



**Graduate School of Development Studies**

**COMMUNITY RIGHT TO PARTICIPATE IN MINING POLICIES WITH  
REFERENCE TO TINTAYA AND RIO BLANCO MINING CONFLICTS IN PERU**

A Research Paper presented by:

**Lenny Merino Jimenez  
(PERU)**

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Members of the Examining Committee:  
Des Gasper  
Sunil Tankha

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***Dedication:***

This paper is dedicated to my parents. Both grew up and based their livelihoods on agriculture and farming on the lands where the Rio Blanco conflict is now taking place. They have spread their love to Piura, its people, its history, its landscapes, its climate, and everything associated with it, onto me. This same love was the spirit that motivated me to move the local conflict to The Hague in an academic attempt to transform it, looking for scenarios where mining and development can merge.

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***Inquiries:***

Postal address: Institute of Social Studies  
P.O. Box 29776  
2502 LT The Hague  
The Netherlands  
Location: Kortenaerkade 12  
2518 AX The Hague  
The Netherlands  
Telephone: +31 70 426 0460  
Fax: +31 70 426 0799

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## **ACRONYMS**

<b>LA</b>	Latin America
<b>UN</b>	United Nations
<b>HRBA</b>	Human Rights Based Approach
<b>FPIC</b>	Free, Prior and Informed Consent
<b>MEM</b>	Ministry of Energy and Mining
<b>MININTER</b>	Ministry of Interior
<b>EIA</b>	Environmental Impact Assessment
<b>FDSFN</b>	Front of Defence for the Sustainable Development of the North Frontier
<b>CONAM</b>	National Commission of Environment
<b>CARC-PUCP</b>	Analysis and Resolution of Conflicts Center – Catholic University
<b>OSINERGMIN</b>	Organism Supervisor of Investment in Energy and Mining.
<b>Oxfam CAA</b>	Oxfam Community Aid Abroad
<b>DR</b>	Dialog Roundtable
<b>SC</b>	Sub Commission

## **ABSTRACT**

This research paper analyzes mining conflicts between native communities and mining companies with international capital, which creates a major impact on the locality, the country and also internationally. Because of their intensity, increasing levels of violence and polarization of positions, mining conflicts are a challenge to the governability, democracy, economic growth and ultimately the development of Peru.

First, conflict processes are inherent to development. Second, conflict is a complex issue that needs a holistic approach to be addressed sufficiently. Among the issues related to conflict, one that will be explored is the increasing demand from local communities to have an influential participation in approving or rejecting mining projects on their lands. The issue clashes with the central government's attempts to impose mining without providing an institutional framework to negotiate differences among the actors involved (communities, mining company, state and third parties), where meaningful community participation – one that is influential, intercultural, informed and appropriate – can take place.

The cases assessed show that conflict can be transformed when there are duty bearers committed to protect, guarantee and respect right holders. With the state as the main duty bearer, and international organizations and the mining companies playing key roles, institutional changes can be provided for to process and transform political differences and allow communities to exercise meaningful participation. The escalation of conflict, as well as polarization, violence and authoritarian practices from all sides, can be prevented, but moreover, it may be possible to relate mining with [sustainable and participatory] development.

## CHAPTER 1: INTRODUCTION

### 1.1 INDICATION OF THE PROBLEM

Peru is a country rich in mineral resources [Annex 1 p. 55], one of the highest in international mining production rankings ('Mining Atlas' 2008: 43). Worldwide, Peru ranks first in silver; second in zinc and copper; third in tin, tellurium and bismuth; fourth in lead and molybdenum; fifth in gold; eighth in indium and selenium, and seventeenth in iron.

Peru was supposed to be one of the most favoured countries in Latin America, due to the prices of metals that were to continue increasing in the next five to ten years (CEPAL 2006) related to the structural demand of raw materials from the Asian market (specifically China and India). Mineral values have increased to annual rates of 32 percent from 2003 up to this time of writing.

But due to the actual economic crisis, mineral prices, among them copper, have dropped, which may cause mining companies to look for ways to reduce costs. If unregulated, this may have a negative impact on the rights of communities where the mining companies are settled.

While investment in the mining sector has increased since the 1990s, social conflicts in Peru have multiplied due to the opposition of the communities to allow extractive companies into their lands, stopping even the exploration phase of the mining projects.

Some reasons related to these conflicts are:

a. Defence of the communal autonomy. There is a growing demand by local communities to participate in the approval (social license) of mining projects settled on their lands, which clashes with the central governments' imposition of mining and the lack of regulatory framework and mining policies for that influent participation to take place.

b. Environmental risks. The communities' fear of the potential contamination of their lakes, rivers, and lands due to extractive industries are anchored on cases where mining has harmed the environment, health and produced human insecurity. The most publicised negative experiences are those from Yanacocha<sup>1</sup>, Southern Peru<sup>2</sup> and La Oroya<sup>3</sup>.

Peru lacks an independent environmental regulatory institution. The regulatory functions (e.g. Approval of the Environmental Impact Assessment – EIA) are in the hands of the MEM [Ministry of Energy and Mining], which also promotes investment. Is MEM more accountable to respecting and protecting community rights or to promoting investment? (Bebbington 2007).

c. Distribution of economic benefits. Without mining, the Peruvian gross domestic product (GDP) would have been 26.6 percent less, the tax income 39 percent less and the exports reduced by 61.8 percent. Investment in the mining and energy sectors has doubled from the previous year; US\$ 25 billion in investments was promised for 2008 to 2012. Most mining companies operate with tax exonerations. If their contribution to economic growth is high, it is because of the utilities obtained, which at the same time are volatile.

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<sup>1</sup> A truck from the Yanacocha gold mine spilled mercury in Choropampa and two more towns, exposure to which caused neurological disorders, severe birth defects and mental illness.

<sup>2</sup> Two lakes dried up because of Southern Peru activity.

<sup>3</sup> The Oroya has been named one of the ten most contaminated places in the world.

But this increment in growth at the macro-national level is not reflected at the micro-local level where mining has not contributed to the economic development of the mining regions. There is a major problem in the redistribution of resources from the national to the regional and local levels, which could help reduce inequality and extreme poverty [Annex 2 p. 56].

d. Dispute over natural resources as a means of economic support. Mining projects, especially in agricultural zones, may affect water supply. Also, lands are a crucial resource in dispute for agriculture-based community livelihoods. The communities' fear of losing their lands is reinforced by the belief that mining (especially open-pit mining) and agriculture are incompatible. Alternative productive activities are a major option to be explored with communities before mining projects take place.

e. National vs. local and communal authority. Native communities, in contrast with the central government and business sector, have different rationalities related to governance and authority over land, environment, natural resources, livelihoods, development and the way to (re-) establish order when law is not followed. Moreover, the role of the state – its absence, support to mining companies or protection of community rights – has a relation to the transformation or deepening of the conflict.

## 1.2 RELEVANCE AND JUSTIFICATION

The spirit of this research paper is an attempt to find common grounds for dialogue to process the differences among various actors involved in the conflict, based on the potential benefits of mining for development, especially in poor communities.

The value of this research can be seen in the current lack of comparative studies on various mining conflicts in Peru. Within one framework, the research applies the theory of social movements and the human rights-based approach (HRBA) to current practice by mining industries, based on concrete cases (e.g. Tintaya and Rio Blanco<sup>4</sup>) in order to arrive at policy proposals.

### *Why the Rio Blanco case?*

1. This is the most symbolic and significant mining conflict in Peru. It opens the door for broader questions related to governance, democracy and decentralization. The way it has been resolved will create a precedent on how mineral exploration is governed and regulated by the state in Peru (Bebbington 2007), and how community right to participate is incorporated in mining public policies.

2. Peru would be the second largest copper producer worldwide if Rio Blanco Copper Company started operating. If the project started operating, the annual national production of copper would increase by 20 percent. For the first year alone, US\$ 65 million for canon and royalties would go to Huancabamba, the regional government and the municipalities of Piura (Andina 2008, 29th January).

3. The history of social conflict in Piura should be brought to light. Rio Blanco could be “a larger war after Tambogrande battle” (Bebbington 2007). In Tambogrande, a Canadian gold company withdrew in 2000 after a referendum was passed. This happened just as exploration in Rio Blanco began; some of its actors participated in the Rio Blanco conflict.

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<sup>4</sup> This research is the most updated analysis of Rio Blanco conflict.

Tambogrande is considered the starting point of growing demand from local communities in the whole country to reject or withhold consent (Echave et al. 2008). Mining conflicts such as Tambogrande and Rio Blanco appeared during the exploratory phase, when the first visual impact of mining happens in community perception. Similar conflicts now occur in other parts of the country. Thus, the large number of projects in exploratory phase is a potential source of conflict [Annex 3 p 57].

*Why the Tintaya case?*

Among all the experiences of social conflict related to mining projects in Peru, what could transform and address the conflict (Tanaka 2007) is the Tintaya case (Cusco, 2002). It was considered successful by the state, mining companies, international and national non-governmental organisations (NGOs) and communities because it was possible to relate mining for development based on a sustained dialogue where minimum agreements were made and concrete results were reached, among the mining company, the five native communities, and the local authorities supported by the national and international NGOs.

This case will be analyzed to gain lessons on the role of the duty bearers (independent variable) in the participatory process (dependent variable) and how this relation could transform the mining conflict in comparison with the Rio Blanco conflict. Evidence will be gathered for recommendations on the role of the duty bearers in enhancing participatory processes through mining policies.

**1.3 RESEARCH OBJECTIVES AND RESEARCH QUESTIONS**

	Tintaya Conflict	Rio Blanco Conflict
[HRBA's tool in extractive industries]:	<b>Describe and explain</b>	
	1. How <u>the duty bearer's role</u> (state, mining company and international organizations as an independent variable), in relation to the <u>participatory process</u> (dependent variable, elements of which are taken from FPIC) is associated with the mining conflict (thus, to help explain the conflict). Similarities and differences between the two cases.	
FPIC [Tool with emphasis on participatory processes]	<b>Transform/manage/deal (Recommendations)</b>	
	2. How <u>the duty bearers' role</u> in relation to the <u>participatory process</u> (elements of which are taken from FPIC) helped transform/manage/deal with the mining conflict (evidence for recommendations).	3. Learnt lessons (evidence-based policy making) based on the role that the <u>duty bearers should play</u> in promoting <u>participatory processes</u> to change current mining policies (in order to transform mining conflicts and prevent them from polarizing).

I would like to describe and understand:

**PART 1**

1. How the duty bearers' roles (state at different levels, mining company and international community), in relation to community right to participate, help explain and transform mining social conflicts with reference to the Tintaya and Rio Blanco projects.

In relation to this, I would like to know:



- a. What are the duty bearer's discourses (words and practices/behaviour) towards community right to participate in mining projects?
- b. What (knowledge, attitudes, cultural values, motivations, rationalities) feeds duty bearer's discourses towards community right to participate in mining projects?
- c. What is the right holder's discourse (words and practices/behaviours) towards their right to participate in mining projects?
- d. What (knowledge, attitudes, cultural values, motivations, rationalities) feeds the right holder's discourses towards their right to participate in mining projects?

## PART 2

2. Recommendations on what should be the role of duty bearers in relation to community right to participate in mining policies in order to transform social mining conflicts.

### **1.4 RESEARCH METHODOLOGY**

In chapters three and four, I use a deep and disaggregated stakeholder analysis with contextual factors and the history of the two conflicts combined with the theory of social movements within the human rights-based approach framework, in which the tool Free, Prior and Informed Consent (FPIC) is used to analyze the participatory process (meaningful participation) developed in both conflicts.

This descriptive analysis gives me ideas for recommendations on the role of the duty bearers to enhance participatory processes in mining policies in order to transform the conflicts.

Most of the material that will be analyzed is based on secondary data. Some interviews were held with representatives of Oxfam [Annex 4 p. 58], to understand FPIC and their perspective on meaningful participation.

## CHAPTER 2: THEORETICAL FRAMEWORK

This chapter covers the different approaches that are used to analyze the role of the duty bearers (state at different levels, mining company and international organisations) in relation to community right to participate in mining conflicts, and how that relation promotes, fosters or transforms conflicts.

HRBA adapted to the mining field is used as the general framework, specifically a detailed and improved version of its tool called Free, Prior and Informed Consent (FPIC), which is one way to make operative a community participatory process in extractive industries. How FPIC is made operative depends on the role of the involved actors, especially the duty bearers.

RP Part I: Conflicts are explained through the theory of social movements (Echave et al. 2008: 145): (1) The motivations of protest (why) resulting from structural changes (mining), which in order to become actions of confrontation need (2) The involvement of parties to afford the costs of collective action (how). Here it is analyzed the role of the duty bearers in relation to the participatory process (elements of which are taken from FPIC) in transforming or deepening of conflict situations.

RP Part II: Still within the theory of social movements, the theory of transformation of conflicts is used, in which conflicts cannot be solved at once, but are constantly transformed to prevent violence and authoritarianism.

### 2.1 HUMAN RIGHTS-BASED APPROACH (HRBA)

Within HRBA, communities have the *right to participate* in the decisions of the issues that will have an impact on their lives. The duty bearers are in charge of protecting and guaranteeing the citizens' rights. "Under this approach, the plans, policies and processes of development are anchored on a system of rights and corresponding obligations established by international law that should have a correlation in national law" (UN 2006: 22).

HRBA to Development (elaborated with inputs from (UN 2006):

1. *Whose rights?:* The realization of the rights of excluded and marginalized populations and those whose rights are at risk of being violated. In this analysis, the focus is on the rights of native local communities.
2. *Holistic view:* The social, political and legal framework that determines the relationship between communities, mining companies and national authorities, and the resulting claims, duties and accountabilities.
3. *International instruments:* Specific national norms should be derived from universal human rights instruments, conventions and other norms or standards, such as ILO Convention 169, or the Convention on Indigenous and Tribal Peoples (1989).
4. *Participatory process:* Accountabilities are determined through participatory processes and should reflect the consensus between those whose rights are violated (right holders) and those with a duty to act (duty bearers).

The right of communities to participate within HRBA is considered:

- A strategic right that opens the door for other rights to be exercised.
- As a means but also as an end in itself.

- A political right because of its potential in changing power relations, which may create conflict. Thus, conflict is an indicator that change is taking place. To deal with conflict properly it is important to work with both sides of the equation:
  - a. *Right holders* to exercise their right to participate.
  - b. *Duty bearers* to listen to communities' demands, be accountable and enable the environment for the fulfilment of community's right to participate.

Four criteria are used to define the concept of meaningful participation:

- An *influential (binding) participation in decision-making* that goes beyond consultation or a technical point included in a project design (Echave et al. 2008).
- *Informative* participation, where communities are provided with information throughout all stages of the mining project.
- *Appropriate participation*, where during the life-period of a mining project various levels and intensities of participation should be appropriately distributed: information, consultancy, monitoring or vigilance and participation in decision-making.
- *Intercultural participation*.

5. *Transparency and accountability*. An HRBA helps formulate policies for particular human right(s) to be addressed, and to specify what must be done, to what standard and who is accountable. Thus, it makes policy formulation a transparent process, and empowers people and communities to hold accountable those who have a duty to act.

A crucial point within HRBA is accountability, which enforces duty bearers to fulfil and be accountable to citizen's rights:

“Perhaps the most important source of added value in the human rights approach is the emphasis it places on the *accountability of policymakers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability.*” (UN OHCHR, 2002: paragraph 23) in ((Nyamu-Musembi and Cornwall 2004: 15)

The HRBA framework offers possibilities *to use the notion of accountability mainly for state actors but also to expand it to non-state actors*. The Office of the UN High Commissioner for Human Rights expresses this broader notion of accountability:

“*Under international law, the state is the principal duty bearer with respect to the human rights of the people living within its jurisdiction.* However, the international community at large also has a responsibility to help realize universal human rights. Thus, monitoring and accountability procedures must not only extend to states, but also to global actors – such as the *donor community, intergovernmental organizations, international NGOs and TNCs* – whose actions bear upon the enjoyment of human rights in any country.” (UN OHCHR, 2002: paragraph 230) in (Nyamu-Musembi and Cornwall 2004: 15)

6. *Sustained results* are ensured by:

- Building the capacity of right holders and duty bearers.
- Enhancing social cohesion through seeking consensus in participatory processes.
- Incorporating human rights entitlements within a framework of laws and institutions.
- Institutionalizing democratic processes.

An HRBA to mining considers that poverty and suffering are mainly caused and perpetuated by injustice between and within countries, whose victims are vulnerable people. So, “such injustice and suffering is neither natural nor inevitable” (Bice and Ensor:

2). Thus, HRBA makes an implicit ethical call for “changing power relations that may lead to injustice and oppression”.

Without adherence to human rights standards, mining would have a negative impact on the loss of lands and livelihoods, the degradation of lands and waterways, and increased violence and conflict, which put human security and freedom at risk. An HRBA to mining helps prevent negative social impacts, limits environmental damage, and lastly, alleviates poverty (Bice and Ensor).

HRBA is a win-win framework that may offer benefits not only to right holders but also to duty bearers. While the main target of an HRBA in mining is to benefit mine-affected local communities, the implementation of this framework may also benefit industry because its adoption can improve and protect the mining company’s image and raise its status in international markets (Bice and Ensor: 3), as the Tintaya case shows.

For Oxfam Australia there is an *apparent dichotomy between community rights versus national interests* invoked by the central government and some mining companies. Both human rights and national interests need to be balanced for successful mining operations.

“State sovereignty or state ownership of subsoil resources cannot justify the violation of human rights. Indeed, the failure to obtain FPIC in violation of human rights would be contrary to state responsibility under international law and arguably antithetical to the national interest.” (Oxfam Australia 2007: 9)

Meanwhile, for a representative of Oxfam GB, the contradiction is not apparent but real.

“It is the type of contradiction between capital and labour led by Marx, about liberty versus equality defended by the liberals. Its reality is based on the fact that we live in a world of scarce resources and increasing social demands. There is no perfect solution or magic recipe supported by principles shared by all the actors. Instead, they can reach minimum agreements on some procedures to determine the scope and legitimacy of the grievances (rights) and a certain conception of substantive justice that can help to favour one principle or the other.”

Both quotes make an implicit call for a balance of the principles at stake, but the latter is explicit in calling for a dialogue process among involved actors for that balance to take place.

Finally, for viable and long-term mining operations it is necessary for mining companies to get the licence of the host government and the social licence from the affected communities. A project that tries to operate without one or the other is financially and social unsustainable. One way of obtaining “social licence” is through FPIC (Oxfam Australia 2007: 9).

## 2.2. FREE, PRIOR AND INFORMED CONSENT (FPIC)

FPIC is a tool and mechanism to make HRBA operative, and has been increasingly used by the UN in designing programs and projects that affect indigenous peoples in the mining industry. Within HRBA, FPIC has proved to be successful in practice (Oxfam Australia 2007: 5).

The Draft Norms of UN incorporate the principle of FPIC:

“Transnational corporations and other business enterprises shall respect the rights of local communities affected by their activities and the rights of indigenous peoples and communities consistent with international human rights standards...They shall also respect the principle of FPIC of the indigenous peoples and communities to be affected by their development projects.” (UNESCO, 2003: paragraph 10 (c).) in (Bice and Ensor: 5)

The importance of the relationship between human rights and the operations of TNCs in extractive industries has been gaining support from international bodies, including the International Council on Human Rights Policy, UN High Commission on Human Rights, the International Labour Organization and the Inter-American Court of Human Rights (Moody, 2005; UN OHCHR, 1995; IACHR, 2005). The World Bank has created a policy of financing only development programs that use FPIC or involve consultations with indigenous peoples. World Wildlife Fund (WWF) has been actively incorporating FPIC in its Mine Certification and Evaluation Project (MCEP) and other related certification schemes (WWF, 2003; FSCUS, 2000).

The creation of norms like the UN's Draft Norms is crucial in endorsing mining industry responsibility for human rights. However, one gap is its lack of enforceability, wherein the industry may voluntarily adopt and value these rights (Bice and Ensor: 3), which generates an “accountability gap” (Bice and Ensor: 4).

FPIC is inherent to an HRBA because the goal of human development is to establish an environment in which people's capabilities can be enhanced, their range of choices expanded and their human rights fulfilled (UNDP 2000: 23). The sustainability of development is related with the ability of people to control their development objectives. For this to happen, people must understand the consequences of projects, be consulted and provided with the opportunity to give or withhold consent to projects that will impact on their lives (Oxfam Australia 2007: 11)

FPIC, a tool with a participatory focus, helps transform social conflict because:

*FPIC is not a one-off procedure but an ongoing process.* This is coherent with the theory of transformation of conflict. Since conflict cannot be resolved at once but transformed during all stages of the mining project and moved to different scenarios, an ongoing process of participation is needed.

