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Environmental Licensing and Conflict in Peru's Mining Sector: A Path-Dependent Analysis

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Summary. — What is the relationship between formal participatory structures and the onset and evolution of popular mobilization? Under what conditions does mobilization bring about policy and even institutional change? This article examines mining conflict—and in particular the project approval stage, when mobilization is most likely to interrupt extraction—in Peru. Utilizing a path-dependent framework, the paper finds that very limited spaces for community participation in the environmental impact assessment process in fact have prompted and transformed popular mobilization in extractive zones, leading to outside scrutiny and the stalling of major projects. © 2014 Elsevier Ltd. All rights reserved.

Key words — environmental impact assessment, Latin America, path dependence, Peru, prior consultation, resource conflict

1. INTRODUCTION

What is the relationship between formal participatory institutions and the onset and evolution of popular mobilization? Under what conditions does mobilization bring about policy and even institutional change? This article examines these questions with regard to Latin America's extractive industries, which in recent decades have expanded amid liberal economic reforms and have confronted challenges from protests. In particular, it analyzes conflict prior to project approval—when protest is most likely to interrupt extraction—in Peru.

In the tradition of historical institutionalism, the article develops a path-dependent framework to explain how protest that initially calls for alterations to a mining project can shift to demand project cancelation. The study focuses on popular participation in the development of the environmental impact assessment (in Peru, *estudio de impacto ambiental*, or EIA), a document that identifies possible environmental and social impacts of alternative project designs, and plans to mitigate those impacts. Peruvian regulations establish EIA reviews as technical and centralized and limit involvement by groups in project zones largely to attendance at informational gatherings. In fact, these participatory structures have served as a critical juncture, paving the way for groups in extractive zones to affect the fate of mining projects.

To explain the evolution of the EIA as a highly political institution, the article looks to research on institutional change. It suggests that regulations governing participation in the EIA have created incentives for actors to alter the institution of the EIA in predictable ways. Not only have local communities used the EIA regulatory structure to change and even halt projects, but subnational governments—especially at the regional level—have responded to such community pressures, becoming increasingly vital players in the EIA process.

In contrast to studies of resource conflict in Latin America that are grounded in social movement theory, the article (1) acknowledges that members of communities in resource-rich zones can identify threats to their well-being and recognize when their voices are being ignored, while also (2) placing front and center the fact that, though mining projects often threaten livelihoods, cultural practices, and the environment, at the same time extraction can bring to local communities resources in the forms of royalty distributions and direct gifts from companies.

The following analysis builds on research conducted during two weeks in March 2012 in the capital city of Lima, Peru, where the author interviewed journalists, academics, government officials, mining company officials and consultants, and representatives of nongovernmental organizations that participate in mining conflict negotiations. Subjects were identified through referral chains and approached because of their extensive knowledge of mining conflict in Peru. These experts described popular participation in the development of the EIA and offered valuable information about the three cases examined. As subjects were not selected randomly, the article makes no claim that they represent larger populations. Following field research, the author delved more deeply into the cases using existing documents, primarily online newspaper articles.

2. ENVIRONMENTAL LICENSING AND MINING CONFLICT IN PERU

Environmental licensing is a useful lens through which to study resource conflict in Latin America. As Kathryn Hochstetler writes with regard to relations in Brazil between coalitions that enable energy projects and those that block them, “The process of environmental licensing is the legally mandated time where [the coalitions’] struggle is distilled into a single outcome—some part of the energy matrix is built in a particular way, or is not built—and so has come to be the fulcrum of Brazilian development debates” (Hochstetler, 2011, p. 353).

In recent decades, local communities have been granted more voice during project approval processes, encouraging exceptionally tense clashes over environmental licensing. The

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1989 Convention 169 of the International Labor Organization (ILO) and the 2007 United Nations Declaration on the Rights of Indigenous Peoples assert the rights of local communities to “prior consultation” before new projects are developed in indigenous territories (Rodríguez-Garavito, 2011, pp. 283, 288; Urkidi & Walter, 2011, p. 685). These international norms have been accepted at least formally in Latin America, home to almost one-half of the states that had ratified the ILO convention as of 2011 (Rodríguez-Garavito, 2011, p. 280). Governments in the region also have adopted constitutional clauses that require prior consultation and have introduced participation into environmental licensing through more specific laws and regulations pertaining to the EIA (Urkidi & Walter, 2011, p. 685) and, in some cases, to the separate, overlapping realm of prior consultation (*Americas Quarterly*, 2014). In the midst of these international and national developments, large-scale mining and oil companies have come to accept the idea that they need a “social license”—that is, some kind of acceptance from local populations—in order to operate in a given area (Bebbington & Bebbington, 2010, p. 264; Warnaars, 2012, p. 225).¹

Peru is an important case of resource conflict, as it experiences alarming levels of protest surrounding the country’s crucial mining sector. With very limited space for participation in the project approval process, Peru also offers a hard test of the effects of participatory institutions on project trajectories.

