

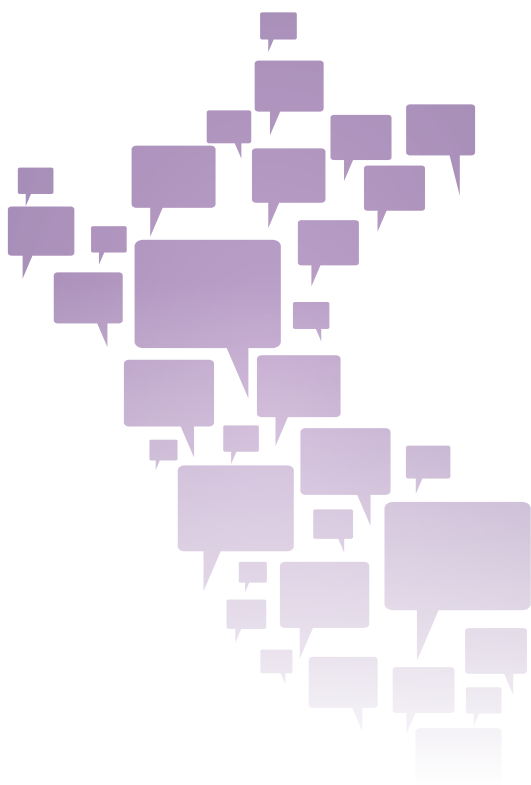


*Empowered lives.
Resilient nations.*



DEMOCRATIC
INSTITUTIONALITY
for
DIALOGUE
AND
**CONFLICT
PREVENTION**

The case of Peru



DEMOCRATIC
INSTITUTIONALITY
for
DIALOGUE
AND
**CONFLICT
PREVENTION**

The case of Peru

DEMOCRATIC INSTITUTIONALITY FOR DIALOGUE AND CONFLICT PREVENTION. THE CASE OF PERÚ

Publication for Latin America and the Caribbean

UNDP Regional Centre for Latin America and the Caribbean

Regional Bureau for Latin America and the Caribbean

Jessica Faieta – UN Assistant Secretary-General / UNDP Regional Director for Latin America and the Caribbean.

Susan Mc Dade – UNDP Deputy Regional Director Regional Bureau for Latin America and the Caribbean.

Rebeca Arias – UNDP Director Regional Centre for Latin America and the Caribbean.

Pablo Ruíz – Regional Cluster Leader, Governance and Peacebuilding.

Author: Gastón Aín Bilbao – Regional advisor in conflict prevention and dialogue.

Photographs

National Office of Dialogue and Sustainability of the President of the Council of Ministers.

Design

Romy Kanashiro

Printing

GMC Digital SAC

Av. Grau N° 598 Dpto. 401

Miraflores - Lima, Peru

Editing

Samara Pellecer, Research Assistant in Conflict Prevention and Dialogue

Governance and Peacebuilding Cluster

UNDP Regional Centre for Latin America and the Caribbean

Susan Bernuy, UNV Communications Specialist

Project “Partnerships for Dialogue: Preventing social conflict over the use of natural resources”

United Nations Development Programme – UNDP in Peru

Copyright © UNDP [2014]

All rights reserved

Prepared in Peru

This document has been prepared by the Governance and Peacebuilding Area.

“The ideas and opinions expressed in this document are the exclusive responsibility of its author and do not necessarily reflect the opinions or views of the United Nations Development Program or the Member States of the United Nations.”

UNDP PERU TEAM

María Luisa Silva

Resident Coordinator UN a.i. and Resident Representative UNDP a.i. in Peru.

Didier Trebucq

Deputy Resident Representative of the UNDP in Peru.

Leonor Suárez

UNDP Democratic Governance Official in Peru.

**THE PROJECT TEAM “PARTNERSHIPS FOR DIALOGUE:
PREVENTING SOCIAL CONFLICT OVER THE USE OF NATURAL RESOURCES”**

Luis Francisco Thais Santa Cruz

Country Project Manager.

Alison Hospina Papuico

Intercultural and Gender Topics Analyst.

Carmen Fernández de Castro

Territorial Development Specialist.

Doris Huando Villacréz

Educational Methodologies Specialist.

Felipe Bedoya Sánchez

Local Governance Specialist.

Miriam Venegas Contreras

Monitoring and Evaluation Specialist.

Susan Bernuy Arenas

UNV Communications Specialist.

Percy Castillo Palomino

Project Associate.

Jenny Figueroa Castro

Administrative Assistant.

Maira Chagua Taipe

Social Research Intern.

CONTENTS

Prologue	9
Acknowledgement	11
I. Introduction	13
II. The Physiognomy of Conflict in Latin America	15
III. Socio-environmental Conflict in Natural Resource Use	18
IV. Special Features of the Peruvian Case	20
V. Conflictiveness and Institutionalization of Dialogue and Conflict Prevention	27
a) The Recent Past	27
b) The Present	34
Notes for Practitioners	51
Bibliography	57
Reports and Regulations	59

FOREWORD

The “Partnerships for Dialogue: Preventing social conflict over the use of natural resources” project, implemented jointly by the United Nations Development Program in Peru, the Ministry of Foreign Affairs, Trade and Development Canada, and the Presidency of the Council of Ministers, begun in 2012 and is being implemented in a changing context where the treatment of conflicts, especially those connected with the use of natural resources, has been, and is still, crucial. This key initiative was aimed at strengthening democratic governance and sustainable development by collaborating with state agencies responsible for preventing and managing social conflicts in the use of natural resources, implementing public conflict management and prevention policies, and promoting dialogue for peaceful and constructive dispute resolution.

Throughout its implementation, the project revealed a variety and wealth of instruments used for monitoring and preventing conflicts, intervening when necessary, designing, implementing, observing and facilitating dialogue, informing communities and the general public, building shared visions, ensuring joint monitoring or evaluating of controversial issues, building diagnostics in a participative manner, and definitively channeling and responding to the social stakeholders’ demands manifested during conflicts.

Although the responses may not always be entirely sustainable and may not fully meet the expectations of the stakeholders in the disputes or conflicts, they help prevent episodes of open violence and create opportunities for dialogue, consensus-building and a joint search for solutions.

Our intention here is to document and disseminate the process for institutionalization of dialogue and conflict prevention that has been at work in the Peruvian state, which un-



Photo: National Office of Dialogue and Sustainability — Peru

THE CASE OF PERU

doubtedly constitutes a roadmap and example for countries seeking to reinforce such institutionalization.

This has also been an opportunity for the UNDP to put to the test the abilities, knowledge and creativity of its staff in the ever delicate task of helping to prevent conflicts and contribute to democratic governance.

One of the UNDP's primary regional goals is to support, systematize and assess dialogue experiences at different levels, identifying and disseminating lessons learned that might fortify the study and practice of democratic dialogue. As such, we feel the presentation and dissemination of the Peruvian experience has enormous value.

We hope this material makes a quality contribution to practitioners of dialogue, officers of central, regional and municipal governments, members of civil society organizations, business people, academicians, and all those committed to the peaceful resolution of disputes and conflicts.

Jessica Faieta

Regional Director

UNDP Regional Bureau for Latin America and the Caribbean

ACKNOWLEDGEMENT



Photo: National Office of Dialogue and Sustainability – Perú

Our special thanks go to the following people for their collaboration and valuable contributions: Vladimiro Huaroc, Former High Commissioner for Dialogue and Sustainability under the Presidency of the Council of Ministers; Rolando Luque, Deputy Ombudsman for Social Conflict Prevention and Governance; Alicia Abanto, Former Assistant Deputy Ombudswoman for the Environment, Public Services and Indigenous Peoples; Carlos Chamochumbi, Former Senior Management Coordinator, Water Conflict Management and Prevention Team; Walter Ollarce and Eduardo Perochena on that same team; Mónica Rojas, General Direction for Environmental Management Policies, Standards and Instruments; Jorge Luis Maguiña Villón, Senior Management Advisor, Ministry of Agriculture and Irrigation; Ronald Ibarra, conflict prevention consultant and specialist; Jose Luis López Follegatti, Mining and Sustainable Development Dialogue Group; Javier Caravedo, owner of Prodiálogo; Fernando del Castillo, Head of the General Office for Social Management, Ministry of Energy and Mining; Jose Luis Carbajal, consultant and Former Director, General Office for Social Management, Ministry of Energy and Mining; Carlos Chirinos, Former Head of the Socioenvironmental Affairs Advisory Office of the Ministry of the Environment; Heydi Araujo Sifuentes on that same team; Gary Rojas, General Coordinator of the Social Conflict Unit in the Environmental Oversight and Evaluation Agency; Victor Aragón, on that same team; Ricardo Morel, Vice President of Antamina Corporate Relations; Omar Varillas, Care Perú; Eduardo Ballón, Technical Secretary of the National Assembly of Regional Governments of Peru; Julia Cuadros, owner of Cooperación; Ángela Acevedo, Director for Consultation, Ministry of Culture; Rebeca Arias, Former United Nations Resident Coordinator in Perú; and the Project Team “Partnerships for Dialogue: Preventing social conflict over the use of natural resources”.

INTRODUCTION



This document for practitioners has been produced as part of the “**Prevention of Social Conflicts in the Use of Natural Resources**” project implemented by the United Nations Development Program (UNDP) in Peru. The main goal of this key initiative – funded by the Ministry of Foreign Affairs, Trade and Development Canada and implemented jointly with the National Office for Dialogue and Sustainability (ONDS) of the Presidency of the Council of Ministers and in coordination with the Ministry of Energy and Mining (MEM), the Ministry of the Environment (MINAM), the Ministry of Agriculture (MAG), the National Assembly of Regional Governments (ANGR), the National Water Authority (ANA), the Environmental Oversight and Evaluation Agency (OEFA), the Ministry of Culture (MC), and the Office of the Ombudsman – is to build stability and strengthen governance by reducing natural resource-based conflicts, as well as to consolidate and build central government, regional government and civil society capacities and abilities to analyze, monitor, prevent and manage conflicts.

The idea of this paper is to document and disseminate the process for institutionalization of dialogue and conflict prevention that has been at work in the Peruvian state. Although the state comprises all the administrative bodies in the executive, legislative and judicial branches, together with autonomous institutions and regional and municipal governments, for reasons of space and a more in-depth analysis this study will concentrate on evolving institutionalization in the executive branch as of 2000, a year in which conflicts began to be clearly seen regarding the use of natural resources. Parallely, a similar study commissioned by the National Assembly of Regional Governments and the UNDP focused strictly on regional governments¹.

Unlike tools and techniques such as debate, negotiation, deliberation or mediation where concrete agreements are sought between representatives of organizations and specific interests, dialogue processes also seek to transform conflictive relations and evolve a “collective understanding” to help change conflicts into opportunities.

¹ *Institucionalidad en materia de Diálogo, Prevención y Gestión de Conflictos Sociales en Gobiernos Regionales: Sistematización de las experiencias de Arequipa, Piura, Puno y San Martín.* National Assembly of Regional Governments (ANGR) and the United Nations Development Program (UNDP). Lima. August 2013.

To achieve this, a rigorous, though flexible, methodology has been developed to facilitate in-depth exchanges and make multi-stakeholder agreements possible. This process is part of an attempt to move up potential interventions to an early phase in the timeline or history of the conflict, incorporating **dialogue into the alternative conflict resolution toolkit**.

The Regional Democratic Dialogue Project, created in 2001 by the UNDP², has helped with the building of an analytical and conceptual framework (of principles, methodologies, manuals and best practices), with the design and facilitation of numerous initiatives and dialogue processes from a Latin American perspective, and especially with all the documentation and systematization of experiences and processes that make the tool valuable. The concept adopted by the UNDP has been that of democratic dialogue,³ defined as “a cross-institutional process for addressing complex social problems or challenges that cannot be adequately (successfully, sustainably, legitimately and peacefully) addressed by any single institution. It is a cross-institutional tool for democratic governance that complements democratic institutions such as legislatures, political parties and government authorities.”

