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Community mining consultations in Latin America (2002–2012): The contested emergence of a hybrid institution for participation

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ABSTRACT

From 2002 to 2012, 68 community consultations/referenda on large-scale mining activities have been conducted in Latin America challenging centralized decision-making procedures. These consultations are fostered by communities and social movements and usually supported by local governments. Around 700,000 people have participated, expressing a massive rejection of mining activities in Peru, Guatemala, Argentina, Colombia and Ecuador. Community consultations have contributed to ease local tensions temporarily, slowing down or stopping mining projects in some cases. This paper analyses the process of emergence and spread of such consultations exploring how they challenge the governance of mining activities.

We claim that community consultations are being institutionalized in the context of mining conflicts in Latin America. Consultations are not isolated experiences but constitute a strategy diffused and transformed in the midst of multi-scalar social learning processes where social movements exchange strategies and discourses and a hybridising process occurs in relation to political and cultural local features. We sustain that community consultations are a hybrid institution where non-state and state actors and formal and informal institutions are mobilized. Consultations are a strategic tool of social movements and a contested emergent institution – as different state bodies support or reject their validity – that reclaim the right of affected populations and indigenous peoples to participate, in empowering forms, in high-stake decisions that affect their territories, livelihoods and future.

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1. Introduction

From 2002 to 2012, 68 consultations/referenda have been conducted in 5 Latin American (LA) countries, with a large opposition to mining projects. This process is occurring in a context of growing pressures to extract mineral ores in LA and an increasing number of related socio-environmental conflicts (Muradian et al., 2012). These community consultations are not commissioned by national governments or mining companies as part of official procedures but instead are promoted by social movements and usually supported by local governments.

The emergence and spread of consultations in LA remains poorly studied as a whole. Studies addressing mining consulta-

tions/referenda have focused on the first four cases (Tambogrande, Esquel, Sipakapa and Majaz/Río Blanco), along with the wave of consultations in Guatemala. Nevertheless, the cases that followed and the connections among consultations have received poor scholarly attention.

This paper is the result of a macro-analysis of the 68 mining consultations identified in LA between 2002 and 2012. It examines a salient issue in current LA politics, by comparing and exploring the connections between consultation experiences. We analyze the contested institutionalization of consultations in the context of mining conflicts in LA. Moreover, we point to the association of local governments and civil society actors and the hybridization of formal and informal mechanisms in these processes. The authors of this paper were among the researchers that analyzed the initial consultations and have since then seen their continuous multiplication. This research is born from the curiosity of understanding how and why these consultations have emerged and spread, and how community consultations are challenging the governance of mining activities.

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2. Consultations and the contested governance of mining in Latin America

Research on cases where community consultations were conducted focused on the contexts, actors, grievances, narratives, scalar dynamics and outcomes of the conflicts (Rasch, 2012; Yagenova and García, 2009; Haarstad and Floysand, 2007; Urkidi and Walter, 2011; Urkidi, 2011; Walter and Martínez-Alier, 2010; Dougherty and Olsen, 2014; Muradian et al., 2003; Van de Sandt, 2009; Bebbington, 2012a; Holden and Jacobson, 2008), rather than on the consulting process itself, that is, in general, blurred.

Studies conducted, mainly, in Guatemala and Peru, have addressed consultation experiences analyzing the legal grounds and implications of consultations regarding the right to free, prior and informed consent (Loarca, 2008; Fulmer, 2011; Fulmer et al., 2008; Ward, 2011; McGee, 2009; Laplante and Nolin, 2014); the *judicialization* of protests (Sieder, 2011); and the relevance of consultations for indigenous mobilizations and identity (Fulmer, 2011; Rasch, 2012). There is also a relevant literature that systematizes consultation experiences in Guatemala (e.g. Mérida and Krenmayr, 2010; Trentavizi and Cahuec, 2012).

We highlight two key contributions of this paper to the literature. Firstly, research on community mining consultations has, with few exceptions (e.g. Fulmer, 2011), focused on single-case or single-country analysis. While such approaches have provided an in-depth understanding of the cases, there has been no study tackling the phenomenon from a regional perspective. This paper adopts a multi-case regional approach that aims to explore the connections and compare the features of consultations. In this vein, we aim to tackle the spatial and scalar dynamics at stake, pointing to the complexity of the institutionalization process of consultations in LA.

