

**Extractive Industries And Conflicts In Peru:
An Agenda For Action**

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(Draft for Comments)

Table of Contents

Introduction	03
Section 1	
Causes of the Conflicts	
Institutional and Governance Weaknesses	06
Legal Framework	14
Stakeholder Responsibility	16
Incomplete Policies	21
Section 2	
Conclusion	22
Section 3	
Recommendations	23
Bibliography	28
Endnotes	29
Annex I	
Matrix of Programs and Policies	30
Annex II	
People Contacted	31

Introduction

Peru has witnessed an unprecedented and worrying increase in the number of violent conflicts. Almost half of the known disputes are related to environmental and social issues and most of them are particularly linked to natural resource extraction. This is not surprising considering that Peru's impressive economic growth of the past decade was to a large extent supported by a rapid investment increase mainly in mining and oil and gas projects. And this tendency is expected to continue in coming years.

Conflicts associated with extractive industries are not new in Peru, which has historically been among the world's major producers of minerals, but lately they have multiplied in numbers and increased in intensity and frequency. Generally speaking, there are national and international developments that may have directly or indirectly contributed to this trend. In Peru, the 1980s was a decade of economic chaos, characterized by anti-export policies that resulted in the close down of several mining projects, the loss of many jobs and a serious drop in export revenuesⁱ. This situation was reversed with the investment attraction policies adopted in the 1990s and sustained by subsequent governments until today. Economic and legal incentives and favorable international prices contributed to a boom in mining investments, which almost quadrupled from U\$750 million in 1996 to U\$2.8 billion in 2009. Peru also became Latin America's number one producer of natural gas in 2004, following the discovery of the giant Camisea gas field, and will soon be the first regional exporter of liquefied natural gas (LNG).

Extractive industry investments have been key to Peru's impressive economic growth of the past years. Between 2000-2009, Gross Domestic Product (GDP) grew at an annual average rate of 5.3%, and estimates for 2010 are even higher, at 6.8% (Ministry of Economy and Finance, 2010). According to official projections, private investments are expected to be the main engine behind economic growth in 2011, particularly in the mining and oil and gas sectors.

The new investments came hand in hand with a profound reform of the State that was set in motion during the government of President Alejandro Toledo (2001-2006). The main element of that reform was the adoption of a new, decentralized government structure aimed at achieving a more egalitarian distribution of economic, political and administrative power among the different State levels – national, regional and local. The Decentralization Law of 2002ⁱⁱ ended the centralist government structure of the past by which all major decisions were made in Lima. The new State model was based on the adoption of national, regional and local coordinated policies. One of the main goals of this new decentralized government style was to improve governance in order to better attend to the needs of the large portion of the population that remains poor.

Thus Peru entered into a virtuous cycle of growth and State modernization that led to important achievements in health care, education and social programs.

The expansion of basic education contributed to reducing the income gap by 5% between 1999-2006 (Jaramillo and Saavedra, 2010). There was a considerable increase in the percentage of the population able to access basic services from just 10% in 2000 to 24.7% in 2007 (CEPAL, 2009*), and even malnutrition, which has been significantly worse in Peru than in other Latin American countries has been reduced.

However, much remains to be done. Poverty levels were reduced from 55% of the population in 2002 to 36% in 2008, but still remain high with poverty rates in rural areas over six times higher than in urban areas (CEPAL, 2009). The quality of services, like health and education, remains a challenge. This is particularly true among the poor, who tend to get a considerably lower quality of services than the rest of the population. It is the poor population living in rural or remote areas that is directly or indirectly affected by extractive industry projects.

The marginalization of this segment of the society and persistent economic inequality in spite of increasing natural resource revenues and economic growth is at the root of most conflicts related to extractive industries. The arrival of the extractive industry opens up for the communities a unique window of opportunity for the negotiation of better living conditions. Representatives from the affected population engage in negotiations with the extractive company and receive assistance from the civil society to put their demands across. A rupture in negotiations or failure to meet their demands may lead to conflict.

Increasing extractive industry investments coincided with the arrival of democracy and the opening up of a new space for civil participation and consensus building. An explosion of protests and demonstrations against mining, oil or gas developments ensued, as did a rapid proliferation of opposition from indigenous and non-indigenous social movements that were often backed by active support from non-governmental organizations (NGOs). Underlying the protests is a generalized discontent among the population that perceives the negative externalities of natural resource developments in their territories, without enjoying the expected economic benefits.