“FPIC applies to specific projects proposed by outsiders and is operational to *all stages of the project cycle*. Where granting their prior informed consent to projects, communities/peoples may agree to *share rights to resources*, which may result in certain constraints on use and access to those resources. But this does not mean that they lose their rights to control the resources, even if it becomes a *joint control*” (Mehta and Stankovitch: 4).

Thus, consent here is understood as a continuous acceptance of the mining project during its life period by the communities. This goes beyond the legal environmental license provided by the state. In this continuous acceptance, community participation takes place.

*FPIC space is the political arena.* The “share of rights or joint control over resources” inevitably means negotiation of power and transforming of differences.

FPIC in extractive industries recognises indigenous peoples’ inherent and prior rights to their lands and resources and anticipates that communities are *informed* about mining projects in a *timely manner* and given the *choice to approve (or reject) a mining project* before the operations starts (Oxfam Australia 2007: 6). Thus, communities have the right to give consent or not to mining projects and their decision must be respected.

The FPIC described takes some of its basic elements from Oxfam Australia (Miranda 2005), FPIC (Oxfam Australia 2007), the proposed content of “meaningful participation” (Cornwall and Coelho 2007) and the types of participation used by some researchers in Peru (Tanaka et al. 2007). Altogether, these constitute what is proposed in this research as ‘*meaningful participation*’.

1. Consent (*intercultural participation*) is valid if it is obtained free from coercion or any kind of manipulation. How consent is obtained may vary but fundamentally, it must let communities (especially indigenous peoples) participate through their own freely chosen representatives and customary or other institutions.

2. Consent should be given in a timely manner (*appropriate participation*) or prior to any authorization by the government or third parties and before the initiation of the mining activities by the company and through all the following stages.

3. Informed consent (*informed participation*) with information presented in an accessible and understandable way to indigenous peoples and local communities (United Nations Economic and Social Council July 2004), on the following:

- a. Nature, size, scope, duration, locality of areas affected.
- b. Potential risks involved (real or perceived) related to:
  1. Autonomy of the land
  2. Environment implications
  3. Struggle for natural resources
  4. Distribution of economic benefits
  5. National vs. local authorities [*new issue not highlighted in the literature reviewed*].

c. Transparency and neutrality

4. Consent (*influent participation*) obtained by consultation of indigenous and local communities based on an open discussion of the different aspects of the project mentioned above.

Although the necessity for FPIC is broadly recognised, the question of how to define FPIC is a topic of debate. For Oxfam Australia, FPIC must be based on rights of self-determination. Some equate FPIC with the right to veto while others, such as the World Bank, suggest it is not (World Bank 2007: 6). Clearly, FPIC is still open to debate, particularly on the degree of influent participation communities should have.

Since the spirit of this paper is based on the belief that mining can foster development, FPIC is not taken as a right to veto. Instead, it is understood as a guideline to get political

consent from communities that can help transform social conflict in the political arena, where the protection, assurance and respect of local communities' rights that may be at risk due to the mining activity, are prioritized.

- a. Social consensus. Communities exercise their right to approve or reject mining projects.
- b. Channels for participation of marginalized groups, which imply sensitivity to social and the cultural context (Tanaka et al. 2007: 16). "The first step is to guarantee a place at the table of such groups, through rules of engagement as well as of selection that seek to broaden participation beyond established interest groups." (Cornwall and Coelho 2007: 24)
- c. Representation of marginalized groups in spaces where decisions are taken. Questions of inclusion imply questions of representation. On what basis do people enter participatory spaces? What are their claims for legitimacy to speak on behalf of others ("the community", "users", "civil society" or "citizens")? What mechanisms exist to facilitate the representation of marginalized groups? (Andrea and Coelho 2007: 8)
- d. Inclusive institutional designs for participatory spaces. The duty bearers play an important role in framing and providing the regulatory framework.
- e. Participation gives concrete results to (all) key stakeholders according to the motivations of those who enter the participatory space. Establishing structures of participation is not enough to create viable political institutions. Much depends on the motivations of those who enter them, and what "participation" means to them (Andrea and Coelho 2007: 9).
- f. Building capabilities/skills/attitudes of marginalized actors and duty bearers:
  - Community: Marginalized groups need to develop capacities to exercise political rights and participate equally. They need to recognize themselves as citizens (instead of beneficiaries or clients). Their skills and confidence need to be enhanced through processes of popular education and mobilization (Andrea and Coelho 2007: 8).
  - State: Expand capacity building efforts to state officials, and unlearn attitudes to listen to citizens and recognize their rights (Andrea and Coelho 2007: 24).
  - Company: They need to be able to listen to community and adapt their management to intercultural contexts.
- g. Alliances with civil society organizations and groups that support collective action.
- h. Media and communications campaigns.

*Influent, appropriate, informative and intercultural* participation crosses the different components of FPIC, and are highlighted in this paper for emphasis.

## 2.3 THEORY OF CONFLICT

### *Understanding conflict*

“Conflicts can be understood as a series of events organized around the differences created between the local actors and the mining companies, and their different positions and actions developed through time. The situation of conflict is embedded in a permanent tension and friction which eventually could cause protests and actions of confrontation.” (Tanaka et al. 2007: 8).

Within the theory of social movements, mining conflicts can be classified according to two axis (Echave et al. 2008: 145):

1. *Real or perceived magnitude of impact of mining activity* is related to the world of perceptions (framing processes) that the affected communities take with them in relation to the structural changes produced by the mining activity. This is based on a common sense that makes them feel negatively affected in some aspects of their lives (identities and practices), and at the same time, gives them a feeling of optimism that through collective action they can address the problem (Echave et al. 2008: 149). This is related to cultural aspects, subjectivities and perceptions (Echave et al. 2008: 151-152).

*Perceptions* (and not objective data) *determine the conduct of the actors*: “If people define a situation as real, it will be true in all its consequences”.(Thomas and Swaine Thomas 1928) in (Echave et al. 2008: 160).

The expansion of the mining activity inevitably causes changes in the ecosystem, and also the community’s traditional and daily relation with land, water sources and the environment (Echave et al. 2008).

This axis explains why protest actions and social movements occur: the conflict results from a clash of conceptions of reality and different ways to see the world (Echave et al. 2008: 144).

What interests are at stake in mining conflicts, related to the framing processes?

1. Environment
2. Perception of development
3. Benefits
4. Local community autonomy
5. National authority vs. local authority, pride and tradition.

When population feels threatened or seriously affected by the mining activity, they have reasons to organize and mobilize themselves to counter it. But the organization and mobilization depends on the capabilities of collective action.

2. *Level of social articulation and mobilization capacity* is related to the capabilities of social organizations to articulate among themselves, have a representative and an agreed upon discourse or agenda. It includes the costs and benefits of collective action, the political opportunities, mobilization and articulation of the symbolic, material and organizational resources to support collective action (Echave et al. 2008).

### *Classifying mining conflicts*

If we cross these two variables, there are four possible situations of conflict, as shown in the diagram (Echave et al. 2008: 144).

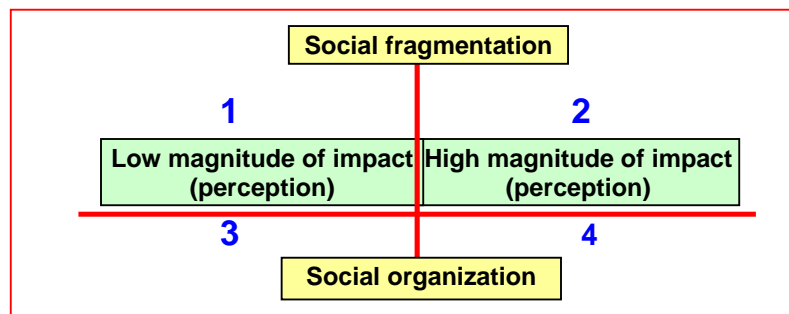


1. Spaces with low conflict intensity
2. Places with permanent conflict but of low intensity
3. Places of outbreak followed by negotiation
4. Places of high conflict intensity

For this analysis we use types 3 and 4:

*Type 3:* Places of outbreak followed by negotiation. The social actors mobilize themselves to negotiate for better conditions with the mining companies, but do not question the viability of the operations, e.g. Tintaya case (Echave et al. 2008).

*Type 4:* Places of high conflict intensity. In this case, there are open and frequent conflicts, e.g. Majaz (Echave et al. 2008).

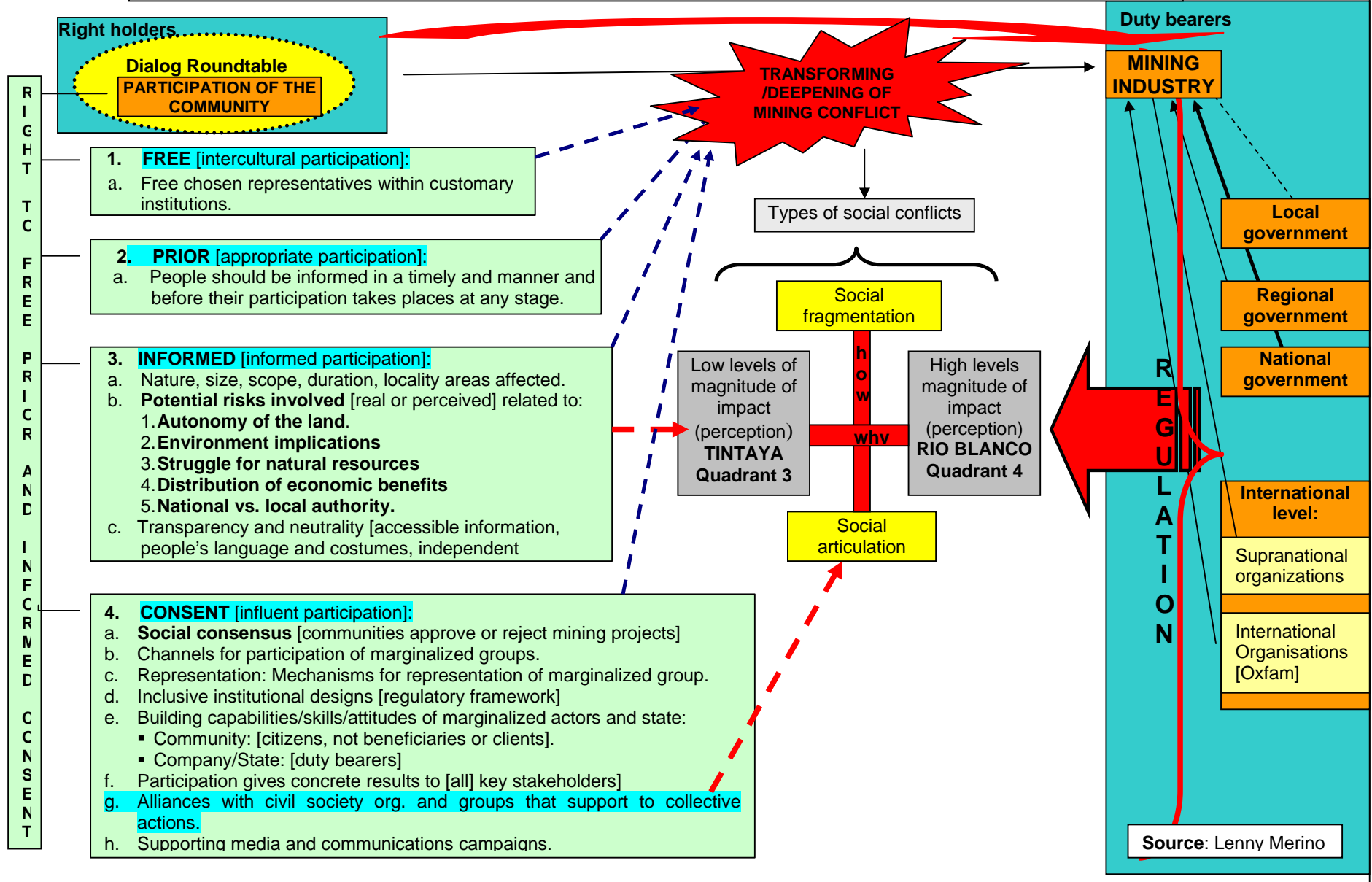


*Theory of transformation of the conflict [main issues taken from (Echave et al. 2008)]:*

1. In contrast to other prescriptive approaches about conflict management in which social actors are focused on “win-win conflict resolution”, the theory of social movements suggests that transformation of conflict means to relocate the conflict in a new frame of relations among the state, mining company and the communities based on the reformulation of the actors’ interests and perceptions.
2. The main difference between resolution and transformation of conflict: the former is interested in making the system (as it is) work and produce a result/outcome, to control or resolve (“make disappear”) the conflict, while the latter assesses how the general conditions of the system can be changed, to facilitate processing of the differences.
3. Conflict may be transformed through institutional change (formal and informal) and needs a starting point in public policy. In conflict, actors tend to confront more than cooperate, which may foster further conflict if there is no institutionalised way to promote negotiation based on transforming the existent relations and rules of the game.
4. The relations among actors are not only defined in the conflictive situation, but in a political and social structure above or superior to the conflict, which should be modified for transforming conflicts.
5. Dialogue is fundamental not only as the interaction among individuals but in the public sphere, which contrasts with the common way of assessing conflict: a dual confrontation (mining companies vs. communities) with an absent state.
6. State’s two main tasks: when there is cooperation among private actors and communities, the logic should be maintained. But when the dynamic is embedded in conflictive relations among actors, the institutional framework (formal and informal) should be changed to promote cooperative conduct in a trustful environment.

The complementation and interaction of the different components of this theoretical framework are explained in the following diagram.

# PATTERN OF ASSESSMENT OF PARTICIPATION IN MINING CONFLICTS



## CHAPTER 3: TINTAYA CASE

### 3.1 CONTEXT

History	The Tintaya project is in a zone that has had a tradition of mining activity since the 1980s, and is one of Peru's oldest mining projects. The communities have a historical memory of the impact of mining ( <i>mita</i> <sup>5</sup> ).
Stage of mining project	Implementation (and some explorations)
Location	Province of Espinar, farming region of Cusco in the rural south highlands, large distance from major communities
Origin of the mining company	Australia
Presence of international organization interested in mining issues	Oxfam Australia and Oxfam Community Aid Abroad
Livelihoods	Some incipient agriculture

In the 1980s Tintaya became the mining zone of Cusco Region and one of the largest in southern Peru. Tintaya mining has gone through different stages: initial (state-run/public company stage), privatization, until transnational companies arrived and expanded mining operations in the second half of the '90s.

*Chronology of events* [For more details see Annex 5 p. 58]

Post-1980: Peruvian government expropriates land for developing Tintaya State Copper Mining Company in Espinar.

1996: Australian company Broken Hill Proprietary (BHP), through a process of *servidumbre*<sup>6</sup>, acquires community lands from Tintaya Marquiri, Huano Huano, Alto Huarca and from individual property owners in the region.

2000: BHP merges with Billiton, creating one of the largest mining companies in the world. CONACAMI and its regional base in Cusco (CORECAMI), with the support of Cooperacion, perform a diagnosis among the affected communities. CONACAMI asks Oxfam CAA to include the Tintaya case in its work, so the BHP Billiton head office knew of the case and focused on it (Camacho and Lossio 2005). Mining Ombudsman appointed by Oxfam Australia visits the affected communities to assess the veracity of the grievances (Camacho and Lossio 2005).

2001: Initial dialogue in Lima, facilitated by the Oxfam CAA Mining Ombudsman. Participants: BHP Billiton Base Metals, BHP Billiton Tintaya, CONACAMI, CORECAMI-Cusco, Oxfam America, Cooperación and Municipality of Espinar.

2002: First meeting of the Dialogue Roundtable (DR).

2004: BHP Billiton and the five communities sign a formal agreement.

<sup>5</sup> Mining *mita* was the forced labour system for the *indios* (in risky conditions and low payment) instituted in 1573 by the Spanish government in Peru to extract mineral resources, and abolished in 1812.

<sup>6</sup> It is an enforced transfer of property similar to expropriation. This transfer is in favour of a particular [mining company].

### **3.2. STAKEHOLDER ANALYSIS** (adapted from (Brooke 2005) (Aroca 2006)) [Annex 6 p. 60]

In the past, the central government did not act on communities' complaints of the mining activity. Since 1980 Tintaya had a dense social organization and by 2000, social organization in Tintaya reached high levels of intensity. At the international level, Oxfam CAA and Oxfam Australia were interested in the case and sent a Mining Ombudsman to assess the communities' grievances.

At the national level, Oxfam America, Cooperaccion and CONACAMI were united; the latter connected at the regional level with its subsidiary, CORECAMI-Cusco, which at the same time was related at the local level with Unified Federation of Peasants of Espinar-FUCAE and the Unified Front of the Defence of the Interests of Espinar-FUDIE, both linked with the five affected communities that had representatives on the DR. The Municipality of Espinar built an alliance with all the institutions mentioned to support and represent community interests.

The DR was a space of dialogue established by representatives from the mining company, the five affected communities, the Municipality and the allies (Oxfam America, CONACAMI, CORECAMI and Cooperaccion). To be part of this space, the communities required non-participation from the central government, specifically MEM, which the communities perceived as untrustworthy and strongly in favour of mining activity.

After the signing of the agreement, some organizations like FUDIE and FUCAE, which at the beginning refused to be part of the DR, decided to participate, introducing some doubts and more issues like employment and distribution of economic benefits. They asked for the reformulation of the signed agreement and promoted mobilizations. But the communities involved in the DR did not join them, preferring to use the DR for direct negotiation.

### **3.3. ANALYSIS OF THE PARTICIPATORY PROCESS**

To analyse the roles that the duty bearers played during the participatory process and their relation with Tintaya conflict, I use the framework of assessment developed in Chapter 2.

#### **RIGHT TO FREE, PRIOR AND INFORMED CONSENT** (Until 2002, Tintaya failed in terms of use of FPIC)

##### *FREE*

*Indigenous peoples should participate through their own freely chosen representatives and customary or other institutions.*

Since, the communities' representatives were usually the (free) elected presidents of their respective communities, they were officially accountable to the community (Brooke 2005: 58). This may have legitimised their actions during the negotiation process. Communal decisions were taken in community-wide assemblies (Aroca 2006: 21).

## PRIOR

Past: One complaint from community members was lack of prior information related to mining activity, which was not addressed from the beginning until the outbreak of the conflict.

Future: The above issue was addressed by the DR with one point in the agreement on the need to inform the communities in a timely manner (in relation to consent), before any future mining explorations and operations would be started.

## INFORMED

*Nature, size, scope, duration, locality areas affected.*

Past: In relation to the near future there was anxiety (backed by the lack of information) about a new Antapaccay project and the construction of a new tailings dam.

Future: The signed agreement specifies that information on these issues should be provided to the communities for future mining projects.

*There were real and perceived risks related to:*

### 1. *Autonomy of the land*

Past: These risks are related to the framing processes of the different actors. Indigenous and occidental cultures are opposed in their perceptions and relation with the land. For native communities, land was something that could not be negotiated for or sold, as it was embedded in their way of life. It was challenging for them to distinguish surfaces and subsoil (where natural resources are); these were interrelated to them. Meanwhile, the distinction (e.g. ownership of land) is present in the Peruvian legal framework, and defended by the central government and MEM (Echave et al. 2008).

*“During 1982, our lands were expropriated. We have been claiming the mining company to pay for our lands through the consecutive years without any result, they did not even listen to us because it was a company ran by the state, and then it became a private company, with Magma Tintaya we continued claiming but again nothing happened, and now that it became BHP Company (Billiton Tintaya), we continued claiming but they did not listen to us and there were confrontations (...) (then) little by little we were participating in the Dialogue Roundtable.” Interview number 8. (Camacho and Lossio 2005).*

The peasant communities claimed different actions by the state-owned mining company, including land sale negotiations, expropriations and unfair evacuation. The community of Tintaya Marquiri was affected by the initial expropriation. Later, the communities of Alto Huancane, Bajo Huancane, Huano Huano and Tintaya Marquiri sold their lands to the mining companies, pressured by *servidumbre* (Echave et al. 2008: 100-101). As a result, the five communities lost 4,754.85 hectares [Annex 7 p. 61].

Future: The DR created the Sub Commission of Lands to evaluate which communities had legitimate claims for relocation. This was a sensitive issue in the negotiation process; in June 2003, communities requested the suspension of all commissions until

land, with development opportunities, was provided. To address the unfair evacuation and human rights violations, the Human Rights Commission was created and external human rights institutions collected and investigated the cases.