It is enormously valuable for democratic governance in Latin American countries to have the different social stakeholders participate in managing differences, disputes and conflicts through informed and rigorous exchanges, consensus-building, and the adoption of peaceful solutions.

The primary goal, then, of this paper is to investigate and identify the transformative or evolutionary elements of dialogue and conflict prevention practice or “service” within the framework of the Peruvian state. It also seeks to determine if there has been an evolution from a relatively inorganic, informal situation to a steadily practiced and exercised, highly organized one whose workings can be foreseen and projected time-wise and for which public funding is allocated. The paper combines the use of primary sources through in-depth interviews with an analysis of the laws and regulations, bibliography and news coverage.

² For more information go to <http://www.democraticdialoguenetwork.org/app/es>

³ The UNDP has adopted the term “democratic dialogue” because the dialogue experiences in Latin America and the Caribbean have usually been focused on building the institutional capacities of democratic regimes.

THE PHYSIOGNOMY OF CONFLICT IN LATIN AMERICA



It is frequently pointed out that Latin America has become one of the most stable regions in the world as a result of the reduced number of armed conflicts in recent decades. However, the profiles of conflict in this region hide a particular reality in which the gradual diminishment of armed conflicts has been accompanied by a surge of increasingly numerous and ever more complex social conflicts, posing a challenge to the state's capacity for response.

The conflicts arising in Latin America during much of the twentieth century had two common denominators: the armed nature of confrontations and the hegemonic and ideological origin of the disputes. Intra-state conflicts coming as a consequence of the rise of armed guerrilla groups during the sixties, seventies and eighties constituted the most widespread type in the region and accounted for the greatest loss of human lives in confrontations with the state. Colombia is still dealing with this type of armed conflict, where the main victim is civil society, in the last two decades, armed conflicts of a hegemonic and ideological nature have been giving way to new, complex and multidimensional types of social, political, institutional and cultural conflicts.

According to the recently created Regional Conflict Observatory – a joint undertaking by the United Nations Development Program (UNDP) and the UNIR



Photo: National Office of Dialogue and Sustainability – Peru

Foundation, both prestigious institutions with extensive social conflict research and analysis experience – conflicts share a common platform from which they emerge and evolve

The features of that platform, shared to a greater or lesser extent by all countries in the region, showcase excessively concentrated power structures, insufficiently competitive economic activity in international markets, weak and barely legitimate state institutions, crime control management problems, persistent poverty and inequality, restricted and irregular citizen participation, and incomplete mechanisms for institutional recognition and exercising of identities.



For some authors internal governance problems generated by social conflicts represent the main threat faced by states in South America.⁴

THE CONFLICTS ARISING
IN LATIN AMERICA
DURING MUCH OF THE
TWENTIETH CENTURY
HAD TWO COMMON
DENOMINATORS: THE
ARMED NATURE OF
CONFRONTATIONS AND
THE HEGEMONIC AND
IDEOLOGICAL ORIGIN OF
THE DISPUTES.

The pattern of Latin American conflicts is characterized by a diversification of demands, multiplication and fragmentation of stakeholders, and a strong degree of polarization.

The demands behind conflicts are a combination of indigenous people's request to exercise their rights to self-government and territory, protests for access to basic services, calls for better wages, and resistance to natural resource exploitation. Despite its democratic consolidation, the region has also experienced power disputes within the state apparatus and traditional coups d'état, as in Honduras, together with new modes of institutional crises, similar to the case in Paraguay.

Fragmentation and heterogeneity of Latin American social organizations and movements has deepened in the past decade, and today the map of conflicts depicts a convergence of unions, informal workers, indigenous peoples, farmers, ethnic groups, women, youths, environmentalist groups, casual workers and non-governmental organizations, all defending their own sectoral visions and interests.

The third and last feature of the pattern of Latin American conflicts is a growing polarization. According to Rojas, the region's existing levels of political polarization today, generating what the author calls "overheated societies" and "high voltage democracies", are the result of overwhelming disappointment following the failure of economic stabilization recipes applied in the nineties. Latin Americans have awoken to the fact that after a decade of sacrifice in terms of adjustment plans, mass dismissals, reduction of the state size, privatization and high unemployment levels, the sub-continent still has the greatest inequality levels on the planet as measured by the Gini coefficient. This monumental disappointment has been transformed into frustration, apathy, disenchantment and polarization⁵.

4 Doring, M.; Dalponte, B.; Hoffay, M. (2010). "América del Sur frente al acuerdo militar entre Colombia y Estados Unidos: La UNASUR y el CDS en acción" in *Anuario de Integración Regional de América Latina y el Gran Caribe*, 2010 CEGRE/CEHSEU/IEEU/CRIS, no. 8, p. 129.

5 Rojas, C., (November, 2008). "La polarización irrumpe en escena." Keynote address at the Fourth World Mediation Congress. Bolivia.

The growing number of conflicts in the past two decades is partially explained and facilitated by a systemic constant – that of the region’s persistent levels of inequality⁶. In Latin America, horizontal inequality, understood as the whole set of economic (employment, access to land), political (participation in decision-making, integration into the political system), and social (access to health services, education) inequalities caused by belonging to a specific cultural group, is still among the highest in the world.

Moreover, since the end of the eighties and the onset of the nineties, insecurity has been progressively linked to new phenomena such as organized crime, urban gangs, drug trafficking and everyday criminal activity, and is considered today one of the biggest concerns of Latin Americans. Nowadays, insecurity and its associated phenomena produce levels of violence similar to, and in some cases surpassing, the violence experienced by Central American countries during periods of civil war.



*Analysis and Information Team
National Office of Dialogue and
Sustainability of the President of the
Council of Ministers.*

6 Stewart, Frances (2002), *Horizontal Inequalities: A Neglected Dimension of Development*, Working Paper No. 16, Queen Elizabeth House, University of Oxford, p. 7.



SOCIO-ENVIRONMENTAL CONFLICT IN NATURAL RESOURCE USE

The expanding demand for resources such as gold, silver, zinc, copper, oil and gas, added to a notable increase in international prices for these goods, has led to a considerable growth of foreign direct investment in the Latin American extractive sector.. The exploitation of non-renewable natural resources has been frequently cited as one of the immediate causes of violent conflicts, their escalating phases, and their sustainment over time⁷.

The specific causes of socio-environmental conflicts as a result of extractive activities include the following:



a. WEAK PARTICIPATION OF AFFECTED, RURAL AND INDIGENOUS COMMUNITIES IN DECISION-MAKING. Despite legal progress in several of the countries in the region where the right to prior consultation has been regulated (via laws, decrees, regulations, protocols, or even the jurisprudence of constitutional courts), the involvement of affected and rural communities, as well as indigenous peoples in decisions enabling the exploitation of natural resources in their territories is still irregular, sporadic, fragile and deficient. Even where citizen participation or consultation exists, it lacks the necessary legitimacy and backing. The enormous asymmetries among the main stakeholders impede balanced dialogue under conditions of equality⁸.



b. INEQUITABLE DISTRIBUTION OF ECONOMIC BENEFITS. On the one hand, there is a widespread assumption among mining communities and areas that the companies' economic benefits are not shared with the community, or that the community receives only a minuscule part. On the other hand, failures in the planning and use of social and compensation funds, labor precarization, and noncompliance with the posting of economic results, among other reasons, have helped reinforce the feeling that companies come into the area to pollute or use, in a best-case scenario, the land and water without providing anything in return. Unlike what happens with hydrocarbons exploitation, hydroelectric undertakings (which generally reduce energy costs in operating and neighboring areas), or agroindustry (which does the same with food), it is more difficult to come up with and provide clear social benefits to offset the negative impacts of mining.

⁷ *Extractive Industries and Conflict, Guidance Note for Practitioners*, European Union-United Nations Interagency Framework Team for Preventive Action, 2012, p. 8.

⁸ *Ibid*, p. 13.

⁹ More details are available at <http://eiti.org/>

¹⁰ More details are available at <http://www.icmm.com/languages/espanol>

¹¹ *OECD Guidelines for Multinational Enterprises. General Policies*.

¹² Gouley Clotilde. "Conflictos mineros, interculturalidad y políticas públicas: el caso de Las Bambas, provincias de Cotabambas y Grau, departamento de Apurímac." Centro Bartolomé de las Casas, Consorcio de Investigación Económico y Social. 2005, Cusco. Pp. 84-85.



c. LACK OF OVERSIGHT AND REGULATORY CAPACITY FOR REVIEWING, MEASURING AND MANAGING ENVIRONMENTAL IMPACTS. Institutionalized measuring of the environmental impacts of extractive activities is relatively recent. This is true even in countries with a long tradition of mining such as Peru, where the Ministry of the Environment has been in existence for only six years. The offices that carry out environmental diagnostics of contamination and carbon footprints and analyze and assess environmental impact studies, as well as those that design public policy for environmental protection, are just now finishing building their tools, procedures, regulations and best practices.



d. GLOBALIZATION OF SOCIAL RESPONSIBILITY AND TRANSPARENCY STANDARDS. International activism, greater access to information, and the establishment of global and regional platforms on extractive industries have all increased the pressure on governments and companies for more transparent reporting of economic benefits and hydrocarbon, energy and mining profits. Consequently, the social, labor, environmental and legal commitments of private investments have intensified in the areas where they operate. Some of the positive effects of this include voluntary initiatives for transparency, such as the EITI,⁹ codes of ethics, environmental impact mitigation protocols, guidelines for involving local mining area communities (like the ones prepared by the International Council on Mining and Metals, which brings together the world's 20 largest mining firms)¹⁰, and dissemination of direct social investment programs in mining areas.



e. THE HUGE CHALLENGES AND LACK OF EXPERIENCE IN OPERATIONALIZING AND IMPLEMENTING INTERNATIONAL COMMITMENTS UNDERTAKEN BY THE STATES. A clear example of this is ILO Convention 169 on prior consultation with indigenous and tribal peoples, which though ratified by the vast majority of Latin American countries has met and continues to meet with challenges for its effective implementation. The consulting process needs to be institutionalized, implying laws, regulations, guidelines, best practices, interpreters, facilitators, georeferenced maps, indigenous population censuses, records of indigenous authorities and effective ways to locate them when necessary, and especially a great deal of training and capacity-building to balance out the enormous asymmetries among the participating stakeholders.