The Office of the Ombudsman reported a total of 250 conflicts in Peru on September, 2010 --four more than in August--of which 121, were related to social and environmental disputes (Defensoria del Pueblo, 2010). These figures show an improvement from the 288 total number of conflicts registered a year earlier in September, 2009, however the high percentage incidence of socio-environmental disputes remained almost constant both years --48.5% of the total in 2010 versus 46% last year (Defensoria del Pueblo, 2009). Unless economic inequality is addressed, the increasing trend of socio-environmental conflicts is not likely to decrease. On the contrary, as investments increase and Peru's economy grows, frustration will continue to build among the marginalized population that remains poor.

The inequality gap could be improved to some extent by addressing lingering inefficiencies of the decentralization process that prevent new extractive revenues from turning into better living conditions for the local population. Peru has been uniquely successful in transferring fiscal resources to the provinces in a relatively transparent way. However, funds are not always invested in productive local development projects by sub-national governments, and sometimes they are not used at all for lack of competence, corruption or simply because it is not politically profitable.

Another major cause of conflict in Peru is related to the ownership of natural resources by the State. In Peru, like in most Latin American countries the Constitution grants ownership of natural resources to the government, which decides how to develop themⁱⁱⁱ. This rule extends to subsoil resources, including minerals and oil and gas. When the government grants a license to a company to extract resources from underground in an inhabited land, the law stipulates the licensee must negotiate first an agreement with the owners of the surface property land, and that accord must be approved by the State^{iv}. The owners of the surface property are entitled to financial compensation (*servidumbre*)^v for the development of the subsoil natural resources in their land. This system is very different from that of the United States or Canada where the owner of the surface land also owns the subsoil resources and is entitled to develop them for a profit. In Peru, the government has the prerogative for deciding who will develop the subsoil resources and when. A large number of conflicts related to extractive industries in Peru begin when surface owners are confronted with this overriding constitutional power of the State with regards to subsoil resources.

In the case of indigenous communities, the law stipulates they must be consulted before developing natural resources in their territories, as stipulated by International Labor Organization (ILO) Convention 169^{vi}. Peruvian law establishes special mechanisms for consultation with regards to mining^{vii}. The government's interpretation of the concept of "consultation" is usually at odds with the meaning granted to it by local communities and civil society organizations, and this is at the heart of many disputes. As Consultation Law is now being debated in Congress that could be ground breaking. However, last minute disputes have delayed its approval, which is further exacerbating tensions.

The government of Peru has taken several important steps in trying to solve social and environmental conflicts related to extractive industries. To name a few: conflict units were created in most ministries in the past 14 months, adding to at least two already operating at the highest government level, within the Presidency of the Minister's Council (*Presidencia del Consejo de Ministros-PCM*); the Ministry of Energy and Mines (MEM) organizes periodic workshops to improve the capacity of regional and local governments for managing the large influx of natural resource revenues; a Ministry of Environment was created in 2008^{viii}; the task of environmental monitoring and sanctioning was transferred to that ministry from the MEM, after much criticism that there was a conflict of interest with the MEM giving out mining and oil licenses and supervising companies' environmental

compliance at the same time; and a New Sustainable Energy Matrix is being studied under an Inter-American Development Bank Project signed in 2009^{ix}.

These initiatives are good first steps towards the search for solutions to the conflicts. Some could be improved, others need time to mature, and more could be done, not just by the government, but also by other stakeholders whose actions or inactions may contribute to the conflicts. Mining and oil companies for example, could improve their operational performance. This is particularly true of the smaller –juniors— or those coming from developing countries, which do not always apply the highest environmental and social standards due to financial constraints and a different business scope from that of their larger peers. This is mostly important in the Peruvian extractive industry context where a large number of mining companies are Canadian juniors.

Past unresolved or traumatic conflicts in relation to extractive industries contribute to building a negative perception of natural resource developments that makes it harder to try to find solutions. Sometimes a local community may reject a new natural resource project because of memories of past contamination back when environmental and social requirements were not as stringent in Peru and around the world. These memories create a lack of trust that may plant the seed for future conflict. Past grievances are difficult to erase and should be addressed in order to avoid future disputes.