## *2. Environment implications*

Past: For indigenous people, contamination is an illness that must be cured immediately and prevented. For mining companies, it is an effect of the mining projects that, depending on the regulatory framework, may be addressed by paying fines to the central government, since it would be more cost-efficient to do so rather than buying expensive clean technology.

There were grievances about water and air pollution from the mine and the Alto Huancane tailings dam that communities perceived as the cause of the illness or death of their animals, as well as their own poor health. There was no independent regulatory environmental institution in charge of approving the Environmental Impact Assessment.

Future: The DR created the Environment Commission which split into three sub-commissions (environment pollution, human health and animal health). To ensure the validity of the findings, the members of the DR voluntarily accepted the incorporation of independent technical studies (separate laboratories), experts (doctors and vets), and control groups (a community with similar characteristics). The communities and local government participated in the monitoring of the signed agreement.

This technical support proved to be helpful and necessary to complement community perception with scientific evidence. The findings revealed that some grievances were caused by the mine, but others were not (e.g. poor diet). However, the results were questioned by some community members. We can conclude that even though there was not enough scientific evidence in the communities' claims, their perception was real but not valid.

## *3. Struggle for natural resources*

Past: There was a dispute on the use of communal lands between the mining company and the communities that used their lands for farming. The mining activity became a direct competitor over scarce water resources in the mining zone (Echave et al. 2008: 100) and there were community grievances reported to the Mining Ombudsman over the loss of traditional means of livelihoods.

Future: Creation of the Sub-Commission of Sustainable Development, in which the communities had the opportunity to develop their own sustainable proposals.

## *4. Distribution of economic benefits*

Past: The history of mining activity in Tintaya shows that the different community members have been demanding their participation on relating mining activity to local development, and how revenues were going to be paid and to whom. The communities also complained about the lack of employment or business opportunities.

Future: Creation of the Sub-Commission of Sustainable Development which offered initial financial and technical input from the company to fund community-led projects. The distribution of economic benefits was a sensitive issue when some organizations (FUDIE and FUCAE) refused to recognize the signed agreement and asked for an

increase of the amount offered. Lack of employment was an issue rejected by the company representatives, who did not consider themselves employers.

To guarantee that all sub-commissions coordinate among themselves and follow up the agreements, a fifth sub-commission was created, the Coordination Commission.

##### 5. *National vs. local authorities*

*“Nor the authorities of the ministry [since it was a property from the state], nor the public workers of the mining company wanted to attend our grievances.”* Francisco Cordova, a peasant of Huano Huano community and founder of CORECAMI Cusco (Echave et al. 2008: 102)

Thus, in relation to the past, the different central governments and mining companies did not attend communities' grievances. The petition from CONACAMI was made to an international actor (Oxfam CAA) and not directly to the central government, because the communities considered it an untruthful pro-mine actor. The intervention of international organisations exerted pressure on the mining company, which transferred that pressure to its subsidiary.

In relation to the main duty bearer, central government's absence in contrast with the local government, meant they failed in their duty to facilitate and lead the processes of citizen participation related to mining activity. States are accountable for enabling the environment for a negotiation process. They have the duty to provide mining-related information to the communities, for these to exercise an informed influential participation (Echave et al. 2008). In this case, central governments' main role was fulfilled by other duty bearers and allies.

The absence of the central government may have reduced the struggle over authority with the local government (which was supported by the high intensity of social organisation). Results could have been different if the central government had opposed the actions taken by the local authorities in this participatory process. Therefore, the central government was a powerful but passive and silent actor that “implicitly” agreed on the decisions taken in the DR.

##### *Transparency and neutrality in the provision of information*

Past: The need for information was highlighted when Tintaya Marquiri and Alto Huanacane communities asked CooperAccion to perform a more exhaustive investigation of the process of buying and selling of land, together with an environmental study in the zone.

Future: CopperAccion found some irregularities of the land sale negotiations, some of them susceptible of originating a process of claiming against the mining company (Camacho and Lossio 2005: 20). Besides, each commission of the DR developed its own study guaranteeing the quality of information (independent experts and control groups).

The information considered relevant in the Agreement was offered in the community's native language [quechua], with offers to provide the community with further information at any time.

## CONSENT

### *Social consensus*

Past: Consent was not implemented in the past. Social consensus has been absent in the regulatory framework, and mining companies may only volunteer to adopt the framework or not.

Future: The signed agreement between mining companies and the communities, with its condition on *prior consent*, set a precedent in Peru that for future mining operations “all the activities that the mining company develops or implements in new places will be done with previous consent of the community or individual owners.”

### *Channels and mechanisms for participation of marginalized groups*

Past: Communities complained that they did not participate in the decisions taken.

Future: The most important outcome of the meeting between the Mining Ombudsman and the actors involved in the conflict was the agreement to begin a dialogue process through the constitution of the DR to deal with existing problems (Camacho and Lossio 2005).

It was important to guarantee a place for native communities (with influent participation) in this space, where decisions on mining projects that would have an impact on their lives were to be taken. The DR was not an “invited space” (Cornwall and Coelho 2007) provided by the central government for citizens and their representatives to participate within state’s rules, but as a “space conquered by civil society.” Thus, it was born within, supported by international connections, and motivated by native communities’ demands for inclusion in decisions related to mining projects.

### *Representation*

Past: There were grievances among community members on their absence in participating in the decisions related to the mining project.

Business behaviour supposes that their representatives can take decisions on behalf of the company. But in native communities, representation operates in a different way: leaders cannot make decisions on behalf of the communities; each decision is consulted with the communities in a wide assembly, which is their customary institutional space (Bebbington 2007). Leaders are then expected to transmit and defend that decision in the DR.

Contrary to the myth that represents communities as a harmonized space, there are divisions inside the communities that need to be addressed (Cornwall and Coelho 2007). Thus, internal capacities and organizations need to be enhanced for representation to take place.

Future: The five communities of Espinar were provided the opportunity to have their own space to analyse the issues of the DR’s agreement. The adaptation of the negotiation process to the way the communities took decisions helped legitimise the actions of communal leaders and agreements.



One of the agreements of the DR was that actions could only be taken *once consensus* was reached among community members, which delayed the negotiation<sup>7</sup> process but also proved to be a prerequisite to reduce potential problems. It also helped develop trust between the mining company and the communities (Oxfam 2003: 35).

Communities discussed and negotiated their internal interests in community-wide assemblies prior to the meetings with the DR. This internal dialogue was maintained during the whole negotiation process. The mining company did not participate during consultations with community members for the crafting of the agreement, to avoid interfering in the internal decisions of the communities.

There was a problem of representation-articulation that explains why some organizations (FUDIE and FUCAE) did not recognize the agreements taken inside the DR, which delayed and interrupted the negotiation process.

#### *Inclusive institutional designs*

Past: There were no inclusive institutional designs specified in the regulatory framework, which incorporate community right to participate in mining policies. Yet there was willingness from communities to participate in mining projects.

Future: The DR was a space formalized in an agreement where community participation was one of the main stipulations. But since it was incorporated in an agreement between communities and mining companies for a specific conflict, it was not binding on the state, nor replicated in other parts of the country.

#### *Building capabilities/skills/attitudes of marginalized actors and state:*

Trust led the different actors to know each other, reduce fears, prejudices and stereotypes and be more tolerant among each other. During the first phase of the DR, all stakeholders agreed that the first task was to generate trust among participants (Oxfam 2003: 34).

As the key stakeholders started to trust one another, they proved to be more tolerant and were able to forgive certain behaviours that at times deviated from what was expected. They committed to reach a higher level of compromise and willingness to solve conflicts.

Mutual trust was based on the fulfilment of promises, agreements and compromises by the stakeholders. The mining company became a credible and trustful actor because their promises in most cases were translated into concrete results, which were perceived by the communities as an outcome of their participation in the DR.

#### *Community: right holders*

Communities were trained before and during the participatory process, which varies from common belief and practice that citizens are already equipped to participate and share their political agendas once they are provided the space. In addition, it is assumed that other stakeholders (e.g. mining companies and/or the state) are willing to listen and respond (Cornwall and Coelho 2007).

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<sup>7</sup> It took more than six months to negotiate relocation of lands with communities.

Changing attitudes is a difficult task in Peru since most members of social organisations, activists and leaders with political experience in social movements, political parties and unions have a confrontational and partisan style of politics that collided with the one needed for the DR: “Consensus-seeking and rational modes of argumentation of deliberative democracy” (Aroca September 2006).

*“...All of a sudden, we were just obstinate in one single thing; struggle and struggle, and practically the Dialogue Table has taught us that through dialogue we can obtain many things, that fight has conducted us nowhere; that is what we have learnt most.” Martha Chirre, a peasant of the community of Tintaya Marquiri (Aroca September 2006: 42).*

In the process of enhancing the capabilities of Espinar’s communities, interchange of experiences with other communities affected by mining companies, such as Ekati in Canada, improved their capacity to negotiate with the mining company and enhanced their self-confidence.

#### *Company/State: duty bearers*

In the beginning, the mining company perceived NGOs as “anti-mining, anti-development and violent organisations.” But in the process, they were able to appreciate how these organisations acted with responsibility and transparency.

Even though the mining companies had knowledge and experience in management, their participation enhanced their negotiation skills in multicultural contexts, which was provided in the training. Managers realized that generating confidence and promoting dialogue was a good investment in business.

*“We developed a workshop with all the members of the mining company... there was the opportunity to go to India for a workshop organized by Oxfam for 15 managers of BHP (Billiton), to train with the University of Queensland that has a program on community development... That trip was extraordinary. We saw poor communities. How poor! We were on the other side of the road, we put ourselves in the communities’ shoes, we lived in tents, and there was a lack of water to wash ourselves.” A representative of the mining company (Camacho and Lossio 2005: 23).*

#### *Participation gives concrete results to (all) key stakeholders*

Establishing structures of participation is not enough to create viable political institutions. Much depends on the motivations of those who enter participatory spaces (Cornwall and Coelho 2007).

In the Tintaya case, all members of the DR were in favour of the mining activity. Communities negotiated for better living conditions, but the viability of the mining project was not in question.

A key question is: *“What motivated the key stakeholders to participate and follow through decisions made at the Dialogue Roundtable?”* [For detailed information about actor’s motivation see Annex 8 p. 61].

The implementation of the participatory process was complemented with concrete benefits<sup>8</sup> that tackled the motivations of all who were engaged in the DR. Communities saw how other stakeholders listened and responded to them, the mining company could resume their mining activities, the local government got political credits for representing community members' interests, the central government received revenues from economic growth, CONACAMI and CORECAMI gained political recognition in representing communities' interests and Oxfam strengthened the transnational control of the Australian mining companies that were accused of committing human rights violations and environmental damage in underdeveloped regions [For a complete list of concrete benefits due to the participatory process see Annex 9 p. 62].

But it is important that the results do not take too much time. The negotiation process in Tintaya was interrupted at times because the communities must wait three years to see outcomes (e.g. acquisition of new lands) related to their participation in the DR.

Finally it was important that mining companies included managers with power of decision in the DR, with influence in the headquarters and thus, power to change the local situation and be provided some incentive<sup>9</sup> to improve their relations with the communities.

#### *Alliances with civil society organizations and groups*

It was important for the native communities to have strong international allies in the country where the mining company came from. Oxfam Mining Ombudsman exerted significant pressure on the headquarters of the mining company that then gave instructions to its Peruvian subsidiary. Thus, the involvement of these allies helped transform the conflict, moving it from the local space to find its resolution internationally.

External actors provided facilitators that helped counterbalance the asymmetrical power relations inside the DR (Bebbington 2007).

#### *Supporting media and communications campaigns*

It was agreed that decisions taken in the DR were not to be made public to guarantee confidentiality and avoid misleading of the agreements during the meetings.

### **3.4 LESSONS LEARNT**

In the Tintaya conflict, two variables intervened: (1) Low or manageable levels of magnitude of impact (perception) of the risks with (2) High levels of social articulation (Echave et al. 2008).

The first variable is related to the real and perceived magnitude of impact of the mining operation reflected in the grievances made by community members to the Mining Ombudsman: land sales negotiations, expropriations and the distribution of economic benefits (the most sensitive issue), followed by the loss of their traditional means of

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<sup>8</sup> The company facilitated land acquisition, provided technical assistance for land use (e.g. training in animal health and provision of tools); and offered community development fund, in which the company contributed US\$ 300,000 each year; and reaffirmed its commitment to address human rights, environmental and social problems.

<sup>9</sup> In the past, local managers were sanctioned for communicating bad news (conflicts, protests, riots).

livelihoods, water and air pollution from the mine, the death of their animals, their poor health and the lack of employment. This was compounded by how the government and mining company previously did not attend to the community's demands.

However, the perception of risk was low because of some contextual elements: long tradition of mining in Tintaya, the distance of the communities from the capital and the fact that agriculture and farming were not extensive activities. This explains why mining was not seen as a disruptive activity; thus, what was in discussion was not the viability of the mining project but the negotiation for better conditions to address grievances, which ease community participation in consensus-seeking negotiations.

Within HRBA, the grievances reported by the community members can be translated as "lack of rights" (to land, distribution of economic benefits, sustainable livelihood, healthy environment, information, participation and development).

Communities' rights were protected and guaranteed by committed duty bearers, whose presence was possible because of the second variable: high levels of social articulation. There were organizations with powerful national and international links that made possible the presence of international duty bearers that exerted pressure over other duty bearers (the mining company), taking political advantage that both come from Australia. The pressure exercised on the company's headquarters was immediately transferred to their Peruvian subsidiary. Thus, the resolution of the conflict not only took place at the local level, but also the international level.

This international duty bearer facilitated the institutional changes to negotiate the differences between the communities and the mining company, with the communities able to participate meaningfully.

This was the case because of a combination of influent, informative, intercultural and appropriate participation: it was *influent* because *consent* for future mining operations was introduced and formalized at the local level through a legal agreement (regulatory institutional framework). The communities participated in the decisions taken inside the DR, which was the inclusive participatory channel created to negotiate the differences among the actors involved in the conflict. Representation linked with articulation is a combination that eases negotiation processes.

It was influent because communities received concrete benefits according to their grievances as an outcome of their participation, which may have played an important role for the sustainability of the participatory process.

It was intercultural participation because decisions were adapted to the way communities take decisions and how representation operates for them and information was provided according to the language and costumes of communities.

It was *informative* participation because there was accessible information according to community's requirements, which validity and quality was guaranteed.

Finally, it was *appropriate participation* because different levels of participation were combined at different moments where necessary: information [previous to the sign of the agreement], consultancy [previous to the meetings at the DR], developing of tasks [communities participation in the Sub Commissions], monitoring of agreements [in relation to mining companies' fulfilment of promises] till decision [social consent].

## CHAPTER 4: RIO BLANCO CASE

### 4.1 CONTEXT

History	The Rio Blanco Project is located near community lands that do not have a tradition of mining activity. In the early 2000s a mining company withdrew due to community opposition after a referendum was passed. <i>Mining mita</i> is present in the historical memory of peasant native communities.
Stage of mining project	Exploration stage
Location	The project is located on lands belonging to two peasant communities in Piura Region: Yanta and Segunda y Cajas. Both communities have a frontier with Ecuador and are near the capital centres.
Origin of the mining company	United Kingdom, then China
Presence of international organization interested in mining issues	When the British mining company was exploring the lands: support group and Oxfam Great Britain. Chinese investors <sup>10</sup> : No duty bearer identified/interested in exercising pressure over mining company
Livelihoods	Agriculture and farming (extensive in some cases for exportation)

Some communities are large not only due to their extension, but because of their number of inhabitants. Segunda y Cajas has 29,933 hectares and 2,500 registered peasants. Yanta with 20,800 hectares has 500 peasants (Echave et al. 2008: 37).

*Chronology of events* (Echave et al. 2008: 35)

A detailed history of the conflict may be found in [Annex 10 p. 63]

We can divide the events into five stages, where conflict increases until it reaches the fifth stage with fixed polarized positions:

1. 1994-2002: No conflict background during the first authorizations of mining exploration
2. 2002-2003: Initial local opposition during the process of exploration and the initial draft of the mining project
3. 2004-2005: First signs of conflict appeared, forming of alliances started
4. July 2005: Attempt to broaden conflict arena to national and international levels through building of alliances, networks, legislation and institutions of the central state, international investors and other translocal actors
5. January 2007-present: Polarization of actors and public struggle between those in favour of public consultancy and those in favour of state-supported projects (coercion).

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<sup>10</sup> Rio Blanco Copper was a subsidiary of the British Company Monterrico Metals. In April 2007 it was sold to Xiamen Zijin Tongguan Investment Development (Consortium Zijin), which started to control 89.9% of shares.

## 4.2. STAKEHOLDER ANALYSIS

[A detailed stakeholder analysis may be found in Annex 11 p. 65]

History shows that the central government (MEM) and the mining company did not address the communities' grievances. When the conflict broke out, these communities were already organized in their respective peasant vigilance organisations and received the support of their local authorities (mayors of their municipalities), allies like CONACAMI and Red Muqui which were active in the previous conflict held in Tambogrande, several Fronts of Defence (e.g. FDSFN), national actors (local offices of Oxfam America and Oxfam Great Britain) with connections to international actors taking political advantage that the mining company was based in the UK. Communities sent grievances to the British Parliament on the performance of the mining company, which hired a UK-based civil organisation (Support Group) to assess the validity of the complaints.

Due to the assessment, the mining company made several modifications in its local team and organisation in Peru, and made a public apology in September 2006 regarding the behaviour of its staff members. But this political opportunity has been constrained because the British mining company was recently sold to Chinese investors<sup>11</sup>, and there seem to be no powerful Chinese organisations nor a state interested to control their mining companies' behaviour abroad.

The MEM gave the Majaz Company (now Rio Blanco Copper) the approval to begin large-scale exploration in 2003, after approving their Environmental Assessment (EA). But in 2006, the Ombudsman Office questioned MEM's approval after receiving complaints from the peasant community where the company was settled.

The Ombudsman Office<sup>12</sup> stated that the surface owner of this place was a native community<sup>13</sup>, and Peruvian Law 26505 states for native communities that permission to explore requires approval of two-thirds of its members in a community-wide assembly. But Majaz Company only gained the approval from community leaders and with purposes different to mining exploration – the community leaders said they were told that the studies were for seismic prospecting/studies (Bebbington 2007).

The Vice-Minister of MEM, in a reply to the Ombudsman, argued that mining companies did not need two-thirds community approval in the exploration phase of community lands, but only in the exploitation phase.

OSINERGMIN, an autonomous Peruvian entity in charge of regulating the functioning of the mining companies, is active but with a limited scope of action (non-approval of EAs). CONAM, the public institution in charge of resolving environmental conflicts among public institutions (MEM vs. Ombudsman), has remained a silent actor<sup>14</sup>.

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<sup>11</sup> In Pekín there was land conflict in Zijin's areas of operation, where some peasants died. Moreover, the President of Peru wrote an article defending China's incursion of Tibet.

<sup>12</sup> An autonomous public institution in charge of defending citizens' and communities' rights (property, participation, public administration, environment) and the supervision of the duties of the state and the supply of public services.

<sup>13</sup> "Peruvian Political Constitution: Native communities are autonomous in the use and dispossession of their lands. Law 24656 of Native and Peasant Communities says that the community territory is a property of the community and that directives have to gain explicit authorization from the community assembly before they can allow others to use these properties" (Bebbington 2007).

<sup>14</sup> Its previous Head was removed and the new one, appointed by the President of Peru, was completing a consultancy with Majaz Company.

At the regional level, opposition came from the regional bishop of Chulucanas, who declared their jurisdictions as intangible spaces (forbidden to be used for mining projects). This clashed with the regional government's position, which reinforced MEM's position in favour of mining without previous consent (both came from the same political party).

Attempts to build DR promoted by the central and regional state governments in which some facilitators intervened (universities and specifically CARC-PUCP) were frustrated.

In September 2007, a referendum was held by the municipalities of Ayabaca, Pacaipampa and Carmen de la Frontera on the request of the communities to exercise their right to participate, where over 90% of the population voted against the Rio Blanco Project, despite the communities' knowledge that public consultation was not binding and compulsory.

Before the referendum was passed, the MEM expressed that public consultations were illegal, the results would not be binding, and that the exploration process would continue.

The declaration that public consultations were illegal was in accordance to the Political Constitution of Peru, national policy on mining issues is MEM's responsibility. Municipalities cannot create mechanisms or implement actions that invade the competencies of the MEM, which is related to the sovereignty of the central state over the use of natural resources.