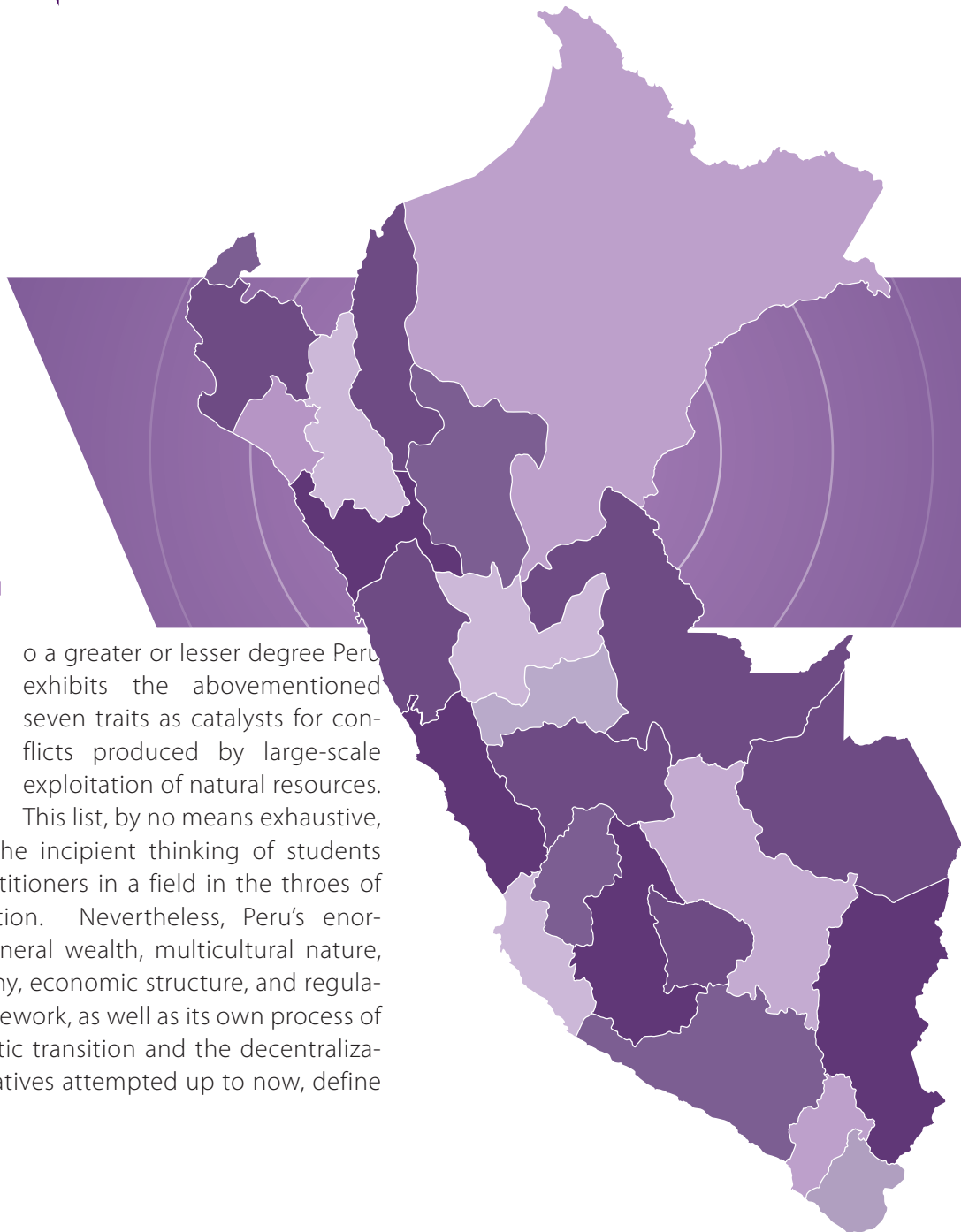
f. PRIVATE SECTOR LIMITATIONS IN THE EXERCISE OF CORPORATE SOCIAL RESPONSIBILITY. Despite much headway in corporate social responsibility, a minimalist interpretation of the concept prevails in which workplace quality, environment, and corporate ethics carry less weight than direct action through social funds for improving community infrastructure, education or health of the inhabitants in the direct area of influence. To this same respect, the obligation to refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labor, taxation, financial incentives, or other issues¹¹ should be more rigorously observed in many Latin American countries.



g. CLASHES AND FRICTION BETWEEN WORLD VIEWS. Conflicts related to the use of natural resources take place in the Amazon, Andean highlands, rural areas, indigenous reserves, protected areas and regions inhabited by indigenous and tribal peoples. In these types of socio-environmental conflicts, the interests of the primary stakeholders are determined not only by economic but also cultural rationales. Mining companies and the state work with common modern Western cultural values and rules, while rural and indigenous communities share different values stemming from their own age-old cultures. The conflicts evince this cultural clash in a context in which stakeholders act according to their "deep-rooted culture" or the "collective unconscious".¹²

4

SPECIAL FEATURES OF THE PERUVIAN CASE



T

o a greater or lesser degree Peru exhibits the abovementioned seven traits as catalysts for conflicts produced by large-scale exploitation of natural resources.

This list, by no means exhaustive, reflects the incipient thinking of students and practitioners in a field in the throes of construction. Nevertheless, Peru's enormous mineral wealth, multicultural nature, geography, economic structure, and regulatory framework, as well as its own process of democratic transition and the decentralization initiatives attempted up to now, define

a particular type of “Peruvian” socio-environmental conflictiveness that merits analysis and provides the background for developing institutionality for preventing and managing conflicts

A. WEIGHT OF MINING ACTIVITIES IN THE PERUVIAN ECONOMY AND EFFECTS OF GLOBALIZATION.

Peru is today the world’s third largest producer of copper, silver and zinc, and the fifth largest producer of gold and lead.¹³ It is also the largest Latin American producer of tin, zinc, gold and lead. The mining industry has been consolidating since the nineties and today constitutes the country’s main export sector. According to Macroconsult calculations for the National Society of Mining, Petroleum and Energy, in the last 10 years the value of metal mining exports has grown by nine times to US \$27,361 million in 2011, accounting for 59% of all exports.¹⁴



ACCORDING TO THE MINISTER OF MINES, THE MINING SECTOR WILL ACCOUNT FOR 30% OF THE COUNTRY’S ECONOMIC GROWTH UNTIL 2016. MINING IS ONE OF THE MAIN CONTRIBUTORS TO PUBLIC COFFERS.

At August 2014 the Ministry of Energy and Mining had a mining project portfolio estimated at US \$61,279 million, comprised by 52 main projects, including expansion projects, projects in advanced exploratory stages, and projects with environmental studies that have either been approved or are under evaluation.¹⁵ In an international setting where competition for natural resources is on the rise, Chinese and Indian companies have appeared on the scene to dispute the market with Western firms. Peru is a clear example of this dynamic since China heads the ranking of investing countries with US \$13,839 million, some 23% of the total

13 U.S. Geological Survey, Mineral Commodity Summaries, January 2013.

14 Cited in “Extracción de Recursos Naturales, Desarrollo Económico e Inclusión Social,” Cynthia A. Sanborn and Juan Luis Dammert B. Centro de Investigación de la Universidad del Pacífico, Peru, February 16, 2013, p. 6.

15 Cartera Estimada de Proyectos Mineros, Peruvian Ministry of Energy and Mining, 2013. <http://www.minem.gob.pe/minem/archivos/file/Mineria/INVERSION/2014/cepm0514.pdf>



Photo: National Office of Dialogue and Sustainability – Peru



Photo: National Office of Dialogue and Sustainability - Peru

portfolio, followed by Canada and the United States.¹⁶ At the same time, China is the second most important destination for Peruvian mining exports with 21% of the total, behind Switzerland and ahead of Canada.

Peruvian mining has grown at an average rate of 7.1% in the last decade, the highest sectoral growth rate for the period. According to the Minister of Mines, the mining sector will account for 30% of the country's economic growth until 2016. Mining is one of the main contributors to public coffers; in 2011 it accounted for 15% of all tax revenue, and it is estimated that this percentage will increase by one or two percentage points in 2012 and 2013.

The notable growth of the mining sector and its portfolio volume represented a physical and geographical expansion that entailed greater use of land and water to sustain the level of activity.

B. DEMOCRATIC REGIME, EMERGENCE OF NEW STAKEHOLDERS, AND DECENTRALIZATION

From the start of the eighties and through at least the year 2000, the way social conflicts were managed was heavily permeated by a pattern of repression characteristic of all Latin American dictatorships. State violence was used in most cases to neutralize social protest.¹⁷ Social conflict began to grow, starting in 2000,

¹⁶ Ibid, p. 3.

¹⁷ Interview with officials at the National Water Authority. January 20, 2014. Authorship is not specified for some of the statements made by the interviewees in order to safeguard the confidentiality involved in the exercise of their office according to the respective institutions for which they performed or are performing their duties. A list of all the interviewees is provided as an appendix to this paper.



”

SOCIAL CONFLICT
BEGAN TO GROW,
STARTING IN
2000
THE MOST EXEMPLARY
CASE BEING THAT OF BAGUA
IN JULY 2009
WHICH ENDED IN THE DEATH OF
33 PEOPLE

the most exemplary case being that of Bagua in July, 2009, which ended in the death of 33 people.¹⁸

The current Peruvian context, in line with the Latin American conflict profiles described above, has a growing number of stakeholders and a wide range of demands. The triangle of key stakeholders (state, companies and mining unions), typical of past decades, is not representative of all social stakeholders (environmental protection fronts, indigenous organizations, mayors, regional presidents, peasant and women's movements, environmental organizations, peasant patrols and the Catholic Church). These are demanding more equitable distribution of benefits from mining exploitation, transparent management, the need for a prior consultation mechanism, and rigorous control of the environmental impacts produced by this exploitation.¹⁹

In addition, the management capacity of regional governments and mayors has been particularly sensitive since the start of decentralization in 2003. Although some regional governments receive hefty incomes from royalties and mining fees, they have no power of decision over mining activities in their territories, sharpening tensions between the national government, regional and local authorities, and citizens where opposition exists to certain initiatives.

18 Office of the Ombudsman for the Republic of Peru. Deputy Ombudsman's Report N° 006-2009-DP/ADHPD. "Actuaciones Humanitarias realizadas por la Defensoría del Pueblo con Ocasión de los Hechos ocurridos el 5 de Junio del 2009 en las provincias de Utcubamba y Bagua."

19 "Extracción de Recursos Naturales, Desarrollo Económico e Inclusión Social," Cynthia A. Sanborn and Juan Luis Dammert B. Centro de Investigación de la Universidad del Pacífico, Peru, February 16, 2013, p. 7.

Likewise, the capacity to implement infrastructure projects or simply spend the money transferred by the national government has posed an enormous challenge. In 2011, regional governments were able to execute less than 60% of all the fees they received, and even less than this in some cases, such as Puno²⁰.

C. PREPONDERANCE OF SOCIO-ENVIRONMENTAL CONFLICTS

The National Office for Dialogue and Sustainability of the Presidency of the Council of Ministers (PCM) recorded 43 conflicts in November 2014, 63% of which were linked to extractive industries, mainly mining. The regional distribution of the conflicts follows a similar trend to earlier months, with the most cases being recorded in Cajamarca, Loreto and Ancash. At this same date, the Ombudsman's Office, which has its own method of recording conflicts, counted a total of 205 social conflicts, 162 active ones and 43 in a state of dormancy. Of these, 132 are socio-environmental conflicts – that is, related to the control, use and/or access to the environment and its resources. Mining is involved in 57% of all socio-environmental conflicts, with the Arequipa, Cajamarca, Junin and Loreto regions registering the most²¹.

20 "Extracción de Recursos Naturales, Desarrollo Económico e Inclusión Social," Cynthia A. Sanborn and Juan Luis Dammert B. Centro de Investigación de la Universidad del Pacífico, Peru, February 16, 2013, p. 6.

21 "Territorio, reflexiones desde la gestión Pública, la conflictividad y el desarrollo", Bulletin in Willaqniki No. 24. "Informe de diferencias, controversias y conflictos sociales." National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. November 2014.



Photo: National Office of Dialogue and Sustainability – Perú

D. PARTICIPATION, TRANSPARENCY AND PRIOR CONSULTATION

All the consulted experts coincided in pointing out that the areas of natural resource exploration and exploitation in Peru are at the same time areas with a high concentration of poverty, wide social gaps, a historically absent state apparatus, a fractured social fabric and the presence of indigenous peoples, peasants or Andean highlanders with strong ties to their respective ecosystems. Although social conflicts have always existed in rural, jungle, and Andean highland areas, the invasion of extractive activities in these historically marginalized areas, often hit hard by armed conflict, puts their inhabitants in the spotlight, forces debate on international commitments signed by the state (such as the right to prior consultation with indigenous peoples), and heightens tensions between the two world views.



With more available information, and therefore more information on the benefits that could come from natural resource exploitation – as well as the risks it entails – together with new leadership when President Alberto Fujimori’s administration left power, more pressure was generated for mechanisms for transparency, participative decision-making, and prior consultation for initiatives that might affect the ways of life and territories of the native peoples.

Peru is the second latinamerican member nation in the voluntary Extractive Industries Transparency Initiative (EITI) and was recognized as a compliant country in 2012. The EITI is a global strategic alliance between governments, extractive mining, petroleum and gas companies, civil society groups and international organizations for applying transparent criteria to the payments made to govern-

ments by mining, petroleum and gas companies and to revenues received by the governments from these companies²².

