the mining sector of Peru identifies critical weaknesses in the system. Aspects such as labour contracted by service providers, the lack of safety in certain jobs, the shortage of health benefits coverage, work accumulation systems and others were identified. The proposal was aimed at introducing the notion of ‘decent work’ to mining labour, which is defined as a productive job done in conditions of freedom, equity, dignity, safety and

---

19 See the recommendations of the World Bank Extractive Industries Review Report regarding indigenous peoples, p. 188.
20 EITI.
21 Report No. 145.
security where labour rights are safeguarded and jobs are adequately paid for and socially protected. 22

The priority in labour issues must be to promote substantial improvement of job conditions and environment and occupational health and safety in general for all workers. This effort should be aimed at reaching service providers’ employees, currently the main mining sector work force, who work under precarious conditions. The considerable increase of workers hired through service providers’ mechanisms reflects the manner in which labour relations in mining have become lax, directly affecting schedules, normal work days, living conditions and salaries, among other aspects.

The expansion of mining activity during the last decade has resulted in the unprecedented rejection in many countries, characterized by the organization of movements within the communities, particularly rural ones. Since the end of the 1990s, the contestation movement regarding mining and other extractive industry activities has become one of the new social indicators in countries such as Guatemala, Ecuador and Peru.

Communities in these countries have questioned central aspects of the established economic models, which have traditionally held extractive industries as privileged productive activities. The consequences have ranged from absolute opposition to new projects to the search to recover rights lost in old mining areas.

One of the greatest merits of the movements created by the affected people and the most representative conflicts is demonstrating that development, with its basic economic growth component, must have an ethical dimension, one of strict respect of human rights and democratic principles and, therefore, the promotion of citizen participation.

The situations in Ecuador, Guatemala and Peru increase the challenge of building adequate relationships among different groups of stakeholders in areas where extractive industry activities, such as mining for metals, gas and oil, are being carried out. The objective is to avoid any type of marginalization and to strengthen reconciliation strategies, tolerance and the promotion of informed participation in these communities. This continues to be the main challenge on the agenda of the governments, communities and organizations that share the new social contract objective of these areas affected by extractive industries.

**BIBLIOGRAPHY**


22 ILO Report No. 145.

DE ECHAVE, José (2001): *Construyendo un proceso de toma de decisiones frente a operaciones mineras*. Mining and Communities, Lima, CooperAcción.


MINERÍA, MINERALES Y DESARROLLO SUSTENTABLE EN AMÉRICA DEL SUR (2002): Co-edited by Environmental Research and Planning Centre (CIPMA, in Spanish) and the International Development Research Centre (IDRC) – Review of Mining Policies Initiative.


ORTIZ, Pablo (1999): “*Apuntes teóricos conceptuales para el diseño de una propuesta metodológica de manejo de conflictos socioambientales a través de la forestería comunitaria,*” Quito, Ediciones Abya- Yalea; FAO-FTPP; COMUNIDEC.


ABOUT THE AUTHOR
Jose De Echave : PhD in Economics from la Nouvelle Sorbonne, Université de Paris. He is the Executive Director of CooperAccion, an independant organization based in Lima, Peru, dedicated to research and the provision of advice in mining and local development. He was a consultant to the International Labor Organization (ILO), for the drafting of the study “Labor Conditions and Environment in the Mining Sector in Peru”.

To leave comments:
http://www.focal.ca/about/comments/index_e.asp