Besides, the National Jury of Elections (JNE), dated 15 August, denied any link to, or recognition of, the public consultation. But the affirmation from MEM and JNE was contested by the municipalities and NGOs supporting community's right to participate; they asserted that community participation in public issues was included in the legal framework as a legitimate mechanism that can be promoted by local authorities in public local issues related to planning of development and environment.

#### **4.3. ANALYSIS OF THE PARTICIPATORY PROCESS**

This analysis is developed with reference to elements included in FPIC.

##### *FREE*

*Indigenous peoples should participate through their own freely chosen representatives and customary or other institutions.*

The communal representatives gave timid authorizations to the representatives of Minera Majaz and were highly questioned and accused by community members for not consulting them in their customary spaces (communal-wide assemblies). As a result, communal representatives were removed from their positions and replaced by peasant vigilance organizations. Given authorizations were rejected and not recognized by the communities.

##### *PRIOR*

The Mining Ombudsman reported that some misleading, incomplete and unclear information (for consent before the exploratory phase) was given to the communal leaders, but not to the whole community in their customary spaces.

## *INFORMED*

Communities were afraid about the *nature, size, scope and locality areas* that may be affected by the Rio Blanco project. Their fear was confirmed by the absence of official information on the characteristics and procedures of the open-pit mining operation located in their fragile ecosystem and lands. Instead, civil society organizations like Factor Tierra and regional universities launched alerts on the dangers of the mining activity in the zone, providing information that raised awareness of risks and dangers.

The contaminating effect of the mining operation in Rio Blanco apparently was not going to be “very severe”. The natural resources were in danger not because of Majaz project but because of the generation of a mining district on the highlands of Piura (Bebbington 2007). In some materials of the mining company, Majaz would be the beginning of a much larger “mining district” with implications for the landscape, environment and livelihoods, which is complemented by the fact that in some maps published by MEM, the whole region of Piura is rich in gold and copper. [Annex 12 p. 68]

*Real and perceived potential risks related to:*

### *1. Autonomy of the land.*

It was difficult for communities to make a distinction between soil and subsoil. Besides, in the Rio Blanco Project, it was not clearly defined how to resolve the clash between competing norms with respect to the ownership of native community lands that have minerals below, and the ones related to state sovereignty over natural resources.

### *2. Environment implications*

For communities, water and air pollution were related to illness, while for mining companies, the issue was resolved once they paid the fine depending on the state regulatory framework. Community’s fear was confirmed when OSINERGMIN sanctioned Rio Blanco Copper with a fine of more than US\$ 100,000 for non-fulfilment of the Regulations of Mining Security and Hygiene.

Further, the Rio Blanco Project is located in a fragile forest area that hosts some endangered species near Tabaconas-Namballe National Sanctuary that needs to expand to Ecuador for its species to survive (Bebbington 2007). During this conflict there was no existing independent regulatory environmental institution.

### *3. Struggle for natural resources*

Much of Piura is desert or semi-desert land, and Piura’s livelihood is primarily based on agriculture, thus water management becomes crucial. Piura’s agriculture depends on water supplied by the region’s eastern highlands, where the Rio Blanco Project is settled. Moreover, if the mining district would become a reality, it would affect watersheds running to the Pacific and the Atlantic (Bebbington 2007).

Related to this, since Peru and Ecuador have a history of border war, some community members thought that water contamination by Rio Blanco could affect water and land in Ecuador, which might revive the war between the two countries (Bebbington 2007).



#### 4. Distribution of economic benefits

Translating economic resources generated by mining exploitation for local development was difficult because in the uneven decentralization process, there were institutional, economic, financial and legal constraints for local governments to invest these resources (Bebbington 2007).

Mining companies are supposed to pay tax and royalties to be used by local authorities for development. Royalties are taxes paid by the companies to the government for the use of the country's natural resources, and 100% goes to the sub-national government in areas affected by the mine. They are negotiated between one and three percent of production value, low in comparison to international standards (Bebbington 2007). But in the past, many of the largest mining companies, especially during President Fujimori's regime, negotiated arrangements with the government for non-payment of this tax.

Canon is part<sup>15</sup> of the regular corporation tax revenue paid by mining companies to the central government (thirty percent of profits). It is not an additional tax payment by the companies, but the geographical redistribution of that payment (Bebbington 2007). Fifty percent of canon *minero* goes to sub-national government distributed in this way:

- Twenty percent to regional governments
- Five percent to national universities
- Seventy-five percent to municipal governments (of which, ten percent goes to districts producing minerals, of which thirty percent goes to communities in these districts)
- Twenty-five percent to municipalities of the province where the mineral is located, and
- Forty percent to municipalities in the department where the resource is located. [A detailed distribution of tax and royalties may be found on Annex 13 p. 69].

Legal constraints: Current legislation impedes the translation of resources from canon into development, since it must be spent mainly and in a certain length of time on infrastructure, neither on enhancing community members' capabilities nor on productive programmes.

Capacity constraints: Local authorities are subject to capacity constraints in order to invest economic resources in local development. Thus local authorities are not able to spend the huge amounts of money once they receive it (Bebbington 2007).

Also, there is a voluntary, temporary and economic agreement between the mining companies and the Peruvian state called "Mining Programme of Solidarity with the Communities". But since it is a voluntary agreement, the amount of money provided by the mining companies that subscribed to it until December 2007 only reached forty percent of the total amount offered [Annex 14 p. 70], which could be affected by the current global financial crisis.

#### 5. Struggle over authority

As we have seen there is a combination of horizontal and vertical struggle over authority among actors and through different levels. At the international level (outbreak

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<sup>15</sup> The other part is the income tax which is applied over the utilities of the mining company.

of conflict), the British Parliament exerted pressure over the mining company headquarters and sent a group of independent personalities to assess the validity of community grievances. Subsequently, mining headquarters transferred the pressure to its Peru subsidiary, which made behavioural changes.

At the national level, the struggle was between two institutions of the central government (MEM and Ombudsman), and between central government and national allies that gave support to the local communities, like CONACAMI<sup>16</sup> and Oxfam America.

At the regional level the struggle was between the regional government and the regional bishop of Chulucanas. In intermediate position there were some regional universities asking for public forums and debates.

MEM exerted pressure over local authorities through regional governments and press releases publicly threatening them and the third parties involved in public consultations, with the argument that communities could not interfere with national interest and state sovereignty over natural resources.

The struggle over national authority and local authority reflected in some incidents (kidnappings, marches and road blocks by the communities) reveals the different rationalities at play. For the central state and mining company, liberty of contract was at stake, and also free circulation in the national territory by any Peruvian citizen. For the community, defence and authority of their communal land was disputed, including circulation control in the territory where they are settled and respecting the decision of the community majority (Echave et al. 2008: 42).

After the public consultations in May 2008, the central state said the communities' voice would be considered, but shortly after, 28 promoters (authorities from local government including mayors of the three municipalities, environment and local and national human rights defenders) of the public consultation were formally denounced as terrorists (for having "unproven" connections with Shining Path, MRTA and Bolivarian movement) before the Public Prosecutor in Piura by the auto denominated Civil Association Front of the Peasant Community, Segunda de Cajas y Yanta, which takes the name of the community but is neither integrated nor created by any community member, but by some ex-workers of Minera Majaz (Republica 2008, March 29th)

#### *Transparency and neutrality in the provision of information*

During the public consultation on Minera Majaz' Environmental Evaluation, communities of Ayabaca and Huancabamba were denied the "right to informed participation"<sup>17</sup> to intervene in issues that affect their person and their community" (Ombudsman Office 2006).

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<sup>16</sup> CONACAMI is an organization that played an important role in the Tintaya conflict, and during that period was eliminated from the list of Peruvian organisations recognised by the state that can be a recipient for international aid.

<sup>17</sup> The announcements misnamed the district of the Environmental Assessment; they were placed only in newspapers<sup>17</sup> or outlets in communities that used the radio instead. Besides, MEM required that any observation to the agreement should be made directly in Lima (Bebbington 2007).

## CONSENT

### *Social consent*

The three consultations carried on, even though they were not supported but repressed by the central government, showed that the mining project lacked social consent. As we have seen, more than ninety percent of the population voted against the mining project despite knowing that it was not binding.

### *Channels or mechanisms for participation of marginalized groups*

The Rio Blanco conflict was characterized by attempts from the central and regional states to create spaces for dialogue without successfully constituting them (Echave et al. 2008).

The regional government created a Dialogue Roundtable (MC<sup>18</sup>) and a series of technical sub-commissions (technical SC) facilitated by experts from Catholic University, who used technical approaches but were not experienced in dealing with political issues (Echave et al. 2008). MEM's agenda for communities' participation was to monitor the implementation of the mining project, a proposal that was rejected by the community (Echave et al. 2008: 34).

Finally, the Dialogue Committee, which convened irregularly, changed its timetable and only met twice until MEM announced its withdrawal from this space.

Limitations of the dialogue spaces: excessive number of meetings, their dissemination by the media, their general agenda (not conflict-related grievances from the communities), their inability to gain legitimacy among those opposed to the project, who were automatically excluded from this space for not considering it neutral.

Finally, the attempt to constitute the Dialogue Committee was parallel to polarization and accusations. As a condition for dialogue, FDSFN requested the suspension of exploratory mining activities from Majaz, which should not participate in the dialogue process because its legality on their lands was questioned. Meanwhile, MEM's requisite was that FDSFN "clean" themselves from accusations of being terrorists and drug traffickers.

### *Representation*

In the beginning, communities were represented by their communal leaders, who, once they gave permission to the mining operations, were dismissed by the communities and replaced by members of the peasant vigilance organisations. Then, the several Fronts of Defence, peasant vigilance organisations and community representatives that intervened with fixed political agendas may have made difficult the communities' interlocution with the mining company and state. Thus, there was high social organization without high articulation.

### *Inclusive institutional designs (regulatory framework)*

The Rio Blanco Project conflict is a reflection of community right to participate being absent, incomplete or unclearly developed in the regulatory framework related to

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<sup>18</sup> Mesa de Concertación in Spanish.

extractive industries at different levels (national, regional and local). The current mechanisms collide with community demands for influent participation, e.g. right to give or withhold consent over mining projects).

### *Building capabilities*

The fixed polarized positions in the Rio Blanco conflict are related to the high levels of distrust among the different actors, a situation that impedes any attempt to establish a genuine and sustained dialogue process by the facilitators.

The peasant vigilance organisations were characterized by confrontational and authoritarian styles of negotiation, a different rationality and understanding of justice, order and nature, and distrust based on the non-fulfilment of a history of central governments' promises<sup>19</sup> and the fact that the community leaders were not told the truth in the past about mining purposes.

On the other hand, the mining companies did not trust native communities because they were not considered seriously when giving their consent, considering the communities rejected the permission given by their representatives since they were not consulted in their customary spaces.

Besides, the facilitators that intervened at the beginning of the conflict used technical approaches but were not experienced in political issues. Thus, their activities were reduced to organizing workshops and providing information. For future activities there was no intermediation. In the Dialogue Committee in Majaz (2006) FDSFN wanted to represent community interests and MEM represented mine investment (Echave et al. 2008).

### *Participation gives concrete results to key stakeholders*

*Community's participation:* Piura's history shows that mobilized communities can make mining companies withdraw. Moreover, the public consultations delayed and stopped the mining exploration phase. As we have seen, the mining company expressed its commitment to wait until social consensus was reached before continuing exploration. And the state said that for future actions in Rio Blanco they would take into account the results of the public consultation. But in practice, both actors were exercising pressure, and coercion over local authorities and allies.

*State's motivation:* Community participation expressed in strong opposition collides with central government's objective to promote investment for economic growth. Some sectors of the state (MEM) oppose community participation in mining projects because they consider this a result of manipulation by "terrorists", "communists of the 21st century" or "international interests"<sup>20</sup> – that political ideologies or economic interests are opposed to mining and thus, opposed to development.

The assumptions are: (1) Communities are incapable to have their "own say". (2) State neglects the possibility that communities can use the third parties to pursue their own

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<sup>19</sup> Communities remember that President Alan Garcia said mining projects would go ahead only if social license was given. But shortly after, President Garcia said during his visit in Pekin that the Rio Blanco project would go ahead with or without social consent.

<sup>20</sup> Chile was implicitly mentioned by the President of Peru in an interview "as the country representing international interests opposed to mining in Peru". Chile is the first producer of copper in Peru and has a history of border conflict with Peru.

interests (Echave et al. 2008). (3) Mining will automatically foster development (Bebbington 2007). Thus, the resulting policy is a combination of providing information to the communities and repressing those who are perceived to manipulate participation.

Other sectors of the central government base their arguments in favour of mining imposed by the central government on the contradictions between “community right” and the principles of “national interest” and “state sovereignty”. In their view, the central state should have the last say in deciding the future of natural resources on behalf of national welfare, which entitles the central government to apply a strong hand and drastic law at any cost.

*Mining company’s motivation:* Extract minerals to increase their capital. Three strategies are used by the mining company, proposed by (Echave et al. 2008) but not analyzed for the Rio Blanco case:

1. A promise of negotiation with the community through dialogue, in this case a promise that the mining project would proceed when community gives social consensus.
2. Control of the local space. A strategy based on management of information (national, regional and local media) and the forming of groups that take the community’s name to fragment the community’s position.
3. Requesting the central state to guarantee the company’s infrastructure, which responds through repression of local authorities and third parties. For the business sector, conflicts are resolved when the legal order imposed by the central state is being fulfilled.

For the mining company, the conflict is reduced to the lack of information about the benefits of mining for development, which may be solved by informing the community and implementing mechanisms of social responsibility.

#### *Alliances with organizations and groups that support collective action*

In Piura there are zones with traditions of organization since the 1930s. There is a tradition of public positions (mayors) being occupied by left parties. Due to a recent conflict in Tambogrande, several fronts and federations have organized themselves, with experience in defending rights and confronting the mining company and the central government (Echave et al. 2008).

Networks and allies gave the local actors the support needed for collective action. They facilitated for local actors to transmit their grievances to international actors (e.g. British parliament). But also, some actors had radical positions that may feed the conflict. CONACAMI’s website, clearly opposing mining, stated that Peru was an agricultural country, while MEM’s website stated that Peru was a mining country. Red Muqui, which gave technical and economic support to FDSFN, was radical in their claim that the mining company should not participate in the negotiations.

At this stage of the conflict where there is a Chinese company involved, there has been no identified duty bearer capable of exerting pressure over the mining company. In this context, allies are providing support for ongoing public consultations.

### *Supporting media and communications campaigns*

The internal debate of the different attempts of DR was transmitted externally by the media, which adopted positions (in favour/against mining) that went beyond providing information. Media played a role in feeding polarized positions. The messages were radical and without concessions to contrary positions at the national, regional and local levels (Echave et al. 2008).

#### **4.4 LESSONS LEARNT**

In the Rio Blanco conflict two variables intervened: [First variable] High levels of magnitude of impact of risks, specifically related to the scope of the project (mining district) in a fragile ecosystem, where water management is a crucial factor and the irregularities on the presence of the mining company on communities' lands backed in some contextual factors as the absence of a tradition of mining in a predominantly agricultural area, a recent conflict involved the withdrawal of a mining company; all together contributed to perceive mining as a high disruptive activity over the community's lifestyle. And this magnitude of perception relates to communities' participation in the way of opposition: What was at stake was the viability of the mining project [in its exploration phase], not negotiation for better conditions in its implementation stage.

As we have seen, the perceived risks were not attended by the two main duty bearers related to the conflict. [Second variable] Thus, MEM and the mining company's history of absence in fulfilling communities' grievances led the different social organizations [not necessarily well articulated] to contact their allies to search for the support of other duty bearers, taking political advantage that their international connections came from the mining company's country. But with the mining company now owned by Chinese investors, this political opportunity is now constrained.

Currently, there are no duty bearers in Peru, only the local authorities interested in fulfilling community rights have power to do so. MEM has two conflicting roles: to promote investment and approve environmental studies in order to guarantee community's rights, which feeds the conflict.

MEM, in coordination with the Ministry of Interior, uses its privilege to impose mining on local communities through repression and coercion of allies considered to "manipulate communities". This limited way of understanding the conflict leads them to make invisible the real risks perceived by the communities.

The Ombudsman Office that challenged MEM can only make public recommendations to other national institutions but cannot sanction. Thus, their capacity coercion is limited and based on public opinion. This legal contradiction between two institutions of the central state generated doubts about the legality of Minera Majaz' presence in Rio Blanco and fed the conflict (Bebbington 2007).

In relation to meaningful participation, there were constant calls and attempts for creation of dialogue spaces without constituting them. What went wrong? As we have seen, meaningful participation was not fulfilled.

Communities demanded *influent participation* (in the form of consent, which is not clearly defined in the regulatory framework for mining projects at the exploratory stage),

while central government's attempts focused on creating *participatory channels* where only participation of low intensity could take place.

Local authorities supported by their allies, in challenging central state's authority, developed their own channels of participation (public consultations) that expressed the communities' overwhelming rejection of the Rio Blanco project. These mechanisms proved to be politically influent because they stopped the mining project. But as we have seen, allies and promoters are being threatened and repressed, which feeds the conflict.

Communities' participation was only to monitor the implementation of the mining project, not to address community's grievances; thus the main issue of mining being a disruptive activity was maintained and fed. Even though, communities were represented in these spaces, the lack of articulation among social organizations made it challenging to identify legitimate actors.

Communities were denied their right to an *appropriate participation* according to their demands in the exploratory stage. Through the channels and mechanisms of participation provided by the central and regional government, we have seen that only participation of low intensity, but not an influent one, could take place. Information was not provided to the whole community in a timely manner, only to some representatives and then during the attempts to constitute spaces of dialogue, communities were invited to monitor mining projects with technical criteria, without enhancing their capabilities.

The communities were also denied their right to an *informed participation* because they were not properly consulted with complete and accurate information about the real exploratory purposes. Also, they were denied their right to an *intercultural participation* because they were not consulted in their customary institutions taking into account their different rationality, which increased mistrust and resentment.

At this stage of escalation of conflict, any attempts to build spaces of dialogue are challenged because these are exercised parallel to actions of polarized positions that include aggression between the involved actors (Echave et al. 2008: 45).

High polarization of positions in conflict fed into by the media threatens a dialogue process where trustful, tolerant positions and consensus-seeking already come rarely. Moreover, any third party seeking to intermediate is perceived with distrust by the several actors opposed to the mining activity.

Finally, this high intensity of conflict shows central states' failures in two duties: not addressing the high magnitude of impact of risks in the community, backed by a history of non-fulfilment of central state's promises related to community grievances, while being openly in favour of mining (Echave et al. 2008) and the political incapacity to negotiate differences and prevent violence and polarization.

## CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

[A detailed comparison of the analysis of Tintaya and Rio Blanco cases is provided in Annex 15 p. 71]

### 5.1 EXPLANATION OF THE CONFLICT

As we have seen, conflict can be understood as a series of events organized around differences between the local actors and the mining companies, which could eventually cause protest actions and confrontations (Tanaka, 2007).

These differences between right holders (native or peasant communities) and the duty bearer directly implied in the conflict (mining company) are related to the communities' real and perceived magnitude of impact present in both cases assessed but with different intensities.

First, there are different rationalities between occidental and indigenous culture. Second, in relation to land, central government invokes a contradiction between community's right to land (to give or withhold consent), national interest and state sovereignty over natural resources.

As we have seen this contradiction is not apparent but real in a world of scarce resources and increasing social demands. Since there is no a perfect solution supported by principles shared by all these actors; Tintaya showed that through dialog the actors involved could reach a certain agreement where communities' grievances were privileged.

Third, there are environmental implications in any mining project and a dispute over natural resources (especially water). Fourth, uncertainty stems from lack of evidence on the distribution of economic benefits to the local community.

Fifth, there is a permanent<sup>21</sup> complexity surrounding the mining industry that combines *concrete and certain negative effects* in the short run and a *promise of possibly huge contingent benefits in the medium and long term*, which makes difficult the projection of costs and benefits for the stakeholders involved and complicates cooperation among different actors (Tanaka, 2007). In other words, for communities there are concrete negative "visible" effects in the short run, while the medium and long term benefits depend on many uncertain factors.

Finally, within HRBA these perceptions of risks reported as grievances in both cases can be translated as lack of rights (to land, livelihoods, sustainable environment, development, information and participation) As the history of both cases show, conflict can be explained because none of the communities' rights mentioned above, even though claimed, were fulfilled by the duty bearers (mining company and the state). In both conflicts, the state is not recognized as a legitimate, trustworthy actor that represents and protects community interests, but as a pro mine-actor in alliance with the mining company, which can be explained by the contradictory functions of MEM, which fed the conflict. Thus, this history of non-fulfilment of rights by the duty bearers fed the communities' motivations to protest.