Secondly, previous research refers to community consultations as “informal” events organized by civil society actors or examine consultations from a legalistic approach, analyzing how consultations followed legal requirements. These approaches have overlooked the role of local governments in the organization and formal support of these mechanisms, as well as the ongoing process of institutionalization addressed in this paper. These features trigger relevant questions regarding the association of local governments and civil society actors, as well as the combination of formal and informal institutional elements in consultations.

2.1. The regulatory context in the governance of extractive activities

The key features of the institutions that regulate mining activities are shared by most LA countries, as they were developed under similar guidelines (Bridge, 2004; Chaparro, 2002). The approval of mining projects is usually centralized in the national government, and is based on an environmental impact assessment (EIA) report. Participation arenas are set in relation to this technical document. Civil society actors can usually present non-binding allegations and, sometimes, can express their views in a public hearing where the technical document is presented and discussed.

In 2007, the Ombudsman of Peru issued a special report identifying key reasons behind the increased number of extractive environmental conflicts in the country. For instance, the poor performance of the Peruvian state regarding participation mechanisms (e.g. shortening the time frame of civil society actors to present allegations to the EIAs or the lack of responses to the allegations presented). A situation that “*feeds the perception of citizens that the possibility to participate in the environmental assessment of projects (...) is irrelevant (...) a mere formalism within an administrative procedure*” (Defensoría del Pueblo de Perú, 2007: 31). A report published by the Latin American Observatory of

Mining Conflicts on consultation rights claimed that participation in mining decisions is mainly “informative” and insufficient, when not secretive (Jahncke Benavente and Meza, 2010).

Large-scale projects affecting indigenous communities are under specific regulations. All countries studied in this paper have subscribed to the International Labour Organization Convention 169 (ILO 169), which requires governments to ensure the prior and informed consent of communities before decisions that could affect them are made; a process that should follow customary procedures. Social movements claim that this right is usually ignored or misapplied (Jahncke Benavente and Meza, 2010). However, even if put in practice, the way ILO 169 and other international documents (e.g. UN Declaration on the Rights of Indigenous People) frame “consent” is ambiguous and does not necessarily imply a binding power to community views (McGee, 2009; Jahncke Benavente and Meza, 2010; Rodríguez Garavito et al., 2010). States usually refer to “*consulta previa*” as a process of consultation that does not acknowledge the need to gain consent of affected populations (Rodríguez Garavito et al., 2010). How consent is defined and to which extent it is included in national legislations is currently under debate in many LA countries.

Decentralization policies adopted by LA countries since the end of 1980s have also opened new spaces for local participation and municipal empowerment and are shaping the contested terrain of mining governance. National and local rights (e.g. information access, local participation) and mechanisms of semi-direct democracy (e.g. citizen referendum, citizens’ initiative law) were introduced in most LA countries. For instance, municipalities could, in countries like Guatemala, Peru or Argentina, call for a local consultation on specific administrative decisions affecting their inhabitants (e.g. Guatemala *Municipal Code, 2002: 20*). Despite the possible asymmetric negotiations between local governments and companies fostered by decentralisation policies (Rull, 2007), these regulations have also created new political opportunities as civil society demands the local level as a legitimate arena for decision-making.

2.2. Environmental governance and social movements: hybrid institutions and diffusion

There is an ongoing shift in views that frame resource regulation from those that are led by state-based institutions of resource management to a wider environmental governance perspective (Bakker and Bridge, 2008). The governance approach addresses the myriad of actors and institutions that guide environmental decisions across different scales (Bulkeley, 2005) and challenges the conventionally recognized social roles of markets, states and, more recently, communities, as new dynamics and alliances are formed.

We refer to hybrid governance as a process of institutional *bricolage* where different (non-state and state) actors shape institutions that combine modern and traditional components and formal and informal practices in a multi-scalar dynamic. Cleaver (2001, 2002) developed the concept of “*institutional bricolage*” as a process by which people consciously and unconsciously draw on existing social and cultural arrangements (rules, traditions, norms, roles and relationships) to patch together institutions that make sense in each particular place in response to changing situations (Cleaver et al., 2013). This framework offers a key approach to examine how civil society actors and local governments, formal and informal institutions, and multi-scalar regulations and customs are shaping mining consultations as an emerging governance mechanism.

Studies on the role of social movements in institutional change do also offer relevant insights in this sense. In their review of the synergies between social movement theory and

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