The companies must also meet a series of disclosure and reporting requirements. Different civil society sectors, however, are demanding more information on how concessions are granted and impact studies are prepared and disseminated.

There is a similar occurrence with the current citizen participation mechanisms that operate centrally for the preparation and approval of Environmental Impact Studies – though only after a concession has been granted. The Ministry of Energy and Mining is undertaking a series of activities that includes participative workshops, hearings, joint monitoring schemes and participative environmental surveillance. The effectiveness of these measures needs to be analyzed, however,

taking into account the tremendous asymmetries among the parties, especially with regard to control of information and ability to decide in advance on initiatives.

Peru is also the only Latin American country to have sanctioned a law for prior consultation of indigenous or native peoples, which it did in 2010 after the tragic events at Bagua²³. The law was enacted in 2011 by President Ollanta Humana, and its regulations were prepared during 2012. Three major social organizations withdrew from the dialogue on the regulations because, among other reasons, they had understood that the consultation should be binding. Effective implementation of the consultation requires the building of institutionality, a census of indigenous peoples (implying a definition of who falls into the category and who does not), a georeferenced database on the country's population centers, interpreters and facilitators, a record of the people's

authorities, sufficient capacity for continuous assistance by the unit concerned together with the advisory agency, and articulation of the state's policy for implementing consultation through the Office of the Vice Minister of Interculturality.

To sum up, socio-environmental conflicts reveal the existing challenges to the way decisions are currently made for approval of mining, petroleum, gas and hydropower projects. Often the public does not accept existing citizen participation procedures for approval of environmental impact studies and responds by rallying around municipal authorities and calling for citizen plebiscites. The protesters are demanding participation, though in some cases they are questioning the power to decide on exploration and exploitation permits.²⁴



PERU IS THE SECOND
LATIN AMERICAN
MEMBER NATION
IN THE VOLUNTARY
EXTRACTIVE INDUSTRIES
TRANSPARENCY
INITIATIVE (EITI) AND
WAS RECOGNIZED AS A
COMPLIANT COUNTRY
IN 2012.

22 <http://eiti.org/Peru> and <http://eiti.org/new-events/peru-president-says-eiti-needed-to-heal-the-wounds>

23 http://es.wikipedia.org/wiki/Masacre_de_Bagua

24 Caballero Martin Victor, *Conflictividad Social y Gobernabilidad en el Perú*. United Nations Development Program, International Institute for Democracy and Electoral Assistance, La Paz, Bolivia. UNDP 2012, p. 19.

CONFLICTIVENESS AND INSTITUTIONALIZATION OF DIALOGUE AND CONFLICT PREVENTION



A. THE RECENT PAST

Most of the individuals consulted for this paper coincided on identifying three distinct periods in the pattern of Peruvian social unrest since the 1980 democratic recovery.

1980
1990

The first period is the *1980-1990 decade*, characterized by attempts at a reformulation of State institutionalization as counterinsurgent warfare came to an end after more than 15 years and at the cost of around 70,000 lives. This decade is characterized by economic failure, hyperinflation and general discontent. Repressive thinking permeated the way in which the State dealt with social conflict, putting down uprisings in rural areas and blocking the resurgence of social leaders, especially in rural, jungle and Andean highland areas.

1990
2000

To a certain extent this approach was maintained during the decade of former President Fujimori, who used a combination of co-optation, hard-handedness and delegitimization of violence to achieve political ends within a framework of economic recovery.²⁵ Most of the protests during this decade (1990-2000) were union- and wage-related. The loss of prestige of the political parties, the democratic plebiscite practices implemented by the maximum authority in power, and the former president's condemnation of violent protests and demands all contributed to minimizing the conflicts. During the 1990-2000 period the Peruvian state underwent a structural transformation based on liberal economic reforms. As in other Latin American countries, in Peru a process began of state downsizing, privatization, economic opening and economic liberalization in line with the reasoning of the so-called Washington Consensus.

25 Bravo Alarcón Fernando, "Conflictos Socio Ambientales y Estado en el Perú". Talk given at the Fourth Ibero-American Congress on Development and Environment – Distributive Ecological Conflicts. October 5-10, 2009, Bogota, p.4.

1992

The year 1992 saw the retreat of the Shining Path (Sendero Luminoso) guerrilla group, and the following year saw the ratification of a new constitution favoring economic opening and foreign investment. In 1991 a law was passed for the promotion of agriculture, granting usufruct; this was followed in 1993 by the Organic Mining Law and the Organic Hydrocarbons Law, marking the formal start of large-scale exploration and exploitation of natural resources. In 1995 an enterprise under private law, Perupetro S. A., was created to promote, negotiate, sign and supervise contracts for the country's hydrocarbon exploration and exploitation on behalf of the Peruvian state. From 1998-1999 onwards social unrest began to grow in response to the former president's reelection attempts and widespread suspicion of corruption in his administration.

1993

1997

With regard to the environment, the first mentions were made at this time about the need to create opportunities for dialogue and consensus building. The Structural Framework for Environmental Management (MEGA), created in 1998, incorporated the functions of prevention, dialogue and consensus building. The National Environmental Council (CONAM), created in 1994 and going into operation in 1997, brings together regional and municipal governments and coordinates actions with the private sector and civil society through consensus-building and dialogue.

For several of the intellectuals and civil society activists consulted, "towards the end of the 90s and at the start of 2000, a public-corporate relationship was first visualized and actually established before going into crisis because the state would grant a license or authorization in Lima but lacked the presence and capacity to order and regulate the relationship in the field." The state's role in this scheme was to provide a legal framework. At almost the same time, efforts began to ratify a mining fee.

This bilateral community-mining company relationship (that is, with a representative from the mining sector) produced good results but was characterized as being "metalized" and generating dependency through the provision of social services, negotiation, and, in some cases, co-optation. This scheme, or relationship, further strengthened by the implementation of a voluntary contribution in 2007, is typified by the absence of the state and regional and municipal governments in circles 1 and 2 or areas of direct influence.

The core conflict, according to another civil society analysis, has shifted from the mine worker-company binomial to the company-community binomial, leading to open disagreement between mining companies and their surrounding populations due to the companies' encroachment on and use of the land and water resources.

2000

2000 saw the start of a genuine political opening with the appearance of social leaders who had begun a comeback in the 90s at the same time as a series of episodes that set off open conflicts related to natural resource exploitation. Non-governmental environmentalist organizations spurred and helped raise the awareness of peasant and indigenous groups.

2002

In June of 2000 a trailer truck spilled 151 kilograms of metallic mercury in the area of Choropampa, Cajamarca.²⁶ Some one thousand peasants were affected by this accident, and according to investigators, even after more than eight years reports continue to come in of uncontrollable shaking, insomnia, irritability, memory loss, intermittent skin rashes, nosebleeds, untimely fainting, cases of sudden blindness and intense kidney pain²⁷

The first megaproject to be halted as a consequence of social protest was Tambo Grande in 2002 in the department of Piura. That same year, attempts to privatize Egasa led to the “Arequipazo” (a massive public demonstration in Arequipa). This was followed by protests to halt exploitation of the Quillish hill in 2004 and the Combayo hill in 2006.

2004

The Camisea gas megaproject, developed between 2003 and 2005, has also been identified as a turning point because of its magnitude and the fact that it forced the state to somehow get its act together in the face of a megaproject which at that time was the country’s largest energy undertaking. Camisea also attracted the attention of international organizations such as the IDB, which exercised their influence to get best practices and specific commitments included in the contracts. Thus Camisea has been pointed out by several interviewees as an example of good practice because it breaks with the sectorial approach that had existed up until then in the treatment of large undertakings. A technical group for inter-institutional coordination was created, an environmental oversight mechanism – called OSINER at that time – was strengthened, and social commitments were established through an agreement between MIEM officials, civil society and the IDB. These commitments materialized in 21 agreements included in the contract, a joint state and IDB oversight mechanism, a tripartite space with civil society, and regular information dissemination mechanisms.

2006

2009

By this time we could talk about a heightened crisis of the Peruvian state, the turning point being the events at Bagua in 2009 where 33 people died. For many of the consulted experts, this case came as a direct consequence of the country’s lack of an indigenous policy.

Parallel to the socio-environmental conflicts, which were beginning to overshadow all others in Peru in complexity and volume, was the occurrence of other emblematic episodes, such as the coca producers’ strike in Tingo Maria in 2003.²⁸ or the Llave incident in 2004²⁹ when the mayor was lynched by residents under accusations of corruption in the Department of Puno.

26 For more details, go to <http://elcomercio.pe/ciencias/planeta/11-anos-derrame-mercurio-sintomas-persisten-choropampa-noticia-761410>

27 Marco Arana-Zegarra, “El caso del derrame de Mercurio en Choropampa y los daños en la población rural expuesta.” *Rev Peru Med Exp Salud Publica*. 2009; p. 114.

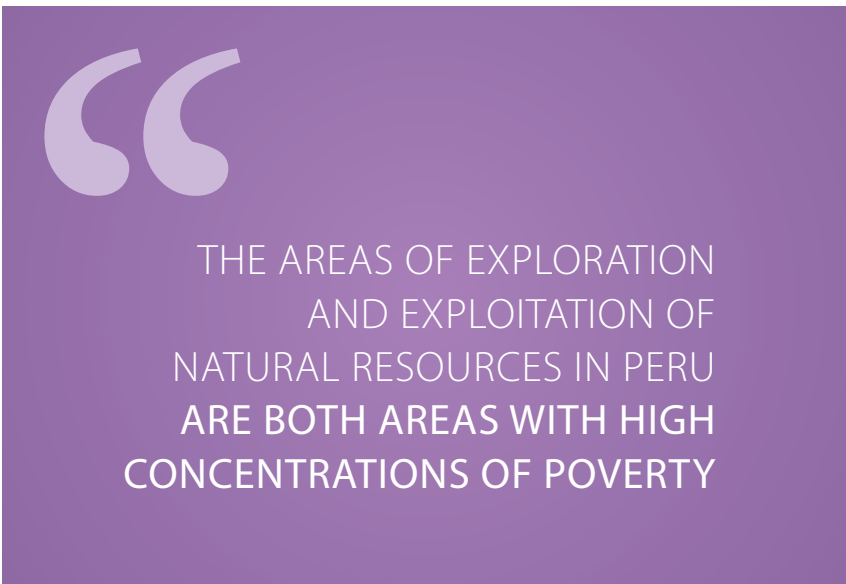
28 For more details, go to <http://www.larepublica.pe/03-03-2003/cocaleros-deciden-hoy-si-reanudan-huelga>

29 For more details, go to <http://agenciaperu.com/reportes/2004/abr/ilave.htm>

At the onset of the 2000-2010 decade, there was no institutionality either in the government or in companies for preventing and managing conflicts and especially for articulating dialogue opportunities. Several officials acknowledged that in no ministry were there any offices responsible for dealing with social conflicts – even in the Presidency of the Council of Ministers (PCM); the way conflicts were addressed as they arose was completely circumstantial and reactive. Moreover, the discipline of conflict prevention, management and transformation being essentially Anglophone, it lacked materials, analyses and degree programs, master’s programs and specialized courses.

The interviewees also acknowledged that at that time they had to work in the dark, applying the instinctive knowledge of whoever was involved and then afterwards avoiding the perception by many that the work of conflict management was one of putting out fires, almost always in an improvised manner without quality information or tools, and with poorly predictable results.

During the administration of former President Alejandro Toledo an inter-institutional group with the name *General Intelligence Office* was formed within the Ministry of the Interior to monitor social unrest based on reports by the intelligence service. Later, the *Strategic Analysis and Conflict Prevention Unit* was formed in the PCM, though with reduced capacity.



“ THE AREAS OF EXPLORATION AND EXPLOITATION OF NATURAL RESOURCES IN PERU ARE BOTH AREAS WITH HIGH CONCENTRATIONS OF POVERTY

The situation was no different for companies, either. In 2003 there were no community relations teams in the large mining firms operating in Peru, whereas at present these are as significant as the operating or environmental teams.