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<sup>21</sup> The author says it is temporal.



The level of magnitude of impact was higher in Rio Blanco and lower in Tintaya, because of some contextual factors. In Tintaya there is a long tradition of mining activity, the location of the project is far from the centre, agriculture is for survival; while in Rio Blanco there is absence of tradition of mining, the location of communities are near the capital centres, and agriculture is extensive. There is also a recent history of war where a mining company withdrew after community opposition. And the current proposal to turn Piura into a mining district, will seriously affect Piura's fragile ecosystem, water management and agricultural livelihoods.

The potential and real risks of the mining activity are related to community's motivations and further participation: In Tintaya, low intensity of magnitude of impact of risks eased community participation in the form of negotiation for better conditions of mining activity; while in Rio Blanco high perception of risks related to community participation in the form of opposition to mining activity.

But communities' motivations for protest action and confrontation depended on the level of social organization and the support from allies to collective action. In Tintaya and Rio Blanco, there is a history of high social organization (though not necessarily well articulated), more intense in the case of Rio Blanco because of the existence of peasant vigilance organizations, and pre-existing networks and collective actors that in the past played an important role in mobilizing communities to make a mining company withdraw.

## **5.2. TRANSFORMATION OR DEEPENING OF THE CONFLICT**

The transformation of the conflict was possible where there were allies with powerful international connections in the countries where the mining companies came from (political opportunity), who helped move the conflict (permanently in Tintaya but temporarily in Rio Blanco) from the local space to the international one. In these countries there were international duty bearers that exercised pressure over other duty bearers (mining company) to guarantee the fulfilment of right holders' rights.

Conflict was deepened where there were allies supporting collective action at the local level without a powerful duty bearer to exercise pressure over the mining company. Rio Blanco shows that the power over authority between national and local governments is high (which feeds the conflict) in view of the lack of powerful duty bearer to exercise pressure over the central government or the mining company.

While in Tintaya, power over authority between the national and local authority was reduced. Here, the transformation of conflict at the local level was possible where there were duty bearers committed to make institutional changes by negotiating the differences between the mining company and the local communities, and where meaningful participation from the communities took place. In Rio Blanco, there are strong demands for an *influential participation* (decision to approve or reject mining projects and attempts from the central government to impose mining without making the necessary institutional changes for that participation to take place).

In Tintaya, there was a combination of influential, informative, intercultural and appropriate participation, while in Rio Blanco, none of these was present. In Tintaya there was *influential participation* because consent was introduced in an agreement (regulatory framework) between the mining company and the communities. Their free elected representatives not only had a seat at the DR but also participated in decision-making, with duty bearers able to listen and respond. In Rio Blanco, *consent* is not

clearly incorporated in an inclusive regulatory framework and is only recognized by the central government at the implementation stage of mining projects.

In Tintaya there was *appropriate participation* because different levels of participation were combined and provided where necessary: information, consultancy, developing of tasks, monitoring of agreements and decision-making. In Tintaya communities were provided information on the grievances in the different sub-commissions. Communities participated in developing and monitoring tasks, which proved to be a strategic political right that opened the door for the fulfilment of the other rights, such as participating in decision-making at the DR.

In Rio Blanco, communal leaders received some *information* from the mining company. Communities were invited to monitor the mining project when they questioned its viability. The mechanisms for influent participation (public consultations) were provided by the local government, and proved to be politically powerful. Though non-binding, the consultations showed the mining project's lack consent.

In Tintaya, there was *intercultural* participation: the negotiation process was adapted to how representation operated in communities (assemblies) based on consensus and community's language and customs. In Rio Blanco, approval given by community leaders was not recognized by community members because they were not consulted in their customary spaces.

In Tintaya, there was *informative* participation: information was accessible in the community's language, with guaranteed validity and quality. In Rio Blanco, there was a problem with the information provided, which was misleading, incomplete and unclear, particularly on consent before the exploratory phase.

In Rio Blanco, there were different attempts to conform DR without constituting them. In context of fixed positions, mistrust among actors, and violent actions coming from one side or the other and fed by the media, none of the actors were able to reformulate their interests or look into third scenarios. Attempts to facilitate dialogue processes were seen with distrust.

The image of dialogue processes also suffered, as these appeared inefficient at times. Arguments in a context of conflict justify coercion and repression from the central state to fulfil its duty of bringing peace and order.

In both cases, representative-articulation was a challenge to the negotiation process, despite high levels of social organization.

One aspect that sustains the participatory process in favour of negotiation or opposition is the combination of benefits with concrete benefits/results based on the motivations of those who participate. In Tintaya, the communities' grievances were attended to at the DR, and the benefits of participation were seen at the local level.

In Rio Blanco, community participation was a challenge to the central government, which declared some of these spaces (public consultations, strikes, among others) illegal. But the communities achieved their objective to stop or delay mining operations. Thus, participation in the form of violence is efficient for those that claim their rights, particularly if duty bearers listen to communities.

The public consultations in Rio Blanco jumpstarted a series of demands and announcements of consultations in various parts of the country. Rio Blanco became a model and pioneer in initiating alternative methods to be heard, and in taking part in decision-making for the future and development of their communities (Echave et al., 2008).

### 5.3 RECOMMENDATIONS

#### *On the transformation of conflict*

What should be the role of duty bearers in relation to community right to participate in mining policies, to transform social mining conflicts?

To transform social conflicts, it is necessary for duty bearers (in first place the central state, the mining company or international supranational organisations<sup>22</sup>) to commit to promoting institutional changes throughout the life of the mining project to transform the differences between communities (backed in their real and perceived magnitude of impact) and the mining company. In conflict situations, the mining company and the communities tend to confront rather than cooperate, which could deepen conflict and lead to violence depending on the existence of institutionalized ways to promote negotiation processes with meaningful community participation (influential, intercultural, appropriate and informative).

#### ▪ *At the international level*

- ✓ Duty bearers at the international level play an important role. Some mining companies, because of international pressure of organizations settled in the countries where they come from, are more concerned about human rights and strive to maintain dialogues with communities at all stages of the mining project, through FPIC (e.g. Xstrata<sup>23</sup>).
- ✓ Because of the lack of political opportunity (e.g. Rio Blanco), it is necessary to have international organizations at the supranational level (duty bearers) capable of enforcing, guaranteeing and monitoring the implementation of standardized tools that endorse mining industry responsibility for human rights at any place of the world (e.g. The Draft Norms of UN that incorporate the principle of FPIC).
- ✓ It is recommended for duty bearers, especially those from the international community to provide technical and economic support to NGOs and other actors at the national level, to support collective actions at the local level, and foster articulation and cohesion among social organizations to facilitate the negotiation processes.

#### ▪ *The State*

- ✓ An ethical challenge is raised in relation to hegemony in discourses such as modernity (based on the respect of legal order). What is the mining company and central government's hegemony in contrast with "others of modernity"? Whose reality counts? For HRBA, the most excluded (native or peasant communities)

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<sup>22</sup> An international organization with power to exercise pressure over the mining company. When the political opportunity does not exist, then a supranational organization like the UN or World Bank, whose measures are enforceable.

<sup>23</sup> [http://www.riotinto.com/documents/ReportsPublications/corpPub\\_BusPract\\_English.pdf](http://www.riotinto.com/documents/ReportsPublications/corpPub_BusPract_English.pdf)

- should be privileged, which means in practice that public policies should incorporate an intercultural perspective and not the opposite.
- ✓ Perception may be real or perceived (but not valid). Thus, there is a component of subjectivity that needs to be addressed by an independent and neutral public organism<sup>24</sup> that protects community's rights with the authority to evaluate with credibility the real scale of the impact of mining projects, as well as to supervise, control, and sanction the fulfilment of law and any agreement among the mining company, the state and the community.
  - ✓ In cases where the levels of impact are basically based on perceived impact, information workshops with intercultural perspectives can play an important role to try to reduce the gap between modernity and indigenous knowledge. In cases like Rio Blanco, where perceptions are based on real evidence, information is not enough. A public debate on the real risks of impact based on a system of territorial planning is necessary, and can help decide where mining is viable and where it is not and how to minimize its negative effects on affected communities (Echave et al., 2008).
  - ✓ The intervention of the central state is especially needed to deal with the roots of the conflict, not only with the real or perceived magnitude of impact but also with the contextual factors that we have seen, which have an impact on perception.

Causes of protests and recommendations:

Causes of protest	Recommendations for policy
1. Defence of the communal autonomy	Enhancing citizen participation
2. Environmental risks	A inter-sector management, expressed in an autonomous authority
3. Struggle for natural resources as a means of economic support	Land-use zoning and planning
4. Unequal distribution of economic Benefits	Link between mining and local development
5. National vs. local authority	Definition of functions among the different levels of the government

- ✓ These recommendations do not aim to dissolve the conflicts but catalyze them in an *institutionalized* and peaceful way where its *resolution is a political one* (Echave et al., 2008). This means that conflict management will be embedded in power relations, the claims of the rights at stake, the history of non-fulfillments, in which the analysis of costs and benefits of the different actors should not oppose at least two considerations: social cohesion and legitimacy of the state<sup>25</sup>.
- ✓ In the table above, (influential) citizen participation is the recommended policy for the defence of the communal autonomy. I would add to this, that community participation (at other levels: information, monitoring, consultations) as the Tintaya case shows may be helpful for dealing and transforming the other

<sup>24</sup> On May 2008, the Ministry of Environment was created without incorporating the supervisory role(s) of regulating concessions (Environmental Assessment) that will remain in the hands of MEM. As some experts argue, the legal norm that creates this Ministry is ambiguous because it does not define the competencies and functions among the different levels of the government, which would feed the conflict<sup>24</sup>.

<sup>25</sup> Interview with the Regional Policy and Programme Advisor Oxfam GB.

causes of protest at the micro level during the period of life of the mining projects.

- ✓ The central government should understand that citizens have the right to protest in a peaceful way, without damaging properties or harming people.
- ✓ Conflict should be politically managed by the state, at the very first stage, through negotiation processes<sup>26</sup>. The escalation and polarization of conflict should be prevented. If the latter happens, it reveals the political incapacity of the state to solve internal problems in a peaceful way. At the last stage the state can perform other duties: coercion to bring back order but respecting the fundamental rights of citizens<sup>27</sup>.
- ✓ Local authorities play an important role in representing communities' interests because they are closer to the people, know their demands and are accountable to these. They should promote the articulation of social organizations, to have common agendas to facilitate negotiation.

▪ *The mining company*

- ✓ In relation to the duties of the mining companies, social responsibility is not enough because by definition it is a voluntary initiative related to activities that go beyond the law. The non-fulfilment of the environmental law is not the same as the absence of social responsibility, but an illegal act. In fact social responsibility can end up as a kind of fashionable act and these "good practices" can be used to hide unfulfilled duties. (Ardito, 2008).
- ✓ Mining projects are not politically viable only with legal technical authorizations provided by the central government; they need to be complemented with the support (social licence) from the local communities directly affected.

▪ *The allies* (some duty bearers behave like allies, but in most cases, allies are organizations that belong to civil society)

- ✓ The role of the allies in easing or blocking negotiation processes is important: Whom do they support? For what purpose? What is the ally's agenda? What is their position on mining? Are they working only on one side of the equation [community's rights]?
- ✓ Are they enhancing the internal organization of representative social organizations and their articulation?
- ✓ Are they giving support to communities that claim for their rights through dialogue or through violent actions?
- ✓ Are they also working on the side of the supply (for a state able to listen and respond)? Or are they occupying the role of the state?
- ✓ To sum up: Is the allies' support feeding peaceful negotiation processes or violent ones?

▪ *Right holders*

- The more articulated the organizations representing right holders, the easier it is to identify interlocutors to initiate processes of dialogue.

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<sup>26</sup> Intelligence services should provide information to deal with radical, extremist and violent groups that may manipulate community's participation as it occurs in other mining conflicts of Peru.

<sup>27</sup> Two vigilance community peasants died after being shot (November 2008); three people died and 33 were harmed in similar circumstances in a different mining conflict in Peru. Policemen can use arms without restriction and they cannot be sanctioned if some people are harmed or die, while fulfilling their duties.

- The directly involved communities should have representation in these spaces.
- Participatory processes as we have seen are not free from conflict. There are some critical questions not resolved in this research paper but that may need to be explored for meaningful participation to take place:
- *Influent participation*
  - ✓ What do communities engaged in the participatory process decide (influent participation)? What decides the state? What decides the mining company? Do demand of participation and supply clash with each other?
  - ✓ Who (communities) should participate in these spaces?
  - ✓ Who are excluded?
  - ✓ Who decides who participate? On the basis of what?
- *Appropriate participation*
  - ✓ When (stages of mining project) should communities participate?
  - ✓ How should community participate at the different stages?
- *Informative participation*
  - ✓ What information is need for community to participate?
  - ✓ Who should provide that information?
- *Intercultural participation*
  - ✓ How does institutionalized mechanisms of participation relate to customary institutions and representation from local community?

After all that has been mentioned, is Rio Blanco project possible?

Role of the duty bearer [state]	Short [5 years]	Medium [10 years]	Long run [15-20 years]	Go ahead with the mining project
Social consensus [for the political viability]	NO	Maybe. After a public debate based on a system of territorial planning.	More possible. After a public debate with new generation of population] based on a system of territory planning	Maybe
Coercion, Threatening Repression risky when there is strong opposition to mining activities. Against principles of HRBA	YES	YES	YES	YES

Finally, social consensus should be institutionalized for these reasons:

- ✓ There is a current demand from communities to decide if they want mining on their lands that clash with the lack of institutionalized mechanism for that type of influent participation to take place. Thus, in order to transform social conflicts, social consensus should be incorporated in the regulatory framework.
- ✓ Communities have the right to property of their lands specified in international law (ILO Convention 169), so Peruvian legislation needs to be aligned with the latter.

- ✓ There are ethical implications in the settlement of the mining that will impact on community environment and human security. So, community has the right to participate in all the phases of mining projects that will have an effect on their living condition.
- ✓ In current conflict, if mining projects lack social license from the community, it is risky for the community's security and will generate costs and delays for the mining company and the state.
- ✓ Community participation may guarantee that communities benefit from the extractive industry settled in the territories where they live as Tintaya case shows.

# EXPLANATION OF TINTAYA CONFLICT

**Contextual factors:**

- Long tradition of mining [since 80s].
- Mining memory [mita]
- Mining, an activity in course.
- Communities far from capital.
- Agriculture and farm were not extensive activities.

**Perceived and real risks [GRIEVANCES]:**

1. **Autonomy of the land** [lack of right to land.]
2. **Environment implications** [lack of right to environment]
3. **Struggle for natural resources** [lack of right to a sustainable development]
4. **Distribution of economic benefits** [lack of right to economic development].
5. **Struggle over authority.**
6. **Anxiety about new projects** [lack of right to [FPIC].]

**Mining not perceived as a disruptive activity.**

Low levels of magnitude of affectation (perception)

High magnitude of affectation (perception)

Social fragmentation

how  
why

Social articulation

**DUTY BEARERS**

- National State [Main duty bearer within HRBA]
- Mining Company Subsidiary Peru [Direct duty bearer in conflict]
- Mining Company Headquarters
- Political Opportunit
- Mining Ombudsman – Oxfam Australia
- Oxfam Community Aid Abroad

**Tintaya Conflict**  
No accountability

**RIGHT HOLDERS**

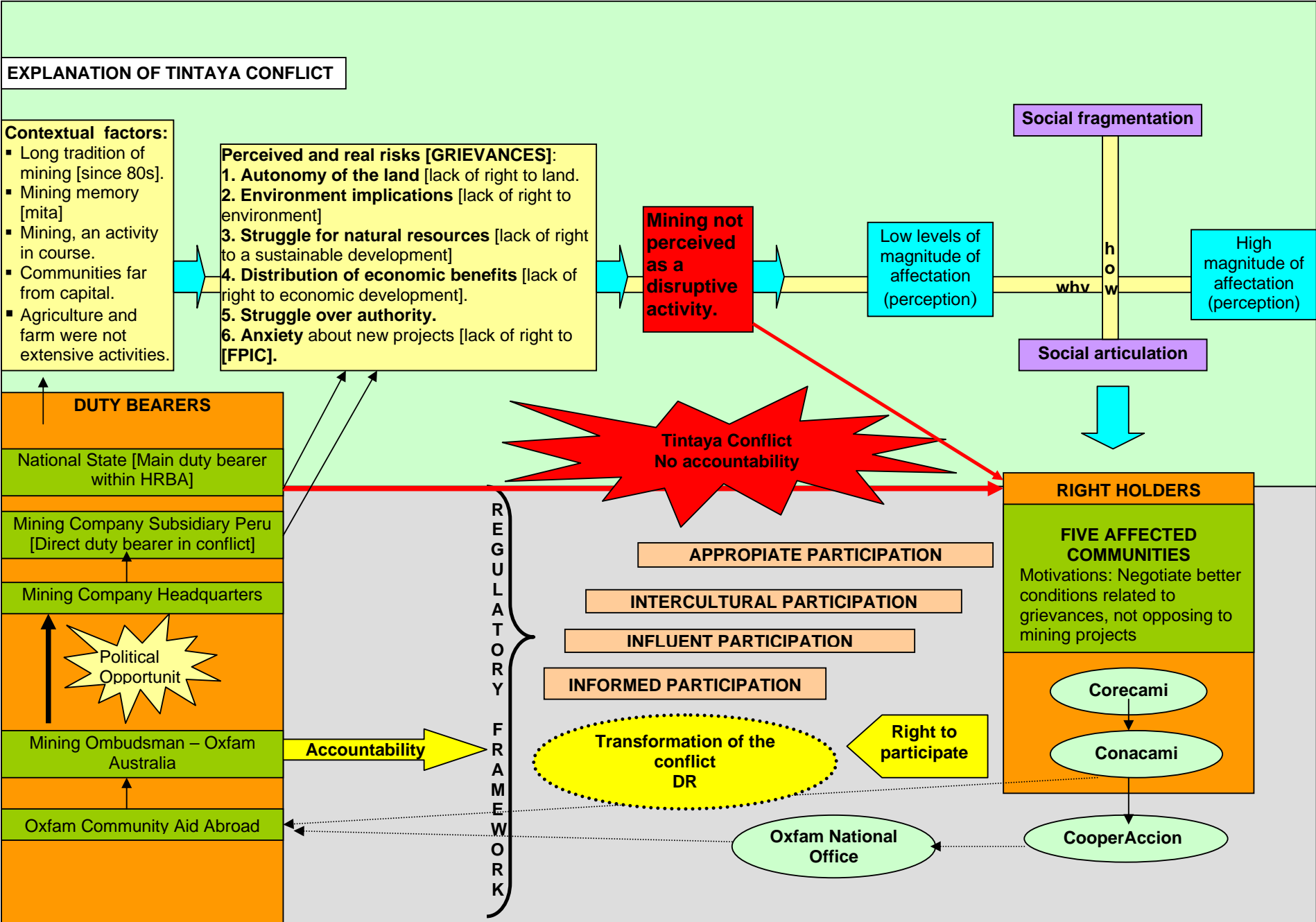
**FIVE AFFECTED COMMUNITIES**  
Motivations: Negotiate better conditions related to grievances, not opposing to mining projects

- Corecami
- Conacami
- CooperAccion

**REGULATORY FRAMEWORK**

- APPROPRIATE PARTICIPATION
- INTERCULTURAL PARTICIPATION
- INFLUENT PARTICIPATION
- INFORMED PARTICIPATION
- Transformation of the conflict DR
- Right to participate
- Oxfam National Office

Accountability





# EXPLANATION OF RIO BLANCO CONFLICT

## Context:

- Previous mining conflict in Tambogrande [population withdrew a mining company]
- Mental history [mining mita]
- There is no tradition of mining.
- Exploration stage.
- Agriculture and farm are extensive activities [water a valuable resource].
- Very near the capital of the centre (north on coast).

## Perceived and real risks [GRIEVANCES]:

1. **Autonomy of the land** [lack of right to land. Most sensitive issue.
2. **Environment implications** [lack of right to environment]
3. **Struggle for natural resources** [lack of right to a sustainable development]
4. **Distribution of economic benefits** [lack of right to economic development].
5. **Struggle over authority**
6. **Anxiety** [Mining district].

CONI

Mining perceived as high disruptive activity.