This document provides a list of some of the main causes of conflicts in relation to mining and oil and gas in Peru. It summarizes the elements that contribute to the disputes and gives a concise contextual framework to understand their development. The first section identifies four particularly problematic areas that contribute to the development of natural resource conflicts in Peru: A) Institutional and Governance Weaknesses; B) Legal Framework; C) Stakeholder Responsibility; D) Incomplete Policies. Section two provides a conclusion and section three includes some recommendations for a UNDP action plan for conflict prevention and resolution in Peru. Finally, Section four is a matrix with the summary of problems and suggested policy or program responses to attend them. The findings reported in this document are the result of literature review and interviews in Lima and in the field.

Section 1: Causes Of The Conflicts

A) Institutional and Governance Weaknesses

Peru's government structure is divided into national, regional and local levels. At the local level, it is divided into provinces, districts and populated centers (*centros poblados*). This division is especially important in light of the decentralization process that took place during the decade of 2000, which delegated increased political, administrative and economic responsibilities to local governments.

The fiscal decentralization process in Peru transferred management of a large portion of the extractive revenues to the local jurisdiction where the natural resources are produced. This was a positive step in ensuring the local population would see the direct benefits of the new increasing natural resource revenues. In practice however, deficiencies in managing those revenues at the sub-national government level often prevents the population from enjoying the benefits of increased rents. Following is a brief description of some of the most obvious governance problems related to natural resource revenue management.

*** Structural Imperfections of the Decentralization Process:** *Governance inefficiencies at the sub-national government level that prevent the local population from enjoying extractive industry revenues.* Fiscal decentralization did not address key governance problems such as: a) lack of or poor local capacity to administer the new funds; b) arbitrary investment decisions due to poor planning and accountability mechanisms; and c) corruption and *clientelism*. These problems get in the way of local populations receiving the economic benefits of increased natural resource developments through development projects or improved living conditions. In turn, this leads to frustration and ultimately to conflict. A brief explanation of these three key governance problems follows:

a) Lack of local capacity: For the first time in the history of Peru there is an institutionalized fiscal decentralization policy that is actually effective in transferring funds from natural resource extraction to the local governments. This fiscal decentralization was implemented by the Canon Law that was passed in 2002^x. The law –known as canon-- stipulates the transfer to the producing regions of a percentage of the income tax and royalties perceived by the national government for the development of mining, oil and natural gas resources^{xi}. The canon is distributed among the regional and local governments and Universities.

Once the funds have been transferred from the federal to the local government accounts, there is a break in the system that very often prevents the money from being invested effectively. The result is that many times the money is not geared to attend the most pressing needs of the local communities, or it simply remains unspent in local government accounts for lack of better uses. Several factors contribute to this miss-management. One is the highly demanding structure of the National System of Public Investment (SNIP - *Sistema Nacional de Inversion Publica*), which is a mechanism established by the Ministry of Finance for approving public investment projects. The process of project approval by the SNIP has been gradually decentralized so that since 2007, regional and local governments may evaluate and approve investments projects. However, the transfer of capacities for successfully implementing those tasks at the sub-national government levels has yet to materialize. Many projects remain in the pipeline without being processed, for lack of local know how on how to get them through the SNIP.

A quick look at a list of investment projects presented by natural resource producing regions shows that many directed at non productive activities such as

enlarging soccer stadiums do pass the demanding SNIP requirements, while other more pressing ones seem to get trapped in the system. This leads us to believe that while the need to improve local capacities for identifying good investment projects and for getting them through the system and ultimately executing them is unquestionable, there seems to also be a large component of political discretion in deciding which projects get funded and executed and which don't. As way of example, in the department of Ancash, by April 2010 the regional government had spent only 2.9% of the total budget destined to improving the drinking water network in the District of Nuevo Chimbote-Santa. But during the same period, the regional government had finished construction of a controversial project for expanding a local stadium –called Rosas Pampa—in department of Huaraz (Grupo Propuesta Ciudadana 2010).

There are contradictory views on whether the solution to this problem should be to loosen the SNIP mechanism or rather to improve local capacities for identifying good investments projects, get them through the system and ultimately execute them correctly. Some experts believe that a demanding SNIP is helpful for preventing corruption as it makes it more difficult to dispense public money. The SNIP mechanism needs to be reviewed and possibly modified to allow for an easier approval of projects. At the same time, the quality and frequency of the training for government officials about the correct use of the SNIP and the selection of investment projects should be improved. A program of internships should be adopted by which regional government officials could spend time at federal offices in order to improve their knowledge about these issues and about extractive industry policies in general.