(a) *A conflict-ridden mining sector*

Peru’s already large mining sector grew further after President Alberto Fujimori’s government (1990–2000) privatized mining and petroleum, largely through the piecemeal sale of shares (Bury, 2005). The central government has continued welcoming foreign private investment since Fujimori left office. For example, during the first two years of his 2006–11 term, President Alan García passed 99 decrees to break up community land and encourage private investment in natural resource exploitation (Bebbington, 2009, p. 12). President Ollanta Humala (2011–present) has taken the company side of many mining conflicts, including in the Conga case analyzed below. With government backing, investment in mining has skyrocketed. During 1990–97, mineral exploration in Peru increased by two thousand percent (Bebbington, 2010). During 2001–07 the number of mining claims made annually rose from under 1,000 to nearly 8,000, and the total area of those claims increased from under 500 hectares to 3,500 hectares (Bebbington, Bebbington, & Bury, 2010, p. 309).

With mining expansion has come popular mobilization, in a context in which mining concessions affect over one-half of Peru’s peasant communities (Bebbington, 2009, p. 15). According to the national ombudsman’s office’s (Defensoría del Pueblo) record of “social conflict” in the country, conflicts between companies that exploit natural resources and communities made up 23 of all 110 conflicts reported in 2006, and 26 of the 57 new conflicts in 2007 (Defensoría del Pueblo, 2007, p. 243, 2008, p. 232). Of all 162 active conflicts registered in March 2012, 117 were over natural resource issues (Defensoría del Pueblo, 2012, p. 11).² Mining protests frequently involve *frentes* (fronts), which consist of civil society organizations and sometimes also subnational government actors.³

A main focus of protest is water, an abundance of which is required to extract hard-rock minerals. Yet material benefits that mining brings to local communities often discourage anti-mining mobilization. In fact, conflict has emerged *over* material and other economic benefits that can come with extraction. Peru’s “mining canon”—which allocates 50% of

total mining royalties to regions, provinces, and districts where mining operations are located—has led to arguments about the distribution of royalties across subnational political units (Arellano Yanguas, 2011). Víctor Caballero, long-time expert on social conflict in Peru and head of the Office of Social Conflicts under the Presidency of the Council of Ministers, said that the most intense conflicts between communities and companies have been driven by community complaints about companies’ failing to provide promised benefits, including employment and development projects, and about insufficient community participation in distributing the benefits (author interview, Lima, March 30, 2012). Such direct company investment in communities can be significant. The largest development funds (*fondos de fideicomiso*) created by mining companies in Peru for local communities are the \$201 million fund from the British company Anglo American for its Michiquillay project in Cajamarca; the \$59 million fund from the Swiss firm Xstrata for its Las Bambas project in Apurímac; and the \$11 million fund from the British Río Tinto Group for its La Granja project in Cajamarca (Arellano Yanguas, 2011, p. 41).

For subnational politicians in extractive zones, pressures both to support and oppose mining projects are perhaps especially intense. Kent Eaton has noted in his research on “subnational economic nationalism” in Peru that subnational governments are constrained both by popular complaints about the practices of mining companies and by the need to bring in resources from those same companies, to implement development projects and fund political campaigns (Eaton, 2010, pp. 1215–19).

The central government’s approach to mining conflict has been largely reactive. The common trajectory of conflict is that if direct community-company negotiations do not resolve a conflict, the energy and mining ministry intervenes. If the ministry also fails, the Office of Social Conflicts establishes a “*mesa de diálogo*” (roundtable) as a last-ditch effort to seek a resolution to the conflict through discussions with communities and the mining company.

(b) *Minimal regulatory space for community influence on the EIA*

At the time research for this article was conducted, the only institutionalized space for public participation in environmental licensing—and for that matter, in the mining project approval process—was very limited involvement by communities in the “area of direct influence,” a space defined by the EIA itself, before the central government reviewed the EIA.

Shortly after EIAs became mandatory in Peru’s mining sector in the early 1990s (De Echave *et al.*, 2009, p. 77), citizen participation was introduced into the process. Regulations in the mid-1990s required that, once completed, the EIA be presented not only to the energy and mining ministry for evaluation, but also to the public at an *audiencia pública* (public hearing).⁴ Initially the *audiencia* was to be held at the energy and mining ministry’s central office in Lima, but it was later moved to the project zone to include affected communities.⁵ In 2002, when decentralization in Peru was giving new voice to actors outside of the capital, an energy and mining ministry resolution mandated that before, during, and after the drafting of the EIA, informational *talleres* (workshops) be held in the area of extraction, prior to the *audiencia*. In addition, within the 30-day period following the *audiencia*, the public could submit written comments on the project to the energy and mining ministry’s Dirección General de Asuntos Ambientales Mineros (DGAAM), responsible for EIA approvals (Ministerial Resolution No. 596-2002-EM/DM; Li, 2009, p. 226).⁶

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