High levels of affectation (perception)

Social fragmentation

Social articulation

how

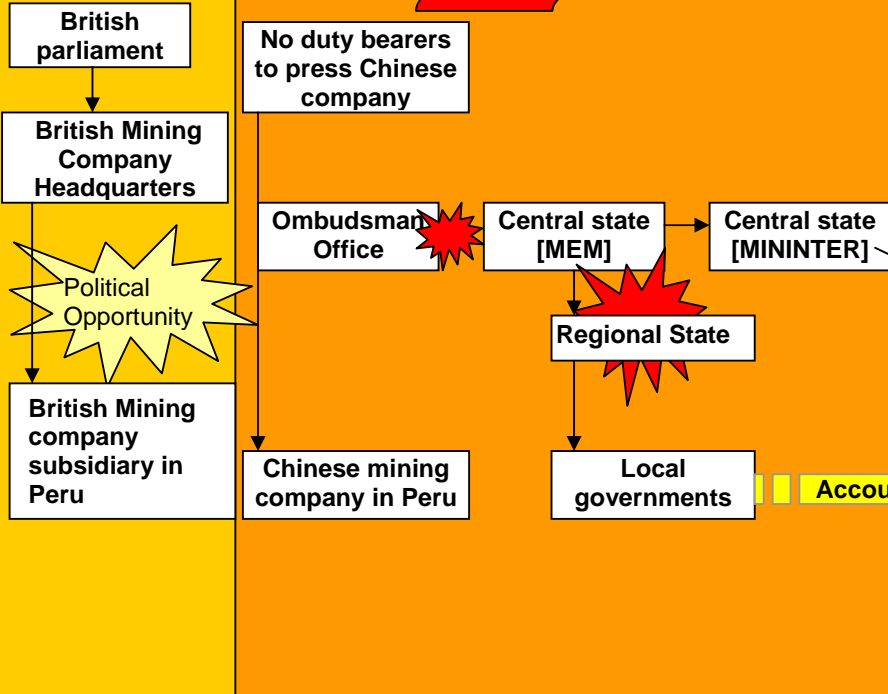
why

High magnitude of affectation (perception)

## DUTY BEARERS

### PAST

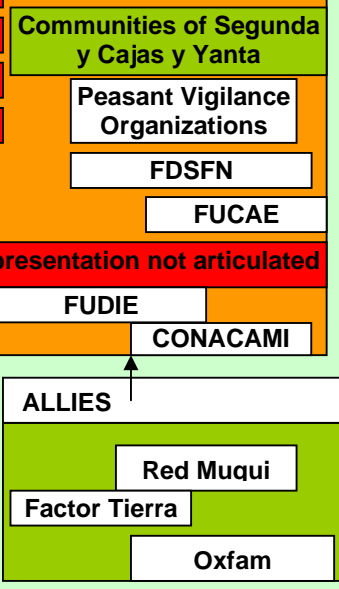
### PRESENT



Rio Blanco Conflict  
No accountability

- NO INFLUENT PARTICIPATION
- NO INTERCULTURAL PARTICIPATION
- NO INFORMED PARTICIPATION
- NO APPROPRIATE PARTICIPATION

## RIGHT HOLDERS



Several attempts for Dialog Roundtables

Public consultancies. Fear of state [previous history]

Accountability

Right to participate

Representation not articulated

## ANNEX

### DATA

(Basically) Secondary Data

(PART I)

#### 1. State's discourse about community right to participate

##### a. National State

- MEM: Regulation of citizen participation in all the stages of mining projects (27/05/08).
- Decree Law 1015 about native communities right to property and autonomy of lands.
- MEM: Pronouncement declaring the public consultancies in the three districts that will be affected by the Mining Project were illegal.
- Document of creation of the Ministry of Environment.
- Ombudsman Office: Report N° 001 -2006/ASPMA-MA about irregularities of the validity of the Majaz Project in Piura.
- Ombudsman Office: Extraordinary report. The socio environmental conflicts due to extractive industries in Peru. 2007.
- OSINERGMIN: Law Decree of its creation and functions.
- CONAM
- Law Decree. D.S. N° 014-2007-EM that modifies the environmental law for the activities of mining exploration (el D.S. N° 038-98-EM) which are related to right to participate of communities.
- Media articles with interviews to the President of the Republic and MEM related to community right to participate.

##### b. Regional State

- Regional President of Piura
- <http://www.cnr.org.pe/noticia.php?id=18947>  
Recent law that says the Regional Presidents can not participate in social mobilizations.

##### c. Local state

- Public Consultancy Paicapampa (Video only in Spanish version)  
<http://www.youtube.com/watch?v=o6DGAhphEbA>  
Mayor's declaration who manifests his complains about some national authorities' participation in the conflict.
- Municipal law that incorporates mechanisms of participation of community in planning development and environmental issues.

#### 2. Mining Company discourse about community right to participate

- Presentation of the integral model of development of Rio Blanco Project to the community in the workshops held by the Mining Companies (22-29 August, Piura).
- Ampliation of Environmental Assessment of Rio Blanco Project. Final Report. May, 2006.
- Minera Majaz Public Apology. Pronouncement. September 11, 2006.
- Bulletins distributed to the community that appear on the web.

### 3. Community discourse about their right to participate

- Public Consultancy in Ayabaca (Video in English version)  
[http://www.youtube.com/watch?v=FGj\\_Nds\\_1bY&feature=related](http://www.youtube.com/watch?v=FGj_Nds_1bY&feature=related)  
 In the district of Ayabaca, nearly 9,000 citizens gathered in the city stadium to cast their votes in the Referendum. Over 97% vote against allowing mining activity in their district. Similar results were obtained in Paicapampa and Carmen de la Legua. The other two communities that held the referendum.
- Public Consultancy Carmen de la Frontera (Video in English version)  
[http://www.youtube.com/watch?v=n-FD\\_Yc-hNE&feature=related](http://www.youtube.com/watch?v=n-FD_Yc-hNE&feature=related)  
 In the district of Carmen de la Frontera about 3,100 citizens cast their votes in a referendum on whether to accept mining in the area. Over 98% voted against the Mining project.

### (PART II)

- Visits to Oxfam in the Netherlands to find data about successful cases of FPIC.
- Documents of successful cases by Oxfam Australia (FPCI)
- Tintaya reports (Oxfam Australia, Oxfam America and other partners involved in the conflict)

### 4. Local organizations' and individuals' (supporting community right to participate) discourse

- Red Muqui
- Parish Priest

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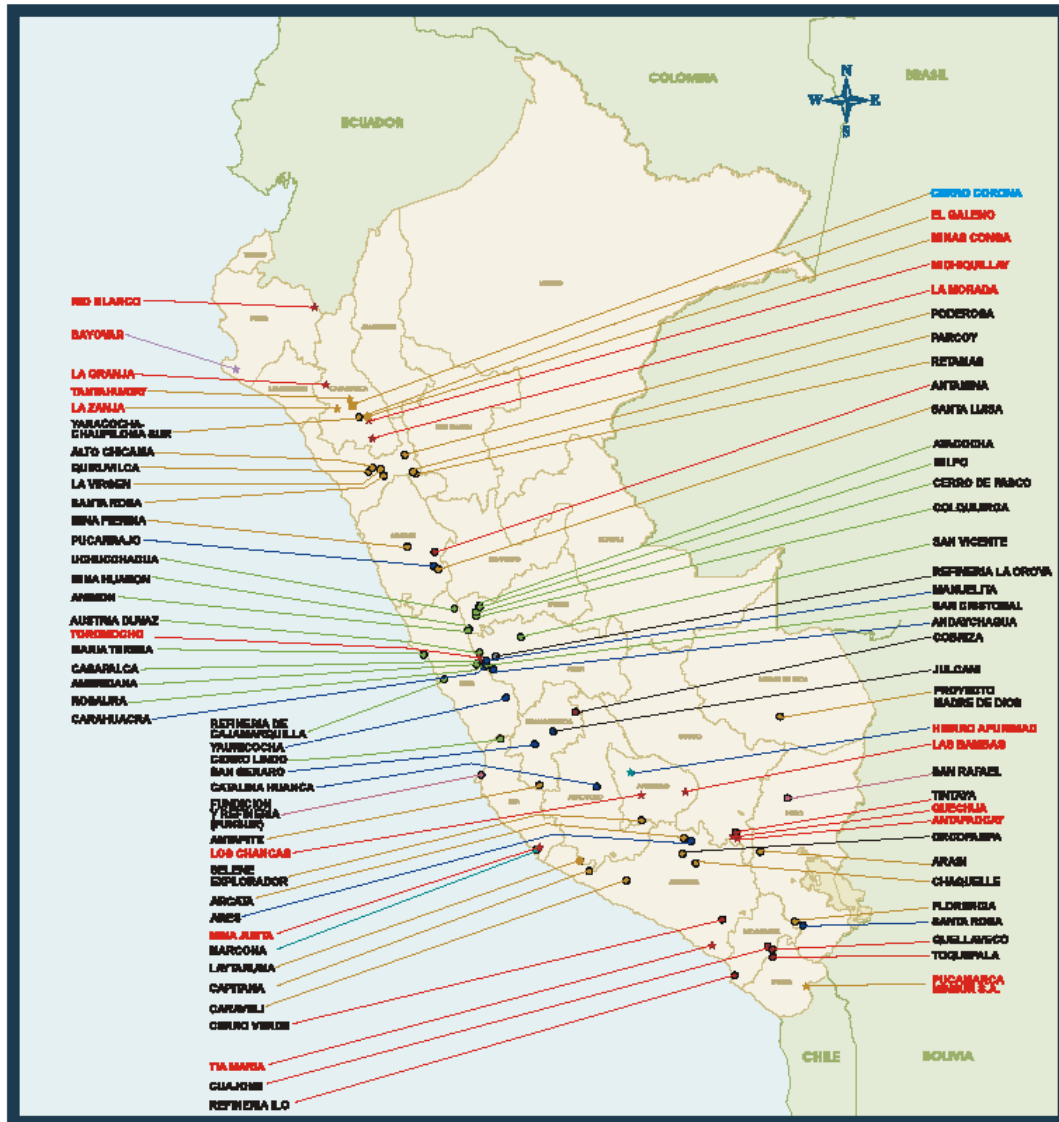
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11.

ANNEX:  
[Annex 1]

PRINCIPALES PRODUCTORES Y PROYECTOS MINEROS  
MAIN PRODUCERS AND MINING PROJECTS



LEYENDA / LEYEND

- |                  |                       |
|------------------|-----------------------|
| ● ORO / GOLD     | ● PLOMO / LEAD        |
| ● COBRE / COPPER | ● HIERRO / IRON       |
| ● PLATA / SILVER | ● ESTAÑO / TIN        |
| ● ZINC / ZINC    | ● FOSFATO / PHOSPHATE |

- |   |                                   |
|---|-----------------------------------|
| ● | EN OPERACION / IN OPERATION       |
| ★ | EN EXPLORACION / IN EXPLORATION   |
| ■ | EN CONSTRUCCION / IN CONSTRUCTION |

**[Annex 2]**

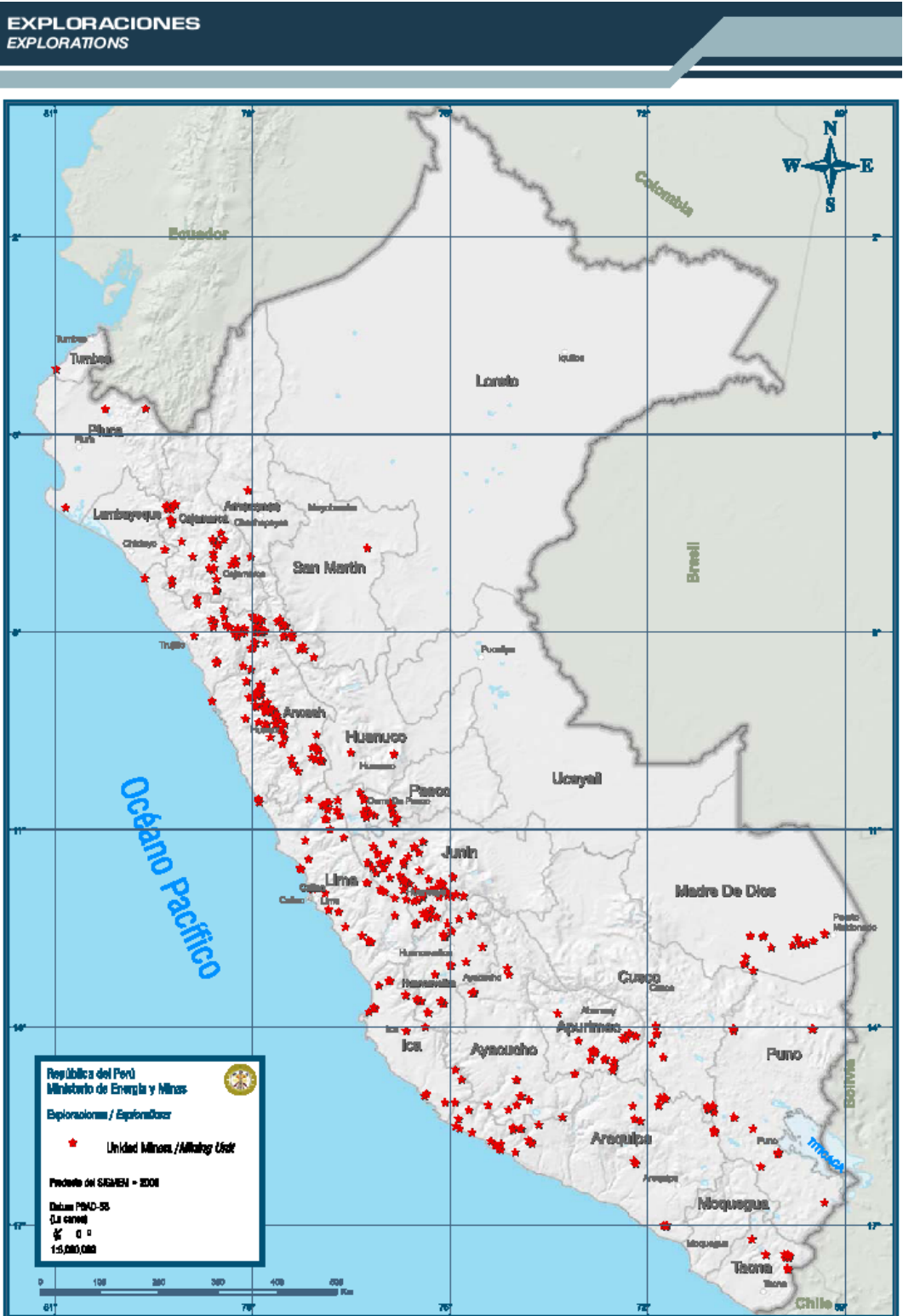
<b>Region</b>	<b>Mining production and national rank</b>	<b>Poverty</b>
Huancavelica	6 lead	88%
Huanuco	5 zinc / 5 lead	79%
Puno	1 tin / 6 gold	78%
Cajamarca	1 gold / 6 silver	77%
Cusco	4 copper	75%
Pasco	1 zinc / 1 lead / 1 silver	66%
Ancash	2 gold / 2 copper / 3 silver / 3 zinc / 4	61%
Junin	4 silver / 3 lead / 4 zinc	58%
La Libertad	3 gold / 6 zinc	52%

Source: Peruvian Magazine 'Bajo la Lupa'<sup>28</sup>

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<sup>28</sup> Magazine 'Bajo la Lupa'. The graphic was made using the sources of this magazine. <http://www.bajolalupa.net/edicion1/edicionImpresa/Edicion1.pdf>

[Annex 3]





**[Annex 4]**

Representatives from Oxfam interviewed

Name	Position	Oxfam
Susanne Engelhardt	Programme Officer	Oxfam Novib
Eduardo Caceres	Regional Policy & Programme Advisor	Oxfam GB in Peru

**[Annex 5]**

Chronology of events (Oxfam 2003: 32)

<b>Post 1980:</b>	Peruvian government expropriates 2,368 hectares of land for Tintaya State Copper Mining Company in Yauri, Espinar Province, Cusco, Peru.
<b>1994:</b>	Mine privatized and acquired by USA-based Magma Copper consortium for US\$ 215.7 million and the cancellation of US\$ 55 million of Peru's external debt.
<b>1996:</b>	Australian company Broken Hill Proprietary (BHP) acquires Magma Copper and a 99.94% interest in the mine.
<b>1996:</b>	BHP acquires 1,263 hectares of Tintaya Marquiri community land through a process of servidumbre to build the copper oxide plant and increase the capacity of the mine and 246 hectares of Alto Huancane community for the Alto Huancane tailings dam.
<b>Post 1996:</b>	To advance exploration activities BHP [through servidumbre] acquires 400 hectares of Huano Huano community land, 477 hectares of Alto Huarca community land and for a space for a new tailings dam, 875 hectares from individual property owners in the region.
<b>2000:</b>	BHP merged with the British Company Billiton [creation of the most important mining companies in the world].
<b>2000:</b>	CONACAMI and its regional base in Cusco (CORECAMI) with CooperAccion carried on a diagnosis among the affected communities. It was the first report of the existing problems in the zone due to mining projects (Camacho and Lossio 2005: 20-21).
<b>11/2000:</b>	CONACAMI asked Oxfam CAA to include Tintaya case in its work of incidence. The objective was that the central administration of BHP Billiton head office in Australia knew the case and focus on it (Camacho and Lossio 2005).
<b>6/2001:</b>	Tintaya case is included in the <i>Mining Ombudsman Annual Report 2000-2001</i> [a publication with issues related to mining].
<b>3-11/12/2001:</b>	Mining Ombudsman <sup>29</sup> visits the affected communities to assess the veracity of the grievances and included their finding in their report. (Camacho and Lossio 2005)
<b>10/12/2001:</b>	Initial dialogue meeting held in Lima, facilitated by the Oxfam CAA Mining Ombudsman. Participants: BHP Billiton Base Metals, BHP Billiton Tintaya, CONACAMI, CORECAMI-Cusco, Oxfam America, Cooperación and Municipality of Espinar.
<b>23/1/2002:</b>	Mining Ombudsman writes to Ian Wood (Vice President of BHP Billiton) outlining community concerns and recommendations.
<b>29/1/2002:</b>	Jaap Zwaan (President of BHP Billiton Tintaya) expresses a desire to investigate community grievances.
<b>2/2002:</b>	Ian Wood conducts an audit/field investigation of the Tintaya mine.

<sup>29</sup> The Mining Ombudsman is Ingrid Macdonald, who was appointed by Oxfam Australia.

<b>6/2/2002:</b>	<p>First meeting of the RD to address the concerns of the affected communities.</p> <ul style="list-style-type: none"> <li>▪ Participants: company, community representatives, their support organizations, the municipality and a facilitator.</li> <li>▪ The DR established four commissions. Land, Human Rights, Sustainable Development and Environmental.</li> </ul>
<b>4/11/2002:</b>	<i>Mining Ombudsman Annual Report 2002</i> published with results of the Mining Ombudsman Tintaya case investigation and the update presented by the DR.
<b>14/11/2002</b>	BHP Billiton writes a letter of concern to Oxfam CAA over the presentation of the Tintaya case report.
<b>12/2002</b>	Oxfam CAA responds that the report provides an accurate portrayal of progress to date.
<b>8/4/2003</b>	Mining Ombudsman attends a meeting of the DR. The four DR commissions report back their findings and recommendations to community members.
<b>11/04/2003</b>	Mining Ombudsman meets separately with all parties in Lima to discuss the Tintaya case investigation.
<b>4/6/2003</b>	Mining Ombudsman writes to BHP Billiton urging them to accept and implement the proposals formally presented by communities.
<b>10/6/2003</b>	Community representatives present a written call for the suspension of all Commissions until BHP Billiton Tintaya commits to its relocation with development in the same way that was provided for the community of Tintaya Marquiri.
<b>20/6/2003</b>	Meeting facilitated by Oxfam America where BHP Billiton Tintaya, Cooperaccion, Oxfam America, CONACAMI, CORECAMI Cusco and Alto Huancane, Alto Huarca, Tintaya Marquiri and Bajo Huancane community representatives reaffirm their confidence in the DR.
<b>12/2004:</b>	Agreement among parties involved is signed: Company facilitates land acquisition, provides technical assistance for land use (e.g. training in animal health and provision of tools); and offers details of a community development fund, in which the company contributes with US\$300,000 each year; and reaffirms its commitment to solve human rights, environmental and social problems.