One event signaled by some experts as decisive for conflict management is that of Combayo, involving the Yanacocha mining company in 2006. Its significance was marked by the visit of the presiding president of the Council of Ministers in an attempt to resolve the conflict. On the one hand this set a legal precedent that would later materialize in the so-called High-level Commissions formed by the President to handle specific conflict situations; on the other, it illustrates the need for the **Presidency of the Council of Ministers (PCM)** to build capacities for dialogue and monitoring of social and environmental conflicts. Until that time, the office that had taken a major role in conflict management had been the **National Decentralization Council (CND)**, which though under the PCM had ministerial ranking. This office was later reduced during the administration of former Presi-

dent Alan García, becoming the Secretariat of Decentralization and taking on an advisory role with a small team of professionals responsible for conflict issues.

That same year, former President García's administration created by means of Supreme Decree 380-2006-PCM the Multisectoral Committee for Social Conflict Prevention with the idea of setting up a core group of representatives from twelve ministries to design strategies for each case and conduct dialogues and negotiations, advising the PCM on strategies, actions and policies to be taken in order to prevent, predict and help resolve conflicts. Unfortunately, the committee didn't work out, as it met very seldom and the ministers sent low-ranking representatives, or in some cases, people without defined roles in the respective ministries.

Even the **Ombudsman's Office**, recognized today for its work in dialogue promotion and conflict monitoring, had no specific department for conflict analysis and monitoring at the time of the Cajamarca mercury spill in 2002; each deputy ombudsman had an advisor on conflicts related to their specific area of competence.



Photo: National Office of Dialogue and Sustainability – Peru

To continue with the timeline, in 2004 the Ombudsman's Office created a Social Conflict Prevention Unit that wound up coming into being in 2009 under the Office of the Deputy Ombudsman for Social Conflict Prevention and Governance. This deputy ombudsman's office has national delegations and mobile units, works closely with social stakeholders and non-governmental organizations, issues high quality monthly bulletins based on its monitoring efforts, and participates in dialogues. The Ombudsman's Office has played a key role in promoting dialogue and its institutional practice has had a domino effect on other state agencies.

Since March of this same year, this unit, and later as the Office of the Deputy Ombudsman for Social Conflict Prevention and Governance, has been monitoring social controversies and disputes with monthly publications informing the sectors called upon to resolve their disputes. It should be emphasized that the publication of these conflict reports has not only contributed to the incipient field of dialogue and conflict resolution in Peru, but also strengthened the debate with

Photo: National Office of Dialogue and Sustainability – Perú



regard to number, geographical location, profile and type of conflict, as well as stakeholders. Although the executive branch itself, academia, and several companies operating in the extractive sector do not coincide on the method used to calculate the number of conflicts, the regular publication of these reports for almost a decade has motivated others to think and prepare, classify and establish other methods and categories for monitoring conflicts.

The first ministry to create a specific structure for dealing with conflicts and promoting dialogue was the Ministry of Energy and Mining. Its General Office for Social Management, created by ministerial resolution in 2005 and reinforced by supreme decree in 2006, was first intended to deal with the mining sector, but it later became a direct agency under the office of the minister and its functions were expanded to include the hydrocarbons sector. In 2008, the ministry prepared the rules for regulating citizen participation in the mining sector, approving them by means of ministerial resolution 304-2008-MEM/DM³⁰

Meanwhile, in 2005 the General Environmental Act (Law 28611) was approved, along with Law 28245, which created the environmental management system and its regulation. This piece of legislation assigns the function of promoting dialogue and preventing conflicts to Regional Environmental Committees (CARs) and Municipal Environmental Committees (CAMs) comprised by representatives from civil society, the private sector and the state. However, despite having been conceived as a tool for state, company and civil society interaction and articulation, it has neither performed its function nor provided any follow-up on those committees.

With regard to water resource conflicts, intimately connected to mining exploration and exploitation activities given the volume of water they require, the Organization and Functions Regulation (ROF) of the National Water Authority

30 http://intranet2.minem.gob.pe/web/archivos/dgaam/legislacion/RM_304_2008_MEM_DM.pdf

(ANA), approved through the new Water Resource Act, Law 29338, provides for a Directorate of Knowledge Management and Inter-institutional Coordination, whose specific function is to formulate and propose guidelines and strategies for the management and prevention of social conflicts related to water use. The ANA is undoubtedly a key institution for prevention, not only because of its extensive geographical deployment with more than seventy-two Local Water Administrations (ALAs) and fourteen Water Administration Authorities (AAAs) distributed throughout the entire national territory, but also because of the setting up of Watershed Councils which, according to ANA officials, will serve as forums or opportunities for consensus-building and participation for water resource management planning.



The case of Bagua represented a turning point not only in terms of conflict but also in the way the government was addressing conflict. Some authors claim that immediately after the event a decentralized design was adopted, expanding the number of members on the Multisectoral Committee through Supreme Decree DS 056-2009-PCM³¹ and promoting more sectorized conflict management with less PCM leadership.³²



Finally, in 2010 the *Office for Social Conflict Management* was created by Supreme Decree 10-2010-PCM as a specialized technical agency responsible for, among other things, fostering civil society participation in consensus-building and designing, formulating and proposing guidelines and strategies for social conflict prevention, management and resolution at the three levels of government.³³ The office began developing an initial set of conceptual instruments, since while the eleven individuals working there had experience in the field they lacked manuals, conflict categories, tools, guidelines, mapping mechanisms and a system for training state employees at the three levels.

THE CASE OF BAGUA REPRESENTED A TURNING POINT NOT ONLY IN TERMS OF CONFLICT BUT ALSO IN THE WAY THE GOVERNMENT WAS ADDRESSING CONFLICT

The needs of the communities, companies, and – to a lesser extent – the government took shape in letters of commitment signed by the parties involved and endorsed generally by state officials, high-level committees formed to travel to the field, the respective ministries, and to a lesser extent the Office for Social Conflict Management.

31 See the decree at http://www.pcm.gob.pe/InformacionGral/ogcs/DS_Comision_Conflictos.pdf

32 Caballero Martin Victor, "Conflictividad Social y Gobernabilidad en el Perú." United Nations Development Program, International Institute for Democracy and Electoral Assistance, La Paz, Bolivia. UNDP, 2012, p. 26. / Bravo Alarcón Fernando, "Conflictos Socio Ambientales y Estado en el Perú." Talk given at the Fourth Ibero-American Congress on Development and Environment – Distributive Ecological Conflicts. October 5-10, 2009, Bogota, p. 5.

33 <http://www.pcm.gob.pe/InformacionGral/ogcs/DS-010-2010-PCM.pdf>

Within this context, given the need to build the PCM's monitoring and intervention capacities, the staff of professionals in the recently created Office for Social Conflict Management prepared the General Guidelines for the Prevention of Social Conflicts in Peru, which were approved by ministerial resolution 161-2011-PCM³⁴. The main public policy document on conflicts in the country, it contains

the approaches, principles, categories and articulation mechanisms for conflict management by the different state agencies.

B. THE PRESENT

To start with, a change in the narrative or discourse of public officials, civil society activists, academicians and businesspersons can be noted with regard to the inevitability of conflict and the opportunity it represents for development. Several interviewees remembered how a decade ago the protests and conflicts, characterized by the forceful measures employed by all parties, were censured and generally seen as traumatic, dangerous and definitely avoidable. Today the assumption seems to be that conflict is a part of the social processes and can, in most cases, represent opportunities for progress for the less-favored sectors of the population if managed with dialogue.

Today's Peru has a decentralized conflict prevention apparatus anchored in institutions that by nature, function and area of competence have to intervene in potential conflict situations, particularly those related to natural resource use, availability, access, demand and management. According to the 1993 constitution, Peru's natural resources are defined as the patrimony of the nation; that is, they belong to neither private parties nor the state. The state, however, must manage them, make them available, and establish conservation policies and transparent access mechanisms.



Photo: National Office of Dialogue and Sustainability – Perú

34 See the resolution at http://www2.pcm.gob.pe/Transparencia/Resol_ministeriales/2011/RM-161-2011-PCM.pdf

PRESIDENCY OF THE COUNCIL OF MINISTERS³⁵

NATIONAL OFFICE FOR DIALOGUE AND SUSTAINABILITY



President Humala's administration has decidedly opted for dialogue as a conflict prevention and resolution tool while at the same time articulating more efficiently the efforts of the different executive branch sectors by creating the National Office for Dialogue and Sustainability (ONDS) under the Presidency of the Council of Ministers. The formal creation of this office by means of Supreme Decree 106-2012-PCM, published in the official journal, *El Peruano*, on October 25, 2012,³⁶ represents an attempt to organize and ensure consistency in the state's general strategy for conflict prevention and dialogue, given the enormous wealth and complexity of the aforementioned institutionality.

More than
300
documents were transferred
to the ONDS by the former
Office of Social Conflict
Management

Its creation came at the same time as the exponential increase in social conflicts during the past decade. Its functions include: proposing and coordinating dialogue, mediation and negotiation strategies with government agencies for any conflicts that may arise; promoting a culture of peace; implementing early alert mechanisms with the different government levels and sectors; fomenting dialogue as the solution mechanism par excellence; coordinating attention to dialogue, mediation and negotiation with other regional and local government agencies; and collecting and requesting from other institutions any conflict information that may be needed for performance of its duties. Finally, the ONDS has a duty to develop dispute management methods and build dialogue, mediation and negotiation capacities.

Supreme Decree 106-2012-PCM stipulates that the Multisectoral Committee for Social Conflict Management and Prevention will report to the PCM through the ONDS.

The ONDS performs its functions with a comprehensive approach to conflicts in the understanding that they represent development opportunities. The office's work is divided centrally into five areas: *prevention*, where the early alert system and inter-institutional articulation with other government units are located; *dialogue management*, which entails the design and participation in dialogue,

³⁵ Sitio oficial <http://www.pcm.gob.pe/etiqueta/oficina-nacional-de-dialogo-y-sostenibilidad>

³⁶ See the decree at http://www.peru.gob.pe/docs/PLANES/145/PLAN_145__2013.pdf

mediation or negotiation processes; *public policy-making* for conflict prevention; *citizen education*, which concentrates activities for promoting a culture of peace; and, finally, *systematization and documentation* of materials, consisting of dialogue promotion research and experiences.

More than 300 documents were transferred to the ONDS by the former Office of Social Conflict Management; most of the documents contained agreements signed during dialogue processes that were never honored. This was when the office, which started with eleven staff members, was created.

There is somewhat of a consensus among interviewees that significant headway has been made on management of extraction-related conflicts after more than a year on mission since the creation of the ONDS. However, it was noted that some tasks are still pending. The breakthroughs and accomplishments include:

- Effectively increased capability for deployment and handling of social conflicts, especially socio-environmental ones. The ONDS now has 44 officers, an Early Warning and Response Program (PART)³⁷ anchored in the provincial governments, and articulation with various decentralized agencies, regional governments, mayors, other sectoral bodies and the vast majority of companies operating in the extractive sector, enabling it to collect quality information and intervene in a timely manner. At November 2014, the ONDS was handling 104 cases, of which 31 were being monitored and 22 were being treated.³⁸
- A conceptual corpus has been prepared with definitions, modes of intervention and typology for standardizing the language and harmonizing approach strategies within the State. These categories do not necessarily coincide with others prepared by academia and other institutions such as, for instance, the Ombudsman's Office, which is well acknowledged in the field of prevention and dialogue promotion, but unification was urgently needed of categories, strategies and flows or intervention routes. To this respect, the documents and bulletins produced by the ONDS place particular emphasis on monitoring and follow-up on agreements reached by the parties.
- Preventive activity accounts for a major share of the ONDS's work; 100 of the 104 cases are in the regions, three are multiregional, and one is national.³⁹
- Each of the cases in which the ONDS intervenes is recorded in a database with its name, location, department, a brief description of the facts, primary and secondary stakeholders, the latest happenings, strategies, steps to follow and state sectors involved in the process or responsible for executing or performing any of the clauses.

37 The early alert and response program provides for an information and analysis network with two levels of participation. At the first level, an institutional network is constructed around the participation of regional, provincial and district governors; at the second, justices of the peace, commissioners and field officials of the different national government agencies are incorporated. At a third level, regional governments will be included through the different directorates and managements, and finally, local governments will be incorporated.

38 "Territorio, reflexiones desde la gestión Pública, la conflictividad y el desarrollo", Bulletin in Willaqniki No. 24. "Informe de diferencias, controversias y conflictos sociales." National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. November 2014, p. 81.

39 Ibid, p. 85.

- According to one ONDS commissioner, 90 cases were resolved in 2013 and commitments have been mobilized for public and private spending of 5 billion soles from the multi-stakeholder dialogues generated, sponsored or facilitated by the ONDS.⁴⁰
- A toolkit has been prepared, including such tools as protocols, ground rules for discussion roundtables, and regularly posted informative bulletins on conflicts – a value-added for the discipline, a contribution to improved information, and a step towards reinforcing a culture of peace. .
- The ONDS has prepared a proposal for a national social conflict prevention system, the conceptualization and implementation of which was announced by President Ollanta Humala in his Message to the Nation in Congress on July 28, 2012. This initiative seeks to set up an institutional network that articulates the different government offices and levels, affirming the state's presence in all social levels. It is also intended to effectively articulate all government levels, generating an "institutional culture" aimed at prevention.⁴¹ The system is based on three main pillars for all conflict prevention and management tasks: a participative early alert and response system, risk area identification, and institutionalization of prevention at all government levels. An apparatus that involves regional and local governments is essential; according to several experts, conflicts tend to diminish or at least become less radicalized when local authorities intervene.
- The ONDS has used the so-called "development roundtables" as an intervention strategy to promote discussion and dialogue among community, company and state, going beyond the situation marked by a conflict. The notion the office is promoting is that of a dialogued comprehensive growing and developing process. The development roundtables force the presence of the various ministries with competency in the problems being addressed and help channel political and institutional energy into marginalized and discriminated areas with an absence of state presence.⁴² Some interviewees have pointed out the danger of overlap of the roundtables with the ministries' sectoral development and planning roles, and warn of their dubious sustainability over time, since they are becoming more proliferate. Nevertheless, they are recognized as being an intelligent way to address a situation characterized by distrust, vexation over the lack of compliance with past agreements, and, in certain regions, growing polarization. As a tripartite or multi-stakeholder scheme, development roundtables generally tend not to last as long as the old discussion roundtables, which usually lasted several months and, according to some interviewees, even years. Social spending projects are agreed upon in these roundtables, with the state and the company defining their contributions and the citizenry highlighting their most strategic and urgent needs. One of the ONDS's accomplishments as the governing body for the strategy of dialogue promotion and implementer of the development

40 Ibid, p. 27.

41 National Office for Dialogue and Sustainability, Presidency of the Council of Ministers, Peru. Willaqniki No. 4, *Construyendo el Sistema Nacional de Prevención de Conflictos Sociales*. March 2013, p. 11.

42 For more details see "Mesas de Dialogo, Mesas de Desarrollo y Conflictos Sociales en el Perú" in Willaqniki No. 5. National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. April 2013.

roundtables has been its strong role in monitoring agreements after they are signed. Civil society intellectuals and activists posited that discussion roundtables, though commonly used during the administrations of former presidents García and Toledo, were merely short-lived solutions to the conflicts since most of the clauses in the signed agreements were never carried out. The instrument's success is acknowledged by the business sector, with the caveat that micro-roundtables should be avoided and roundtables that bring together several districts should be encouraged. From the regional government perspective, the key is to avoid roundtables of indefinite duration and to set start and end dates in order to include the roundtables in the existing institutional framework. The identified demands, it was cautioned, need to be incorporated into the consensual development plans that are being prepared in the regions, provinces and districts with the participation of civil organizations and which come under review every five years. Likewise, the teaming up of regional and municipal authorities and the PCM and ministries is being encouraged for conducting and facilitating the multi-stakeholder dialogues.



TOOLS

The tools developed and used by the ONDS for conflict prevention and management include: the conceptual corpus (conflict phases and typology, causes and triggers), the early alert and response program, the team of analysts and facilitators, the database, protocols for the multi-stakeholder dialogues, articulation with regional and local governments, development roundtables, monthly bulletins on conflicts in Peru, and the proposed national system for social conflict prevention.

MINISTRY OF ENERGY AND MINING - MEM



The Ministry of Energy and Mining has a General Office for Social Management⁴³ which very likely, if taken as a unit, is the office with the most capabilities and resources for environmental conflict prevention and management.

According to the regulations for the MEM's organization and functions, this office is responsible for promoting harmonious relations between mining and energy firms and civil society, including local and regional governments, fostering the use of dialogue, sectoral consensus-building and collaborative sustainable development planning. In terms of hierarchy, the office reports to the office of the minister.

As mentioned earlier, the MEM was the first ministry to create – in 2005 – a unit for conflict prevention and management. The General Office for Social Management (OGGS) is also responsible for promoting, disseminating and implementing the citizen participation mechanisms provided in the country's investment promotion system, and has prepared rules for citizen participation and consultation for hydrocarbon and mining activities.

A community relations guide also had to be prepared for the purpose of evaluating the social component of the different environmental impact studies (sworn statement, environmental assessment, environmental impact study and semi-detailed environmental impact study).

At this time the OGGS has 42 direct employees and works in several thematic areas, of which environmental conflict prevention and management is only one. The office also has direct authority for managing the social funds set up by the companies and acts as a watchdog agency for the EITI initiative, in addition to analyzing and considering applications for socially-related international cooperation and providing technical advisory for prior consultations in the extractive sector.

One of its key tasks is to follow up on the social commitments made by the companies with the affected populations. To do so, the office has drafted an early

*At this time
the OGGS has*
42
*direct employees
and works in several
thematic areas*

⁴³ <http://www.minem.gob.pe/sector.php?idSector=3>

THE CASE OF PERU

alert and monitoring system for social commitments (SSAR) in order to monitor compliance with social commitments taken on by companies and the social environment in their areas of influence.

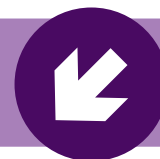
The General Office for Social Management plans to double its staff to 85 employees by the end of 2014. It will be opening decentralized offices this same year in ten of the country's regions.



TOOLS:

The following are some of the many tools used for monitoring and managing environmental conflicts: regulation-based citizen participation handbooks, awareness-raising workshops in affected communities, tripartite dialogues in the Amazon region, joint development planning, conflict resolution courses for staff and social stakeholders, stakeholder mapping in exploration and exploitation areas, and the community relations guide.

MINISTRY OF THE ENVIRONMENT - MINAM



Although the MINAM does not participate in authorizations for extractive industry operations or have any authority for water use management, since the National Water Authority (ANA) comes under the Ministry of Agriculture, it does oversee any environmental quality standards that might influence the impact of mining activities. A significant innovation in the country's environmental policy that might definitely impact the stream of extractive activity-related conflicts is the enactment of a law creating a national environmental certification service for sustainable investments (SENACE), an inter-ministerial agency under the Ministry of the Environment that will be responsible for reviewing and approving environmental impact studies for public and private investment projects.

The **Advisory Office for Socio-Environmental Affairs**,⁴⁴ also located within the Ministry of the Environment, is responsible for providing substantive support to dialogues concerning natural resource use, availability, access, demand and management. This office has a complete database of all existing socio-environmental conflicts in Peru. According to this database, at the beginning of 2014 there were 34 active cases, 22 of which have specific commitments requiring follow-up on the part of this office. Follow-up can take the form of participation in development roundtable meetings and on technical task teams, or attendance at technical secretariat meetings. It should be noted that this office already has early warning networks in place.

The office's participation has been essential in complex processes such as the one in Tintaya in 2012, since it has technical tools that can be used participatively to improve existing information and reach a joint understanding of problems and potential solutions. It has an early alert training plan and edits an informative bulletin, "Diálogo", containing opinion pieces, interviews, regulations, and a calendar of events for the National System for Environmental Information (SINA).⁴⁵

44 Official website, <http://www.minam.gob.pe/oficina-de-asesoramiento-en-asuntos-socio-ambientales-ooas/>

45 See No. 2 of the bulletin "Diálogo" at <http://sinia.minam.gob.pe/index.php?accion=verElemento&idElementoInformacion=1443>



TOOLS:

The tools used by this office include baselines and diagnostics, joint health and environmental monitoring committees involving local and national authorities and civil society, dissemination and presentation of studies, and comprehensive monitoring plans, as well as reporting that is validated by technicians designated by civil society, municipal and regional governments, training for community networks, and the informative bulletin, “Diálogo”.



AN IMPORTANT NEW ENVIRONMENTAL POLICY IN THE COUNTRY IS THE PUNISHMENT AND ENACTMENT OF LAW CREATING A NATIONAL ENVIRONMENTAL CERTIFICATION SERVICE FOR INVESTMENT SUSTAINABLE (SENACE)

It is worth noting that the MINAM also has the **General Directorate for Environmental Policies, Standards and Instruments**⁴⁶ which is currently developing software for follow-up on socio-environmental conflicts, though it does not directly intervene in dialogue promotion and conflict prevention. This office monitors two key environmental policy committees where dialogue and exchanges take place for setting criteria and formulating environmental policies: the Cross-sectoral Environmental Committee, which brings together executives from executive branch environmental agencies; and the Multisectoral Environmental Committee, which includes civil society and was re-formed in 2013.

Finally, also situated within the MINAM is the **Environmental Oversight and Evaluation Agency (OEFA)**, created in 2008 by means of Legislative Decree 1013, though its activities were not initiated until 2010.

The OEFA has a **General Coordinator of Socio-environmental Conflict Management (CGGCS)**⁴⁷ responsible for articulating the prevention, monitoring, handling and recording of socio-environmental conflicts related directly to the OEFA’s area of authority. Ten different specialists (sociologists, political scientists and lawyers) work in the CGGCS. The office gears its efforts towards re-building trust between communities and the state. Three factors are prioritized in the exercise of its duties: response time, geographical coverage, and potential reach of the response. Branch offices have been set up in each of the regions except San Martin, Amazonas, Ucayali and Huánuco, where the OEFA plans to open branches next year. Each branch has some six employees. In addition to this national deployment, the OEFA has 200 inspectors traveling constantly throughout the country.

Another effective tool for prevention and social relations is the National System for Environmental Complaints, where citizens can report alleged violations of environmental law and activate inspections by the office. The OEFA is completing

46 Official website, <http://www.minam.gob.pe/politicas/>
 47 Sitio Oficial http://www.oefa.gob.pe/?page_id=31876

construction of a university network for environmental training and assessment (RUCEFA), which will consist of volunteers who have received training from the MEM; this has involved the signing of agreements with 21 universities.

The CGGCS has set in motion its early warning system (SAT) with feeds from regional offices; the system records protests, collects information on the ground from local media, and cross-checks information with the Complaint System if necessary. All information is processed by analysts in the Lima office. At no time can a response take more than 48 hours from the deployment order.

TOOLS:

Tools include: case recording software, socio-environmental conflict maps, a community information network, an early warning and rapid management system, a conflict analysis and identification guide, and a participation guide for dialogue and negotiation.





MINISTRY OF AGRICULTURE AND IRRIGATION - MINAGRI⁴⁸



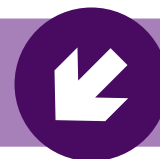
Despite MINAM's lack of equipment and a formal, specialized conflict prevention unit, and despite the fact that issues are centralized and managed by thematic offices, as will be seen below, the ministry's new regulation (ROF) seeks to create such a unit based on the joint workings of the ministry's different agencies with offices throughout the country.