**[Annex 6]**

Stakeholder Analysis (adapted from (Brooke 2005) (Aroca 2006))

ACTOR	ROLE
<b>INTERNATIONAL GLOBAL LEVEL</b>	
BHP Billiton's Headquarters	Mining Company headquarters in Australia. Its subsidiary exploited and explored minerals in Cusco, Peru.
Oxfam – CAA	International development organization with 12 affiliates working together in more than 120 countries.
Oxfam Australia	An Australia-based NGO and a member of Oxfam International.
Oxfam CAA's Mining Ombudsman	It grew in 2,000 by Oxfam Community Aid Abroad.
<b>NATIONAL LEVEL</b>	
BHP Billiton Tintaya	Subsidiary of BHP Billiton's Melbourne that operated in Tintaya, Cusco.
THE STATE (MEM)	An absent actor in DR. Social organizations and communities demanded MEM should <b>not</b> participate in the DR.
Oxfam America	A US-based NGO and an affiliate of Oxfam International. They supported Cooperaccion and CONACAMI.
COOPERACCION	A Peruvian NGO based in Lima with presence in 10 regions. Funded in 1997, to help local communities gain the information, skills and organization to defend their rights related to mining.
CONACAMI	National Coordinating Body for Communities Affected by Mining in Peru. A membership organization composed of 1,000 delegates from 13 mining-affected regions. [2000] CONACAMI, representing CORECAMI Cusco and the affected communities asked the Mining Ombudsman of Oxfam Australia to take up Tintaya case.
<b>REGIONAL LEVEL</b>	
CORECAMI-Cusco	Regional subsidiary of CONACAMI. In 1998, peasant affected communities decided to constitute CORECAMI Cusco. CORECAMI trained advocacy training for Espinar community leaders and diagnosis of the affected communities with the support of CooperAccion. CORECAMI became the channel to represent communities' demands in national spaces.
<b>LOCAL LEVEL</b>	
Municipality of Espinar	[2000-2001] The Municipality of Espinar through its Mayor [Mollohuanca] participated in the DR and built an alliance with community leaders, CONACAMI, CORECAMI, national and international NGOs. Then, Luis Alvarez became the Mayor and his action focus on the Agreement process. He decided not to participate in the DR.
Community of Tintaya Marquiri	The peasant communities claimed of different actions considered unfair and implemented by the mining company from the period since it was a property of the state such us: The land expropriation by the mining company and other issues related with the past (sexual violations, the unfair evacuation, grievances about environmental contamination, the changes in their way of living and the lack of employment).
Community of Alto Huancane	
Community of Bajo Huancane	
Community of Alto Huarca	
Community of Huano Huano	
Unified Federation of	[1980]. It was a base of the Departmental Federation of Peasants in Cusco. They demanded that mining be related

Peasants of Espinar (FUCAE)	to development, the appropriation of lands, employment and the provision of infrastructure and basic services.
Unified Front of the Defence of the Interests of Espinar (FUDIE)	Funded in 1988. Its first President was a leader of the left party. It was created as a response of the no responsiveness of communities' demands in Espinar by the state.

**[Annex 7]**

<b>Number of hectares affected by expropriations or processes of buying-selling in each one of the communities</b>	
<b>Peasant community</b>	<b>Affected hectares</b>
Peasant community Tintaya Marquiri	3,274.50
Peasant community Alto Huancane	204.73
Sector Huinumayo (CC. Alto Huancane)	246.00
Peasant community Huano Huano	400.85
Peasant community Alto Huarca	477.00
Peasant community Bajo Huancane	151.77

**[Annex 8]**

Motivations of the key stakeholders to participate in the DR. Adapted from (Camacho and Lossio 2005) and (Echave et al. 2008)

<b>Actor</b>	<b>Motivation to participate in the Dialog Roundtable</b>
<b>INTERNATIONAL</b>	
BHP Billinton's Melbourne Headquarters	Threatening of the possible negative economical repercussion of the publicity about their behaviour in the international market promoted by the Mining Ombudsman.
Oxfam CAA	Attending a request made by the communities and the local NGOs in Tintaya Peru through Oxfam America in accomplishment of their mission: <i>"Create lasting solutions to poverty, suffering and injustice"</i> .
Oxfam Australia	Fulfilment of their mission related to the mining ombudsman, who was a recently established body that received and investigated complaint abuses by Australian Mining Companies abroad in underdeveloped regions.
Oxfam CAA's Mining Ombudsman	Strengthening transnational control of the Australian mining companies and exerted public pressure on mining companies' headquarters to address the actions taken by their subsidiaries. The Ombudsman made public in her home country any incident of the mining companies that violated the rights of the communities.
<b>NATIONAL</b>	
BHP Billiton Tintaya	[First stage]: BHP Billinton's subsidiary in Peru followed BHP Billinton's Headquarters instructions. [Second stage]: After the training process, BHP Billiton's managers in Tintaya were started to maintain good relations with the community, attend their expectative and assume a compromise with the sustainable development in the zone.
MEM	One of the first agreements of the DR was that the central government did not participate in this participatory state.

	Communities considered the state, specifically MEM, was not a trustful actor.
Oxfam America	OA participated in the DR for these reasons: 1. Their new role in extractive industries in Peru, Ecuador and Bolivia. Tintaya case was considered emblematic. 2. An invitation from Cooperacion and CORECAMI-Cusco. Oxfam America supported their work in Espinar. 3. Become a bridge between Oxfam CAA, the Mining Ombudsman, the communities and the local NGOs.
COOPERACION	They participated in the DR attending the invitation of the Mayor of Espinar to document communities' grievances through a study of: land sale process, collecting quality of life indicators and an assessment of the mine's environmental impacts.
CONACAMI	Mission: "Keep the natural resources potentially affected by the mining activity and work in the sustainable development of the affected communities". In their web page they said the Peru was a agricultural country [in opposition to mining]
<b>REGIONAL LEVEL</b>	
CORECAMI-Cusco	Fulfilment of CONACAMI mission and tasks.
<b>LOCAL LEVEL</b>	
Municipality of Espinar	Gain political dividends (re-election) through canalizing and attending community's complaints.
<b>Five affected communities</b>	The peasant communities decided to enter the DR in order to claim and find a solution for what they considered an unfair process related to their demands ["forced selling"], the environmental problems, the forced evictions/evacuations and the development of the locality, the sexual violations and the changes of their traditional ways of living and the lack of employment.
FUCAE	The Unified Federation of Peasants of Espinar demanded that mining be related to development and employment, e.g. through the provision of infrastructure and basic services to the localities.
FUDIE	The Unified Front of the Defence of the Interests of Espinar was created because of the no answer of the communities' demands. They integrated a group of social organisations of Espinar with a broad agenda.

[ANNEX 9] Adapted from (Oxfam Australia 2007)

<b>CONCRETE BENEFITS RELATED TO THE PARTICIPATORY PROCESS</b>	
<b>1. Land Commission</b>	
Findings: Active participation of community members, recognition of problems by the company, empowerment of the communities and relocation of lands.	
<b>2. Environment Commission</b>	
Findings: In relation to the polluted water sources, the company provided drinking water to the affected communities. Mining company was committed to resolve the selenium problem and closed the holes of exploration activities in Antapaccay and Corocohuayco to eliminate contamination.	
<b>3. Human Rights Commission</b>	
The 34 allegations of human rights violations received were investigated by impartial organizations and the results communicated to the communities. The mining company was committed to honour the results of the investigation. The findings were important in addressing some of the more personal	

grievances of the community. Many community members were anxious over the findings and results of this commission [compensation and restoration of their rights].
<b>4. Sustainable Development Commission</b>
Cooperación proposed the formulation of a proposal to obtain funding to address long-term sustainable development issues.
<b>5. Commission of Coordination</b>
This commission facilitated the achievement of results of the other commissions, following up the agreements of all the commissions and monitor their work.

**[Annex 10]**

**Chronology of events adapted from (Echave et al. 2008: 37-54)**

1994	Minera Coripacha S.A., a subsidiary of Newcrest, discovers the cooper deposit.
1996-1998	New Crest in joint venture with Cyprus Amax from the United States develops 18 drill holes of exploration.
2002	Fusion operations and selling of actions give Majaz Mining Company the total rights of exploration of the cooper deposit.
2003	Rio Blanco Cooper Limited acquires 100% of Majaz Mining actions, authorizing to operate within 50,000 km of the frontier
2003 January	Majaz invested 800,000 dollars and made a request for the approval of the environmental assessment presented on February.
2003 March 31 <sup>st</sup>	The Direction of Environmental Affairs formulates observations to the project with 60 days of deadline to solve them.
2003 May 13 <sup>th</sup> ,	All the observations were solved except number 20 (information to explicit the negotiation strategies to prevent future mining conflicts). The company requested one extra month to solve them.
2003 July 25 <sup>th</sup>	The mining company presented an agreement with the Community of Segunda y Cajas and a plan of action with the communities obtaining approval from community leaders for prospective studies.
2003 November	It was approved the environmental assessment by MEM.
2003 August	Beginning of the process diffusion of the mining project to the communities, in which personal of the Ministry and the consultants [in charge of elaborating EIA] intervened. Against what it was expected, the meeting first developed in Huancabamba, en Segunda y Cajas (2003) and then in Ayabaca, in Yanta (January 2004) generated the disapproval of the mining project.
2004, February	Peasant vigilance organisations of Yanta kidnapped for some hours a car from Majaz Mining Company and its occupants. This information was announced by the Prime Minister through the media.
2004, April 15 <sup>th</sup>	Two marches to Majaz mining campsite against the mining project promoted by a group of authorities of the province and in particular by a series of leaders of the peasant vigilance organisations. To face the marches representatives of the MEM and the Ministry of the Interior held a meeting with authorities of Huancabamba, representatives of the peasant vigilance organizations and the communities of Segunda y Cajas y Quispampa to change their minds about the mobilizations and proposing as an alternative the creation of a commission of citizen monitoring of the mining project. But the proposals were rejected.
2004 April 20 <sup>th</sup> – 22 <sup>nd</sup> .	A large number of peasant vigilance organisations and community members marched on the mine site to recuperate their communal lands. The marchers were repelled by the police. In the confrontation two peasants died.
2004 April	It is open a judicial process to 23 communal leaders because of their responsibility on the confrontation mentioned above.

2004, April, 8 <sup>th</sup>	Act of assembly of the community of Segunda and Cajas includes the requirement of support to the municipal authorities and other local authorities as well as a series of fines and punishments for the ones that do not obey them. It was agreed an ultimatum to Majaz Mining Company to withdraw from the Mining zone otherwise local authority will use the force. The peasant vigilance organisations prohibited any link or relation with the mining company. And the one(s) that do not fulfil this requirement will be punished by "peasant community penalty". (Echave et al. 2008: 39)
2004, May 5 <sup>th</sup>	The regional government interested in contributing to make a reality the project, created a DR and their Technical Sub Commissions, some of its members had participated in the opposition to Manhattan Minerals. It was designed a model of space of dialog that combined a public foro of discussion with a series of specialized technical roundtables.
2004 May	Bishops of Piura, San Ignacio and Chulucanas as an answer to what had happened declared the intangibility of their dioceses for the development of mining projects.
2004 June	A group of communal leaders from the Province of Yanta (sponsored by the mining company) were kidnapped by the peasant vigilance organisations for attempting to distribute notebooks in the community. The peasant vigilance organisations burnt publicly the material. These communal leaders were accused for being in favour of the mining company and thus, were removed from their positions.
2004 July, 14 <sup>th</sup>	It was organized in Piura (from Paicapampa) a march in defence of the Paramos (forests). However, the local and regional scenarios would be sequentially marked by three mayor events: The disputes between journalists and peasant communities in Huancabamba, the detention or kidnap (depending on whose point of view) of the workers of Minera Majaz by the peasant vigilance organisations and the accusations of drug trafficking against groups that defended the environment.
2004, July	The population of Paicaipampa marches to Piura, in defense of the Paramos.
2004, July	It was installed the DR of Rio Blanco Project integrated by organisations and institutions of the two provinces (municipalities and communities), the mining company and the church. The objective was to provide information and facilitate the participation of the organized population in the supervision of the technical study of environmental impact. This DR had four technical Sub Commissions [Social EIA, Environmental EIA, Communications and Development] which worked complementary and parallel to the DR. The link between DR and their technical Sub Commissions were in charge of CARC-PUCP [integrated by professors from Catholic University and form the University of Piura. Anchante y Guzman Barron 20050] in (Echave et al. 2008)
2004, October and July 2005	There were meetings between DR and the technical Sub Commissions according to a complex and variable universe of regional actors. The DR gathered seven times from the first session in Huancabamba, the Technical Sub Commissions completed four sessions. It was suspended the fifth session planned for July 2005 as a decision made by the communal leaders.
2004, August	Meeting of dialog in Piura in which participated Regional Government, Catholic Church, Ministry of Energy and Mining, Ombudsman, representatives of the mining company and the peasant vigilance organisations. Next day there was a new strike in Huancabamba, with blocked ways.
2004, September	Closed meeting in Piura with the participation of Mayors of the provinces of and districts involved, the communities, the peasant vigilance organisations and the Fronts of Defence , members of CONACAMI and other activists created the Front of Defence for the Sustainable Development of the North Frontier (FDSFN).
2004, September	After the second march and the frustrated attempts of dialog between the peasant vigilance organisations and the commission developed for the dialog, it was open a period of mutual accusations at the same time of new callings for dialog from civil society

	and MEM. During this month there were at least two attempts of dialog for the establishment of a high level commission to deal with Majaz conflict. The communal leaders demanded to talk directly with the Minister without intermediaries.
2004, September	Members of FDSFN had a meeting with representatives of MEM in order to create other institutionalized space of dialog [Dialog Committee] among the members of the Front and the representatives of the Ministry. The preparatory meeting was marked by previous declarations and mutual accusations among the participants, who asked for the suspension of activities of Majaz as a pre condition for the initiation of the dialog process, while MEM demanded that FDSFN made a public confession in order to clean themselves from the accusations of drug trafficking and terrorism.
2004 December, 27 <sup>th</sup>	A radio presenter from Radio Centinela was kidnapped by peasant vigilance organisations as a measure to put him into order following the codes of the justice of the peasant communities. He was accused as a betrayer to the community and for being partial and in favour of the mining company and of organizing an attack to Radio Difusora, whose owner was the President of the Front of Defence. On other side, members of the peasant vigilance organisations in favour of the radio presenter, capture the owner of Radio Difusora and one of his collaborators accusing them as responsible for intellectual authoring.
2005, May	After the initial discounters, one of the agreements was the establishment of the Dialog Committee (CD), which gathered accidentally and irregularly, with continuous changes in the timetable. They could meet tighter in two opportunities and agreed on the establishment of a mission from the Ombudsman to assess in situ the events during and after the march to the mining camp at the end of July. Till the end of May, MEM announces their withdraw of the dialog process.

#### [Annex 11]

##### 4.2. Stakeholder analysis adapted from (Echave et al. 2008)

ACTOR	ROLE
<b>INTERNATIONAL GLOBAL LEVEL</b>	
Peru Support Group	Travel to Peru to assess community complaints over the performance of a British Mining Company
British Parliament	Hired Peru Support Group and chose impartial members to elaborate the report of assessment
<b>NATIONAL LEVEL</b>	
MEM	In charge of promoting investment and evaluating EIA.
Ministry of Interior	In charge of guaranteeing internal security
CARC-PUCP	Center of Analysis and Resolutions of Conflicts of Catholic University (CARC-PUCP). They were in charge of monitoring of the MC and the organization of the technical RT.
Red Muqui	Consortium of NGOs formed in the context of Front of Tambogrande, to which they gave support.
CONAM	CONAM (National Commission of Environment)
OSINERGMIN	OSINERGMIN, autonomous Peruvian entity in charge of regulating the functioning of the Mining companies; but they do not approve EIAs.
<b>REGIONAL LEVEL</b>	
Regional Government	In favour of mining project. They were interested in promoting spaces for dialog.



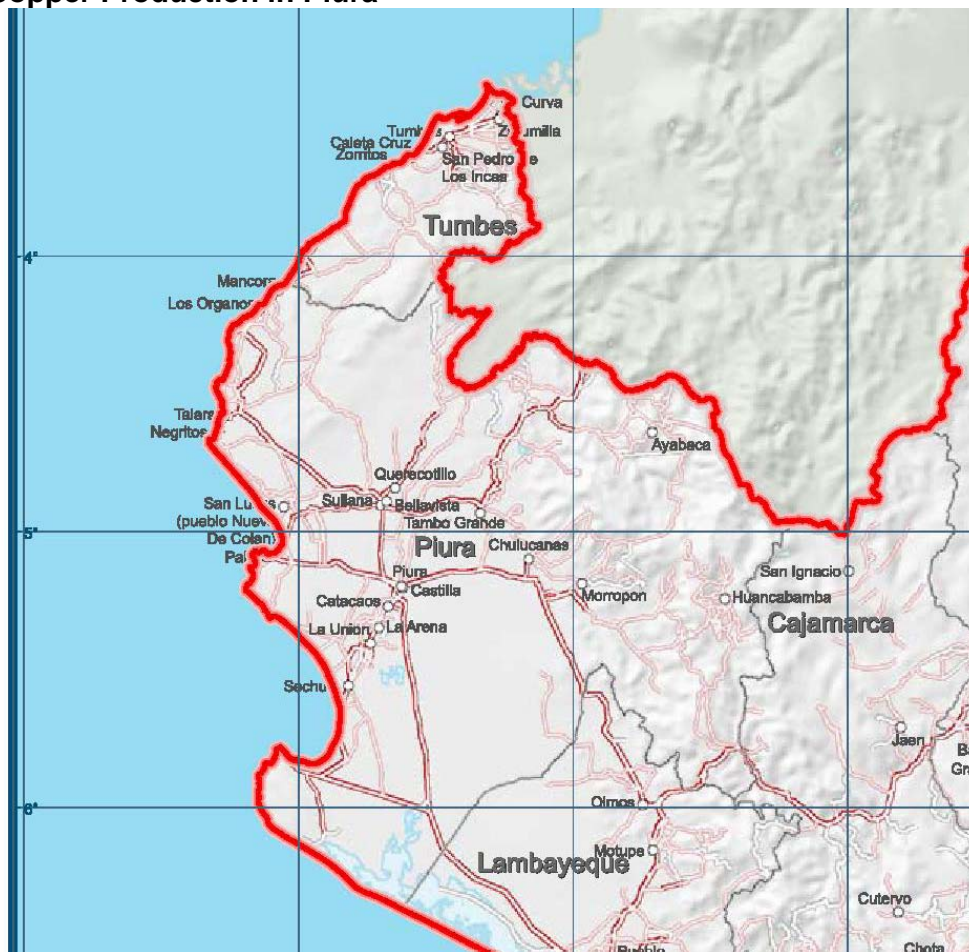
Bishop of Chulucanas	They participated in some spaces for dialog. They declared the intangibility of their jurisdictions of mining projects.
Universities	They facilitated some of the participatory spaces.
Media	They disseminated polarized positions.
<b>LOCAL LEVEL</b>	
Segunda y Cajas	They are very old communities. They got recognition as a peasant community on 1949. During the colony they were the This community has 29,933 hectares and 2,500 communal members registered. <sup>30</sup>
Peasant vigilance organisations of Cajas Shapaya	“Initially created to guard against cattle rustling but later have subsequently assumed a wider range of governance, anti-subversion and even judicial roles and have also assumed mining as an issue on which they work and over which they exercise vigilance”. (Bebbington 2007: 18). Created since the middle of the 80s. The most important and numerous peasant vigilance organisations of the highlands of Huancabamba.
Yanta community	Yanta was expropriated during the agrarian reform and delivered to a peasant group. It was recognized as a community in 1983. This community has 20,800 hectares and almost 500 communal members. They did not recognize the timid authorization made by their representatives.
Peasant vigilance organisations of Yanta	One of the most important and powerful peasant vigilance organisations. Ayabaca centralizes peasant communities that have their expression in the Liga Agraria of Ayabaca and the Federation of communities.
Segunda y Cajas	The representatives of both communities gave authorizations to the representatives of Minera Majaz, and for that reason they were hardly questioned
Yanta	
Mayor of the Municipality of Ayabaca	Against mining activity
Mayor of the Municipality of Huancabamba	Mayor did not show himself against mining activity in public but his public servants did. The municipality publishes an regulation declaring the intangibility of the forests of Carmen de la Frontera and the community of Yanta.
Ecological groups	Ecological groups related to Factor Tierra gathered in Huancabamba and launched an alert about the dangers of the mining activity in the zone.
Frente de Defensa de Tambogrande	In the meetings organized by MEM there were representatives of the Frente de Defensa de Tambogrande
Frente de Defensa of the Environment in Ayabaca and Huancabamba	Their presidents were very close to the peasant vigilance organisations. Both had as their presidents, teachers from the peasant vigilance organisations.
Frente de Defensa FDSFN	FDSFN consolidated receiving technical and economical support from Red Muqui. Their initial strategy was: 1. Direct negotiation with MEM through CD, space in which they carried their not negotiated

<sup>30</sup> The amount of communal members are referential because there is no an updated pardon and exact of the communal members inscritos.