Under this ministry there is a dialogue, consensus-building and almost permanent discussion mechanism that operates at three levels. The **General Directorate for Agricultural Competitiveness** is responsible for liaising with the producers of six of the country's sensitive products where potential conflicts may arise (cotton, corn, potatoes, alpaca, coffee and rice). For each of these products there is a specific team that communicates with, monitors and attempts to maintain collaborative relations with the producers. It is reasonable to assume that any protest in these sectors would be manifested in advance in one of the many conversations with the ministry's officials. The Agrarian Research Institute (INIA) and the National Agricultural Health Service (SENASA) assist with the management task.

Relations with the sector's unions, the National Board of Irrigation Users, the National Convention of Peruvian Agriculture, and the National Agricultural Confederation (CAN) are handled by a **focal point** who specifically addresses agricultural policy-making and regulatory issues and oils the co-management machinery.

Finally, hydraulic issues are coordinated by the **General Directorate of Hydraulic Infrastructure** with the National Water Authority (ANA).

48 Official website, <http://www.minag.gob.pe/portal/>

NATIONAL WATER AUTHORITY - ANA⁴⁹

The ANA is the Ministry of Agriculture agency responsible for implementing the national Water Strategy and National Water Resource Plan approved in 2009. According to its regulation (ROF), the **Directorate of Knowledge Management and Inter-institutional Coordination** has a specific duty to formulate and propose guidelines and strategies for water use-related social conflict prevention and management. There is, at present, a water dispute management team that will be formally created with the publication of the next ROF. The multidisciplinary team of professionals keeps a matrix of each of the cases where disputes or potential conflicts exist over access to or use or distribution of water. At present Peru has 51 cases of water disputes. The ANA has software that enables it to locate the exact spot within the national territory, the type of conflict, and the primary and secondary stakeholders involved. A report is produced by this office on the situational status of water controversies. The broad coverage given by the Water Administration Authorities (AAAs), with 72 offices throughout the national territory, enables them to collect first-hand information and send it to Lima for analysis for the appropriate measures to be taken. The AAAs' conflict prevention and management capacity needs to be reinforced, according to ANA officials themselves. One of the actions taken by the institution to raise awareness on the appropriate use of water was to translate the Water Resource Act into the Aymara, Awajún, Quechua Ancash, Ashaninka and Quechua Chanka Collao languages.

TOOLS:

The four primary tools this agency has for promoting dialogue, exchange and generation of shared visions on the problems are participative diagnostics constructed with communities and user boards, water sampling, a protocol for intervention and participation in discussion roundtables, and the monitoring system for potential disputes based on information collected by the AAAs.



49 Official website, <http://www.ana.gob.pe/>



AS MENTIONED ABOVE,
MANY PROJECTS IN
PERU EXTRACTIVE
OCCUR IN TERRITORIES
WITH PRESENCE OF
INDIGENOUS AND TRIBAL
PEOPLES OR HAVE
CONSEQUENCES FOR
YOUR LIFESTYLE AND
WELFARE

The Ministry of Culture, created in 2010, is responsible for keeping a registry of indigenous populations and implementing the new law on the right to prior consultation of indigenous and native peoples through the General Directorate for Interculturality and the Rights of Native Peoples. Approved by President Ollanta Humala in August 2011, this law regulates the Peruvian state's compliance with obligations set forth in International Labor Organization (ILO) Convention 169 ratified by the Peruvian government. As mentioned earlier, many of Peru's extractive projects occur in territory inhabited by indigenous or tribal peoples or where there are consequences for their lifestyle and well-being.

The Viceministry of Interculturality is also responsible for articulating state policy for implementing the right to consultation, providing prior technical assistance and training to promoting agencies and indigenous organizations, and advising the agencies on defining the consultation scope and features. Fifteen of the institution's sixty staff members are exclusively dedicated to implementing prior consultation. This Viceministry has been playing a key role in communicating with the different national organizations of indigenous peoples of the Amazon and Andes, not only when preparing the bylaws to the consultation law but also in current consultation processes. Two consultation processes have been completed, thirteen are underway, and one is on the verge of beginning in Huancavelica in the Andean area. One of the measures submitted to consultation is the Forestry Law. Most of the consultations are related to the possibility of exploiting oil lots in indigenous territories.

Viceministry officials recognize that the institutionality needed for effective exercise of the right to consultation has to be built, implying a radical change in the structure of the three state levels. The georeferenced database on indigenous peoples, essential for identifying which measures might impact which peoples,

50 Official website, <http://www.cultura.gob.pe/interculturalidad>

the record of the indigenous peoples' authorities, the facilitator and interpreter database, and the methodology manual for conducting consultations, their direct dialogue phases and preparatory activities for the consultation plan, will all depend on the Viceministry of Interculturality.

One of the most pressing challenges for the Viceministry of Interculturality staff is how to handle complaints that come up during the dialogue or negotiation process with regard to the indigenous people's precarious living conditions, even though the consultations take place around a specific legislative or administrative measure which the process is ostensibly designed to address. These kinds of complaints should be addressed through development roundtables, so more inter-institutional coordination and articulation is needed.

TOOLS:

The following tools are used: native staff members from indigenous areas, a Methodological guide for consultations, facilitators, interpreters for the nineteen native languages in Peru, and Database of the indigenous peoples.



Ombudsman's Office⁵¹

The Ombudsman's Office is a prestigious institution respected for its work in defending the human rights of all Peruvians. Monthly monitoring of social conflicts is carried out by the Office of the Deputy Ombudsman for Social Conflict Prevention and Governance, created in 2009. The monitoring is based on information provided by the Ombudsman's field offices and mobile units, non-governmental organizations, and research conducted by its own staff. In practice, this mechanism works as an efficient early alert and monitoring system.

38

*national offices
with staff trained in
conflict monitoring*

The Ombudsman's Office has a decade of experience and systematic work in dialogue and social conflict prevention, management and resolution. The Office of the Deputy Ombudsman for Social Conflict Prevention and Governance started out as a social and political conflict intervention committee that operated from the end of 2003 to 2006, at which time it became a unit, operating as such until the deputy ombudsman's office was created.

A key asset of the Ombudsman's Office and its Deputy Ombudsman's Office for Social Conflict Prevention and Governance is its 38 national offices with staff trained in conflict monitoring, prevention and management. The itinerant rights protection system, a group of mobile units that travel out of field offices, also helps it increase its geographical coverage and response capacity.

The Deputy Ombudsman's Office also conducts significant training and produces conflict reports that get distributed to a large network of social, political, and

⁵¹ <http://www.defensoria.gob.pe/temas.php?des=3>

economic stakeholders. The Ombudsman's reports constitute a valuable contribution to government operators and dialogue practitioners, providing valuable and up-to-date information for monitoring and studying the evolution of conflicts. The office has one of the most complete databases on conflicts and incidents of conflict and has also produced studies and research on socio-environmental conflicts, giving presentations on these topics to the National Congress. The Ombudsman's Office also participates in dialogue processes, promoting, advising, facilitating and in some cases guaranteeing agreements. To this respect, it monitors commitments made during the discussion roundtables in which it participates.

TOOLS:

Its tools include monthly reports on the number and characteristics of social conflicts in Peru, an early warning system, guidelines to intervene in electoral conflicts, guidelines for intervention in social conflicts where the stakeholders are indigenous Amazonian peoples, a social conflict intervention protocol for prior consultations, a lead role in organizing dialogue processes, authority to intervene in areas where a state of emergency has been declared, and authority to intervene in Shining Path (*Sendero Luminoso*) areas where they are currently working on an intercultural mediation mechanism.







Notes for
PRACTITIONERS

1

In the last ten years Peru has developed an abundant set of rules and regulations aimed at institutionalizing the practice of social conflict prevention and management, particularly for socio-environmental conflicts related to natural resource access, use and exploitation. Comprising this are social conflict management guidelines, principles, and strategies set forth in laws, ministerial resolutions, supreme decrees, directives, and organization and functions regulations for the different ministries, which have been cited throughout this paper and are available at the links provided in the footnotes. The creation of the Multisectoral Committee for Social Conflict Prevention in 2006, approval of the Prior Consultation Law in 2010 and its bylaws in 2012, preparation and approval in 2011 of the general guidelines for the prevention of social conflicts in Peru, and creation of the National Office for Dialogue and Sustainability in 2012 were important landmarks in this institutionalization process.

2

With the passage of time, the regulations have changed the way the state reacts or responds to social conflicts, especially socio-environmental ones. Today it is assumed that an indispensable condition for a democratic regime is to seek dialogued, consensual solutions to the challenges posed by the economic growth and development of communities, and to attain this end a conceptual and institutional apparatus must be developed that can make this possible.

3

Though not always consistent over the last 14 years, the promotion of opportunities for dialogue, mediation and conciliation has been a key piece of the Peruvian state's response strategy for conflicts. This commitment to dialogue continues to gain strength; proof of this is the relatively recent creation of the National Office for Dialogue and Sustainability, responsible for articulating the efforts of the three state levels for dialogue, a culture of peace, and conflict prevention.

4

The institutionality developed in Peru during the last ten years for conflict prevention and management consists of at least three distinct elements: **rules and regulations, installed capacity in the different state sectors and institutions, and available tools for promoting social and socio-environmental conflict management and resolution.** Considerable headway has been made in each of these three categories during the last 14 years.

5

The type of response provided by the Peruvian state to a social or socio-environmental conflict at the onset of the 2000-2010 decade was characterized as intuitive, informal, inorganic and inconsistent. In general, the President of the Council of Ministers would give instructions to collect information on a conflict once it was already underway and, in most cases, escalating. A similar thing happened at the ministerial level with officials who lacked any type of preparation or formal training in conflict analysis, sensitive conflict handling, or conflict management and resolution. There were no funds earmarked for deployment of officials or units or offices responsible for designing intervention strategies. Many of the social and socio-environmental conflicts occurring after midway through the 2000-2010 decade ended up forcing the presence of ministers and the President of the Council of Ministers through the formation of high-level committees. This led to high levels of exposure and fatigue among top state authorities, forcing in some cases a premature reshuffling of cabinet members.

6

Conflict monitoring capacities were nonexistent at the start of the 2000-2010 decade, as were practical tools for anticipating or preventing a breakout or resurgence of socio-environmental unrest. All conflicts, therefore, occurred in public spaces or came to the attention of the authorities only after they started escalating or forceful measures were taken by one of the parties. This trend was reversed in 2004 when the Ombudsman's Office – among other stakeholders – began to monitor conflicts and present conflict reports prepared by an incipient social conflict prevention unit.

7

During the second half of the 2000-2010 decade, social management or conflict prevention units were created in the Ministry of Energy and Mining, the Ministry of the Environment, and the Presidency of the Council of Ministers. The growing volume of work and expanding role of prevention tasks and dialogue promotion justified the creation of a deputy ombudsman's office for social conflict prevention and governance within the Ombudsman's Office in 2009. In 2010, the Prior Consultation Law was approved and the Viceministry of Interculturality was created to ensure its effective implementation and advise other state agencies on the matter. Joining this trend were the Ministry of Agriculture – without a formal structure, even at this date, but with a permanent mechanism for dialogue with key agricultural production sectors and sectoral unions – and the National Water Authority with its water dispute management team.

8

At present, each of the units, offices or directorates responsible for carrying out prevention tasks and conflict management has staff with formal training in conflict theory, analysis, planning, monitoring tools, intervention, and management. Staffing has quadrupled in the Presidency of the Council of Ministers (PCM) unit responsible for dialogue and prevention, the National Office for Dialogue and Sustainability (ONDS), going from 11 members in 2006 to 44 today. The same has occurred with the **General Office for Social Management** of the Ministry of Energy and Mining, which plans to have 85 people by the end of 2014, and the Office of the Deputy Ombudsman for Social Conflict Prevention, which started with four people when it was a unit in 2004 and now has a team consisting of all the field office heads and at least two commissioners with training in dialogue and conflict prevention and management.

9

This multiplicity of institutional spaces for monitoring and intervening in multidimensional and multi-causal conflicts – such as the socio-environmental ones – requires more inter-institutional coordination. The vast majority of interviewees understand this as perhaps the most important aspect to focus on within the framework of a general, multi-level strategy for socio-environmental conflict prevention and management. Visible improvement has been made since the creation and putting into operation of the National Office for Dialogue and Sustainability. This office attempts to play the role of articulator and overseer of state response and the commitments made by companies in the multi-stakeholder spaces where there is dialogue for resolving conflicts. However, institutionalization of a formal coordination platform for responses at the three state levels is essential. The ONDS has conceived and drafted a national system for social conflict prevention and management currently under study in the Council of Ministers.

10

There is a variety and wealth of instruments used for monitoring, preventing conflict and intervening, such as: designing, implementing, observing and facilitating dialogue; informing communities and the general public; building shared visions; ensuring joint assessments or monitoring of controversial issues; constructing diagnostics in a participative manner; and definitely channeling and responding to the demands aired by social stakeholders in a conflict. Although the responses may not always be entirely sustainable or fully meet the expectations of the stakeholders in the conflict, they help prevent episodes of open violence and create opportunities for dialogue, consensus-building and a joint search for solutions.

11

The early warning mechanisms in the National Office for Dialogue and Sustainability, the Ombudsman's Office, the Ministry of Energy and Mining, the Ministry of the Environment, and the National Water Authority all operate in a more or less similar manner. First-hand information collection is the responsibility of decentralized offices in the different regions, which send it to a team of analysts (generally based in Lima) who in turn prepare a report or pre-alert whenever necessary for political decision-makers.

In addition to the installed capacity or physical presence in the regions – varying from departments or municipalities with 7-person offices to more modest delegations of 2 officials – the potential of early warning and response systems resides in the social capital built by these offices and reinforced by institutions in Lima. The privileged relationship of the ONDS with governors and mayors, the early warning networks and trainers in the Ministry of the Environment, the National System for Environmental Complaints, the OEFA's network of university volunteers, and the Ombudsman's Office's relationship of trust with social and non-governmental organizations throughout the country all make it possible to access "quality" information – which moreover represents the "voice of the stakeholders". These relationships of quality and trust with social stakeholders are essential for identifying points of entry and designing and implementing conflict prevention or management strategies.

All the offices or units combine ground information with news reports of social stakeholders, non-governmental organizations and other state agencies. It should be highlighted that the Office of the Deputy Ombudsman for Social Conflict Prevention and Governance does not use information from reserved sources or state intelligence agencies. All the early warning and response systems have some type of information technology support, from a database with conflict information (typology, region, stakeholders, demands, related legislation, phase, intervening institution, signed agreements, news coverage and forceful measures) to programs for recording pre-alerts that are transmitted directly to Lima for validation or correction before an alert is issued.

12

All the institutions have georeferenced maps of the conflicts in their area of competency or jurisdiction. The maps give the number of existing conflicts, basic information on each case, and conflict status (active, passive, or under treatment).

13

The tools for building shared diagnostics or similar visions of a problem have been crucial for the peaceful resolution and outcome of several incidents of environmental conflict. Participative diagnostics constructed with communities and water users boards, comprehensive health and environmental monitoring plans, and the validation by the Ministry of the Environment of studies and reports with civil society and regional and local government technicians are all examples of this type of approach, which seeks to improve information quality and involve stakeholders with interests and needs in the conflict.

14

A key lesson learned from the UNDP's success in multi-stakeholder dialogue processes in the region is that "form" counts – and counts heavily. The process dimension of the dialogues has been shown to be essential and has had as much or more weight in successful processes than the substance itself or the issue under discussion or for which a solution was being sought. Along this line, consideration should be given in each stage to the convening, preparation, design of the rules, holding of the meetings, facilitation, informal spaces, monitoring, and press release, among other things. There are decisions and options that can be taken by stakeholders in advance or at the time that are critical to the success of the process. Likewise, the existing conflict intervention protocols in various sectoral units or the protocols prepared by the ONDS for practical management of discussion and development roundtables help prevent misunderstandings between the parties and ensure a transparent, calm, informed and participative process.

15

The existence of dense, complex and varied institutionality does not guarantee, *per se*, a reduction of the number of socio-environmental conflicts, since according to all interviewees this type of conflict is linked to the volume of the extractive portfolio and the pace of growth of the Peruvian economy that depends highly on the sector. Institutionality has grown and become more robust, but this does not mean that it can keep up with the pace or level of natural resource exploitation or the pace of economic growth, one of the region's highest in the past decade.

BIBLIOGRAPHY

- **Arana-Zegarra, Marco**, “El caso del derrame de Mercurio en Choropampa y los daños en la población rural expuesta.” *Rev Peru Med Exp Salud Publica*. 2009; 26(1): 113-18.
- **Bravo Alarcón Fernando**, “Conflictos Socio Ambientales y Estado en el Perú”. Talk given at the Fourth Ibero-American Congress on Development and Environment – Distributive Ecological Conflicts. October 5-10, 2009, Bogota.
- **Caballero Martin Victor**, “Conflictividad Social y Gobernabilidad en el Perú.” *United Nations Development Program, International Institute for Democracy and Electoral Assistance, La Paz, Bolivia*. UNDP 2012.
- **Cadarso, P.**, (2001) *Fundamentos Teóricos del Conflicto Social*, Siglo XXI, Madrid.
- **Calderón, F.**, (2011) (Coordinator). “Las Protestas Sociales en América Latina. Informe sobre Conflictos Sociales en América Latina.” UNDP, Fundación UNIR, Bolivia.
- **Doring, M.; Dalponte, B.; Hoffay, M.**; “América del Sur frente al acuerdo militar entre Colombia y Estados Unidos: La UNASUR y el CDS en acción” in *Anuario de Integración Regional de América Latina y el Gran Caribe, 2010 CEGRE/CEHSEU/IEEI/CRIES*, 2013.
- **Gouley Clotilde** “Conflictos mineros, interculturalidad y políticas públicas: el caso de Las Bambas, provincias de Cotabambas y Grau, departamento de Apurímac.” *Centro Bartolomé de las Casas, Consorcio de Investigación Económico y Social*. 2005, Cusco.
- **Lazarte, J.** “Crisis y percepciones en la crisis. Actores y estrategias” in *Del Conflicto al Diálogo: Una Mirada hacia el Futuro*. FES-ILDIS and fBDM. La Paz.
- **Ormachea I. Bedoya C.** “Conflictos Sociales y Construcción Democrática” in *Quehacer, Lima, Desco, No. 164, January-February 2007*.

THE CASE OF PERU

- **Rojas, C.**, *“La polarización irrumpe en escena.”* Keynote address at the Fourth World Mediation Congress. Bolivia, November 2008.
- **Sanborn Cynthia A, Dammert J.L** *“Extracción de Recursos Naturales, Desarrollo Económico e Inclusión Social en Perú.”* Centro de Investigación de la Universidad del Pacífico, February 16, 2013.
- **Stewart, Frances** *“Horizontal Inequalities: A Neglected Dimension of Development,”* Working Paper No. 16, Queen Elizabeth House, University of Oxford, 2002.

REPORTS AND REGULATIONS

- National Agreement. State Policy on Water Resources. Executive Secretariat for National Agreement. August 2012.
- Informative Bulletin No. 2- "Dialogo", Peruvian Ministry of the Environment. December 2013.
- "Diálogo y prevención, Garantía de Desarrollo." Bulletin in Willaqniki No. 1. "Informe de diferencias, controversias y conflictos sociales." National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. December, 2012.
- "Mesas de Diálogo, Mesas de Desarrollo y Conflictos Sociales en el Perú." Bulletin in Willaqniki No. 5. National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. April 2013.
- "Construyendo el Sistema Nacional de prevención de Conflictos Sociales." Bulletin in Willaqniki No. 4. National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru. March 2013.
- "Balance Anual de la Conflictividad." Bulletin in Willaqniki No. 14. National Office for Dialogue and Sustainability. Presidency of the Council of Ministers, Peru.
- "Mining Conflicts in Peru: Condition Critical." Oxfam International. March 2009.
- Supreme Decree 10-2010-PCM Creating the Office of Social Conflict Management
- Office of the Ombudsman for the Republic of Peru. Deputy Ombudsman's Report N° 006-2009-DP/ADHPD. "Actuaciones Humanitarias realizadas por la Defensoría del Pueblo con Ocasión de los Hechos ocurridos el 5 de Junio del 2009 en las provincias de Utcubamba y Bagua." 2009.

THE CASE OF PERU

- “Extractive Industries and Conflict, Guidance Note for Practitioners,” European Union-United Nations Interagency Framework Team for Preventive Action. 2012.
- “Guiding Principles on Business and Human Rights.” United Nations Office of the High Commissioner for Human Rights. 2011.
- Annual Project Report. “Prevención de conflictos sociales en el uso de recursos naturales 2013.” United Nations Development Program.
- Report. “El MINEM y la responsabilidad social en industrias extractivas.” Government of Peru. 2013
- General Environment Law 28611.
- Framework Law for the National Environmental Management System, Law 28245, and its Regulation by DC 008-2005-PCM.
- Law for the Creation, Organization and Functions of the Ministry of the Environment. Legislative Decree 1013.
- Law 29785 on the Right to Prior Consultation of Indigenous or Native Peoples, recognized in International Labor Organization (ILO) Convention 169, and the Regulation for said law, Supreme Decree 001-2012 MC.
- Water Resource Law 29338 and its Regulation.
- Protocol for Intervention in Social and Political Conflicts. Office of the Ombudsman of Peru. 2004.
- Organization and Functions Regulation (ROF), Peruvian Ministry of Energy and Mining.
- Ministerial Resolution 161-2011-PCM establishing the general strategies and guidelines for the prevention of social conflicts in Peru.
- Ministerial Resolution 304-2008-MEM/DM regulating the rules for citizen participation in the mining subsector; and Citizen Participation Regulation for the Mining Sector, approved by DS 028-2008-EM and Ministerial Resolution No. 304-2008-MEM/DM.
- Organization and Functions Regulation, National Water Authority (Adaptation of Law 29338. July 2010.
- Strategy Note. UNDP’s Strategy for Supporting Sustainable and Equitable Management of the Extractive Sector for Human Development. December 2012
- U.S. Geological Survey, Mineral Commodity Summaries, US Minister of Interior, US Geological Survey, January 2013.



**Alianzas
para el
Diálogo**
Prevención de conflictos sociales en el uso de recursos naturales

Project Partnerships (Alliance) for Dialogue

Preventing social conflicts over the use of natural resources

Our goal

Contribute to strengthening democratic governance and sustainable development by reducing conflicts linked to the use of natural resources, by supporting the institutionalization of dialogue and a culture of prevention.

Our thematic lines




Our strategies


- Intersectoral, interinstitutional and intergovernmental coordination.
- Political and Social impact.
- Building and developing Capacities.
- Knowledge management.

Our counterparts


National Office of Dialogue and Sustainability of the Presidency of the Council of Ministers • Ministry of Environment • Ministry of Energy and Mines • Ministry of Culture • Ministry of Agriculture • Environmental Monitoring and Evaluation Agency • National Water Authority • Office of the Ombudsman • 15 regional governments • National Assembly of Regional Governments • Civil society (universities and Research institutions, NGO, indigenous organizations, private sector, and others) and international cooperation.

For more information on the project “Partnerships (Alliance) for Dialogue: Preventing social conflicts over the use of natural resources”, please contact:

 facebook.com/Alanzas-para-el-Diálogo

 [@AlanzasDialogo](https://twitter.com/AlanzasDialogo)

 es.scribd.com/AlanzasDialogo

 alianzasparaeldialogo.blogspot.com



UNITED NATIONS DEVELOPMENT PROGRAMME

Regional Service Centre for Latin America and the Caribbean
UN House, Building 128. City of Knowledge, Clayton, Panamá
Panamá, República de Panamá.
Phone: (507) 302 – 4500

*Empowered lives.
Resilient nations.*

www.regionalcentre-lac-undp.org