	<p>proposal asking for the withdraw of the mining company from Rio Blanco. 2. Generating and developing actions of capacity building and awareness, settling the basis for the implementation of a popular consultancy as it was implemented in Tambogrande.</p>
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[Annex 12]

### Copper Production in Piura



Source: MEM, 1997

**[Annex 13]**

Item	Description	
<b>Source of transfer</b>	<b>Income tax (canon minero):</b> 30% on profit <b>Royalties:</b> 1-3% on value of production	
<b>Share going to subnational Governments</b>	50 % of the <i>canon minero</i> 100 % of mining royalties	
<b>Distribution of the Transfer</b>	Canon Minero	<ul style="list-style-type: none"> <li>a. 20% regional governments.</li> <li>b. 5% national universities.</li> <li>c. 75% municipal governments of which:               <ul style="list-style-type: none"> <li>▪ 10% to districts producing minerals (of which 30% goes to communities in these districts).</li> <li>▪ 25% to municipalities of the province in which the mineral is located.</li> <li>▪ 40% to municipalities in the department in which the resource is located.</li> </ul> </li> </ul>
	Mining Royalties	<ul style="list-style-type: none"> <li>a. 15% regional governments.</li> <li>b. 5% national universities.</li> <li>c. 80% municipal governments of which:               <ul style="list-style-type: none"> <li>▪ 20% to districts producing minerals (of which 30% goes to communities in these districts)</li> <li>▪ 20% to municipalities of the province in which the mineral is located.</li> <li>▪ 40% to municipalities in the department in which the resource is located.</li> </ul> </li> </ul>
<b>Mode of fiscal Transfer</b>	Canon Minero	12 monthly quotas: beginning 60 days after annual declaration of income tax
	Mining Royalties	Monthly: within 30 days of the payment
<b>Conditions on use of Transfer</b>	Canon Minero	<ul style="list-style-type: none"> <li>• Pre-investment studies</li> <li>• Infrastructural works</li> <li>• Maintenance of infrastructure</li> </ul>
	Mining Royalties	Monthly: within 30 days of the payment
<b>Transparency</b>	<ul style="list-style-type: none"> <li>▪ Payment of taxes: only companies listed on the stock market publish their accounts</li> <li>▪ Transfers: Ministry of Economy and Finance and the National Council on Decentralisation publish the amounts transferred</li> <li>▪ Use of resources: Although the law requires local governments to provide public information on spending this does not exist</li> </ul>	

Source: Arias and IFC seminar, November 3rd, 2006 (Bebbington 2007)

[Annex 14]

## APORTES VOLUNTARIOS HECHOS POR EMPRESAS MINERAS

Hasta diciembre último el monto ejecutado en promedio alcanzaba apenas el 40% de la cantidad ofrecida.

	FONDO MINERO REGIONAL		FONDO MINERO LOCAL	
	Monto en soles DECLARADO	Monto EJECUTADO %	Monto en soles DECLARADO	Monto EJECUTADO %
<b>TOTAL</b>	<b>183'187,325.13</b>	<b>34.83%</b>	<b>335'185,143.03</b>	<b>43.28%</b>
1 Compañía Minera Antamina S.A.	54'885,750.40	20.61%	150'935,814.40	37.83%
2 Compañía Minera Ares S.A.C.	1'680,253.00	36.12%	420,063.00	20.46%
U.Q. Ares	838,782.00	CIFRA NO PRECISADA	209,696.00	7.73%
U.Q. Arcata	273,209.00	41.03%	68,302.00	100.00%
U.Q. Selene – Explorador	568,262.00	27.27%	142,065.00	0.00%
3 Minera Aurífera Retamas S.A.	766,866.80	57.28%	191,716.70	52.25%
4 Compañía Minera Santa Luisa S.A.	1'152,580.00	10.38%	2'905,271.00	35.96%
5 Minera Colquisiri S.A.	1'136,707.06	76.35%	882,588.93	112.92%
6 Southern Perú Copper Corporation	41'528,037.00	50.31%	10'382,009.00	16.13%
7 Compañía de Minas Buenaventura S.A.A.	1'171,171.00	CIFRA NO PRECISADA	319,000.00	CIFRA NO PRECISADA
8 Cia. Explor. Des. e Inv. Min. (CEDIMIN S.A.C.)	98,970.00	99.96%	38,000.00	100.00%
9 Sociedad Minera El Brocal S.A.A.	3'297,289.60	3.63%	824,323.20	0.00%
10 Compañía Minera Raura S.A.	877,340.00	18.28%	219,335.00	21.54%
11 Consorcio Minero Horizonte S.A.	782,531.00	85.06%	195,633.00	83.01%
12 Minera Yanacocha S.R.L.	18'635,580.80	37.89%	51'247,849.60	80.22%
13 Aruntani S.A.C.	1'018,414.00	33.07%	254,604.00	71.74%
14 ARASI S.A.C.	400,000.00	55.35%	232,000.00	0.00%
15 Compañía Minera Caudalosa S.A.	143,851.00	95.73%	395,592.00	95.87%
16 Sociedad Minera Cerro Verde S.A.A.	14'116,050.00	CIFRA NO ACTUALIZADA	38'820,725.00	CIFRA NO ACTUALIZADA
17 Compañía Minera Condestable S.A.A.	381,984.00	8.64%	95,496.00	52.98%
18 Xstrata Tintaya S.A.	9'214,767.94	41.54%	35'200,000.00	41.73%
19 Compañía Minera Argentum S.A.	1'030,944.00	5.40%	257,736.00	112.27%
20 Pan American Silver S.A. – Mina Quiruvilca	1'363,167.20	19.45%	340,791.80	40.05%
Mina Quiruvilca	643,374.00	15.65%	160,843.00	33.39%
Mina Huaron	719,793.20	22.85%	179,948.80	46.00%
21 Minera Pampa de Cobre S.A.	216,956.47	17.62%	54,239.12	6.25%
22 Compañía Minera Milpo S.A.A.	2'768,734.00	35.01%	7'614,017.00	26.65%
23 Compañía Minera Atacocha S.A.	2'117,658.84	35.01%	529,414.71	65.08%
24 Minera Barrick Misquichilca S.A.	13'555,409.42	7.53%	11'405,539.97	16.35%
U.Q. Pierina (Áncash)	3'206,675.05	0.00%	8'818,356.38	18.99%
U.Q. Alto Chicama (La Libertad)	10'348,734.37	9.97%	2'587,183.59	4.97%
25 Shougang Hierro Perú S.A.	2'361,055.00	17.02%	590,264.00	0.00%
26 Compañía Minera Poderosa S.A.	224,000.00	68.70%	96,000.00	90.73%
27 Minera San Simón S.A.	230,000.00	100%	58,000.00	100.00%
28 Minera Doe Run Perú	1'776,713.60	0.00%	4'885,961.60	0.00%
U.Q. La Oroya	1'470,716.80	0.00%	4'044,473.60	0.00%
U.Q. Cobriza	305,996.80	0.00%	841,488.00	0.00%
29 Minera Los Quenuales S.A.	5'147,348.00	0.00%	14'745,009.00	0.00%
30 Minera Perubar S.A.	796,229.00	0.00%	970,408.00	23.25%
31 Compañía Minera Castrovirreyra S.A.	75,256.00	70.00%	18,814.00	70.14%
32 Minera Huallanca		CIFRA NO PRECISADA		
33 Compañía Minera Aurífera Santa Rosa S.A.	235,710.00	0.00%	58,927.00	0.00%

Fuente: Comisión Sectorial según información de las empresas suscriptoras del Convenio PMSP.

LA REPÚBLICA

Source: Sector Commission with information from the companies that subscribed the agreement PMSP.

**[Annex 15]**

Detailed comparison between the two cases

Tintaya Case	Rio Blanco Case
<b>CONTEXTUAL INFORMATION</b>	
<b>History</b>	
<ul style="list-style-type: none"> <li>▪ Located in a zone of long tradition of mining activity (since 1980s).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Located near community lands without tradition of mining. Recently, a mining company withdrew after community opposition.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Mind history [mining mita]</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mind history [mining mita]</li> </ul>
<b>Stage of mining project</b>	
<ul style="list-style-type: none"> <li>▪ Implementation of a mining project [and some explorations].</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exploration stage.</li> </ul>
<b>Location</b>	
<ul style="list-style-type: none"> <li>▪ Rural zones far from the centre</li> </ul>	<ul style="list-style-type: none"> <li>▪ Two peasant communities near the capital centers.</li> </ul>
<b>Origin of the mining company</b>	
<ul style="list-style-type: none"> <li>▪ Australia.</li> </ul>	<ul style="list-style-type: none"> <li>▪ United Kingdom and then China</li> </ul>
<b>Presence of international organization interested in mining issues.</b>	
<ul style="list-style-type: none"> <li>▪ Oxfam Australia</li> <li>▪ Oxfam Community Aid Abroad</li> <li>▪ Oxfam America</li> </ul>	<ul style="list-style-type: none"> <li>▪ Peru Support Group [When the British mining company was exploring the lands].</li> <li>▪ Oxfam America</li> <li>▪ Oxfam GB</li> </ul>
<b>Livelihoods</b>	
<ul style="list-style-type: none"> <li>▪ Some agriculture and farm.</li> </ul>	<ul style="list-style-type: none"> <li>▪ [Extensive and in some cases for exportation] agriculture and farm.</li> </ul>
<b>FREE</b>	
Free chosen representatives and customary institutions.	
<ul style="list-style-type: none"> <li>▪ Representatives at Dialog Roundtable were elected.</li> <li>▪ Decisions were taken in customary spaces [community wide assemblies].</li> </ul>	<ul style="list-style-type: none"> <li>▪ Community rejected authorization given by their communal leaders [who were removed].</li> <li>▪ Decisions not consulted to community in wide assemblies.</li> </ul>
<b>Gender perspective</b>	
<ul style="list-style-type: none"> <li>▪ Native language used</li> </ul>	<ul style="list-style-type: none"> <li>▪ No information about gender perspective</li> </ul>
<b>PRIOR</b>	
Past	
<ul style="list-style-type: none"> <li>▪ Lack of information [reported in community's grievances].</li> <li>▪ Community members showed anxiety about future mining activities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Some misleading, incomplete and unclear information [for consent] was given to the communities.</li> </ul>

Future	
▪ [Agreement of DR]: For future mining explorations communities should be informed [for consent] in a timely manner.	?
<b>INFORMED</b>	
<b>Nature, size, scope, duration, locality areas affected</b>	
Past	
Complaints related to lack of official information in the past and anxiety about a new project.	
Future	
▪ [Agreement] information related to these issues should be provided to the communities for future mining projects.	▪ Third parties provided more information that raised the perception of risks.
<b>There were potential risks</b>	
<b>1. Autonomy of the Land</b>	
Past	
Different rationalities between occidental and indigenous cultures [distinction between surfaces and subsoil].	
▪ Irregularities in land sales negotiations and expropriation [process of servidumbre], inadequate compensation and unfair evacuation.	▪ Ownership of lands [state's sovereignty vs. community right to land].
Future	
Sub Commission of lands for the relocation of lands	Not addressed yet
<b>2. Environment implications</b>	
Past	
▪ Clash between different rationalities [occidental vs. indigenous]	
▪ No independent regulatory environmental institution for approval of EIA during Tintaya [now on hands of MEM] .	
	▪ Fear supported in facts: Fragile ecosystem and mining district.
Future	
▪ [DR]: Creation of Sub Commission of Environment [with Sub Comissions: Environment pollution, human health and animal health].	
▪ For validity of results: independent studies, doctors, vets, separate laboratories and a group of control.	
▪ The results were interchanged with the communities for their contestation in an attempt to fit both rationalities.	
<b>3. Struggle for natural resources</b>	
Past	
▪ Dispute for use of lands and water.	▪ Dispute for water [Piura's livelihoods is based on agriculture]
	▪ Fear [contamination of water may revive war between Peru and Ecuador].

Future	
<ul style="list-style-type: none"> <li>[DR]: Sub Commission of Sustainable Development in which community developed their sustainable proposals.</li> </ul>	
<b>4. Distribution of economic resources</b>	
Past	
<p>Communities demanded:</p> <ul style="list-style-type: none"> <li>To participate in relating mining activity to local development</li> <li>To be informed on how the revenue was to be paid and to whom.</li> </ul>	<ul style="list-style-type: none"> <li>There are institutional, economic, financial and legal constraints for local governments to invest mining resources [decentralization process].</li> </ul>
Future	
<ul style="list-style-type: none"> <li>[DR]: Sub Commission of Sustainable Development that provided financial and technical support to fund community-led projects.</li> </ul>	
<b>5. Struggle over authority</b>	
Past	
<ul style="list-style-type: none"> <li>Central state and mining companies did not fulfill community rights [to land, sustainable environment, livelihoods and development]</li> </ul>	
Future	
<ul style="list-style-type: none"> <li>Involvement of Oxfam CAA was requested by CONACAMI.</li> <li>Mining Ombudsman [Oxfam] exerted pressure over mining company Headquarters, who pressed their subsidiary in Peru to respect community's rights.</li> <li>Absence of the central state may have reduced the struggle over authority with the local state.</li> </ul>	<ul style="list-style-type: none"> <li>British Parliament exerted pressure over mining company Headquarters, who translated pressure on its subsidiary in Peru.</li> <li>MEM vs. Ombudsman [community right over land].</li> <li>MEM vs. third parties [CONACAMI and Oxfam America] that supported local communities.</li> <li>MEM [supported by Regional governments] vs. local authorities [supported by regional bishops]. Discourse: sovereignty of the state vs. community's rights.</li> <li>MEM [supported by MININTER] vs. peasant vigilance organizations.</li> <li>Mining company vs. peasant vigilance organizations.</li> <li>Crosscutting factor: Different rationalities [occidental vs. indigenous] to understand order, justice, development, environment, nature.</li> </ul>
<b>Transparency and neutrality in the provision of information</b>	
Past	
<ul style="list-style-type: none"> <li>Communities demanded information about process of buying and selling lands and an environmental study in the zone.</li> </ul>	<ul style="list-style-type: none"> <li>Information provided to communities was misleading, unclear and incomplete [public consultation on Minera Majaz' Environmental Evaluation].</li> </ul>



<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ Problems in process of buying and selling lands addressed in DR.</li> <li>▪ Each Sub Commission of the DR developed its own studies to guaranty quality of information through independent experts and groups of control.</li> <li>▪ Information of Agreement was provided in community's language.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Any attempt to provide neutral information is seeing with distrust by community members due to the polarized positions.</li> </ul>
<b>CONSENT</b>	
<b>Social consensus</b>	
<b>Past</b>	
<ul style="list-style-type: none"> <li>▪ FPIC not implemented in the past. Since social consensus was absent in regulatory framework, it was voluntarily for mining companies.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Social consensus was not provided by the whole community in the environmental study for the exploratory stage.</li> </ul>
<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ FPIC was incorporated in Agreement [DR] for future mining operations.</li> </ul>	
<b>Channels or mechanisms for participation of marginalized groups</b>	
<b>Past</b>	
<ul style="list-style-type: none"> <li>▪ Communities complained that they did not participate in decisions taken.</li> </ul>	
<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ Creation of a space of dialog to address demands of communities in which they had a seat.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Different attempts to create spaces for dialog without successfully constituting them.</li> </ul>
<b>Representation</b>	
<b>Past</b>	
<ul style="list-style-type: none"> <li>▪ High social organization without high articulation which made difficult communities representation [interlocution] with the mining company. Community's complaints to have representation in issues involving the mine.</li> <li>▪ Different rationalities [how representation operates] in business and indigenous culture.</li> </ul>	
<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ Communities had opportunity to discuss issues related to DR in their customary spaces [legitimacy and made lasting the agreements].</li> <li>▪ Agreements for DR could only be taken <u>once consensus</u> was reached by all community members in their customary spaces.</li> </ul>	

<b>Inclusive institutional design</b>	
Past	
<ul style="list-style-type: none"> <li>No regulatory framework including community right to participate in mining policies.</li> <li>Increasing willingness of communities to participate in mining projects.</li> </ul>	
Future	
<ul style="list-style-type: none"> <li>DR was a space at micro level legally formalized in an Agreement where community participation was a main requisite.</li> </ul>	
<b>Building capabilities/skills/attitudes of marginalized actors and state</b>	
Past	
<ul style="list-style-type: none"> <li>Distrust backed in the non fulfillment of the central state and company's promises.</li> </ul>	
	<ul style="list-style-type: none"> <li>Fixed polarized positions among actors funded in high levels of distrust.</li> <li>Peasant vigilance organizations characterized by confrontational and authoritarian styles of negotiation and a different rationality [justice, order and nature].</li> <li>Mining companies considered native communities not serious [backed in previous consent rejected].</li> </ul>
Future	
<ul style="list-style-type: none"> <li>Change of attitudes to promote trustful and tolerant relationships for consensus-seeking.</li> <li>Mutual trust funded in fulfillment of promises, agreements and compromises.</li> <li>Exchange of experiences abroad [other affected groups].</li> </ul>	
<b>Participation [or its absence] gives concrete results to key stakeholders</b>	
Past	
<ul style="list-style-type: none"> <li>All stakeholders in favor of mining activity [mining not perceived as a disruptive activity].</li> </ul>	<p>Stakeholders had divergent agendas:</p> <p><u>Community:</u></p> <ul style="list-style-type: none"> <li>Opposition to mining [perceived as highly disruptive].</li> <li>Community participation [as opposition] offered concrete benefits [stopped mining exploration phase of Rio Blanco].</li> </ul> <p><u>State [MEM]:</u></p> <ul style="list-style-type: none"> <li>Promote investment for economic growth. Community participation [as opposition] an obstacle.</li> <li>Community opposition: a result of manipulation by third parties [terrorists, communists, international interests].</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Contradiction: Principles of 'sovereignty of the State', 'national interest' vs. community right to participate.</li> </ul> <p><u>Mining company's motivation:</u></p> <ul style="list-style-type: none"> <li>▪ Extract minerals to increase capital. Two possibilities: Social consensus or capacity of coercion of the state.</li> <li>▪ Conflict reduced to lack of information about benefits of mining for development.</li> </ul> <p><u>Third parties and allies:</u></p> <ul style="list-style-type: none"> <li>▪ Some in favor of right to veto [participation should be binding].</li> <li>▪ Others: Not right to veto but social consensus with a framework and institutional environment to regulate FPIC and a stronger state to guarantee redistribution of resources especially in poor communities.</li> </ul>
<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ Participation in DR complemented with concrete benefits that tackled motivations of stakeholders.</li> <li>▪ Managers of mining companies at DR had power of decision. Incentives for local managers to improve relations with communities.</li> <li>▪ Problems appeared when concrete benefits for communities took too much time.</li> </ul>	
<b>Alliances with organizations and groups that bring support to collective actions</b>	
<b>Past</b>	
<ul style="list-style-type: none"> <li>▪ High social organization with international connections in the same country where mining company came from [political opportunity: Mining Ombudsman from Australia/British Parliament].</li> </ul>	
<b>Future</b>	
<ul style="list-style-type: none"> <li>▪ Involvement of allies moved permanently conflict [from local space to international one] for its resolution.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Involvement of allies moved temporarily conflict [from local space to international one] for its resolution.</li> <li>▪ Current stage: No [international] actors capable of exerting pressure over the Chinese mining company.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Support offered by third parties: Facilitators [able to counterbalance of asymmetrical power relations and develop trust].</li> </ul>	<ul style="list-style-type: none"> <li>▪ Support offered by third parties: Facilitators [not able to counterbalance of asymmetrical power relations and develop trust because of high polarization].</li> </ul>
<b>Supporting media and communications campaigns.</b>	
<ul style="list-style-type: none"> <li>▪ Agreement: Decisions taken inside DR not disseminated by media [to guarantee confidentiality of information].</li> </ul>	<ul style="list-style-type: none"> <li>▪ Internal debate of different attempts of DR transmitted by media [influence in process of maintenance, dissemination and amplification of conflict].</li> </ul>