A study of four representative local and regional governments that use the SNIP could provide more insights on the problems government officials usually confront when using this system. The case studies should include two from mining regions, and two from oil/gas producing areas that saw increased revenues in recent years, but experienced difficulties in getting their investment projects approved.

b) Arbitrary Investment Decisions: This may go hand in hand with bullet point c) (corruption/*clientelism*) since many times investment decisions are made for political, electoral or other reason rather than in accordance with local development plans. Sometimes the logic for investing funds is hard to follow. For example, the government of the province of Cajamarca (eight largest world gold producing area and the biggest in Latin America) had invested 22% of its 2009 budget in health projects, and only 1% in education by May of that year (Grupo Propuesta Ciudadana, 2009). These are the two main sectors where the local population demands the most attention by the government and immediately feels the neglect when their needs are not heard.

The methods for accountability of regional and local government officials to the local population with regards to the selection of investment projects should be strengthened. The four case studies mentioned in the previous bullet point could

also review the mechanisms used for consulting the population about investment decisions in each of the four cases. This would provide a clear idea about the decision-making process that goes into favoring one investment project in lieu of another. Also, UNDP could contribute to the development of pilot accountability projects in selected regions and local governments to exercise more representation of the views of the local population in the design of investment projects. Models of participatory budget discussions being applied in other countries could be tested in this pilot project, such as those used in Fortaleza, Brazil and in Bangalore, India. These international models of budgetary accountability could be presented to the government during a Seminar before the launching of the pilot projects, and other potential models applied to Peru could be discussed.

c) Corruption and Clientelism: Corruption and *clientelism* affect not only the choice of investment projects but also the procurement procedures, and ultimately reduce the funds available for community projects. In the oil producing area of Rio Corrientes, in the Northern Amazon, weeks of violent protests that included the interruption of oil production and exports resulted in the signing of the Dorissa Accords in 2006, with the intervention of the Office of the Ombudsman. The agreements are probably the most comprehensive and effective accords signed so far to solve an extractive industry conflict. They called for a comprehensive health insurance for the communities; re-injection of contaminated waters; a comprehensive economic development plan for the region; temporary food aid and water supply; and remediation of damages and liabilities. A specially created Board formed with representatives of indigenous communities and the government was to administer the funds, which were provided by oil company Pluspetrol. Two years after the accords were signed, the Ombudsman found flaws in the way the funds were administered and in the calendar of implementation of the agreements. Only 31.47% of the funds allotted for 2008 had been invested (Defensoria del Pueblo, 2008). In February of 2009, Pluspetrol reported undocumented use of funds by the local government after an independent audit of the accounts. Violent demonstrations ensued in response to the findings.

Popular mistrust in the local governments' handling of revenues is well grounded most of the times, as was documented by the Peruvian Office of the Ombudsman in a study of complaints received from the local population in 56 Municipalities. The research concluded that the people blamed the municipal government to a much larger extent than they did the Federal government for governance irregularities^{xii}. Among the main irregularities the research found were the over charging, or the charging of unauthorized, municipal fees (for example, fees for the installation of drinking water networks; for parking; or for the opening of commercial outlets.)

*** Imperfect Government Representation:** *Local communities complain there is no government presence in their territories.* One of the main complaints of communities living in the areas where the extractive industry project is being developed is the lack of government presence, particularly the Federal government. Given the absence of proper institutional mechanisms for them to express their

grievances, they ask to talk to government representatives directly. The initial contact the community has with the Federal government is during participatory events (*Eventos Informativos Presenciales*) facilitated by the MEM, to inform them about government plans to give out extractive licenses in their territory and to give them information about future natural resource investments. MEM officials are also present in a series of subsequent workshops once the license has been granted and with the presence of the oil or mining company. During these events, the population's points of view about the investment projects are heard, prior and during the preparation of the Environmental Impact Assessment (EIA).

There is a perception among the local population that the Federal government, represented by the MEM, is on the side of the company, because its only interest in coming to talk to them is to inform them of an already made decision to put their territory out for bid. Local communities perceive this as confrontational and demand to be consulted before natural resource decisions are made for their territory. The government's position is that the initial contact between the communities and the MEM is already a form of consultation and a mechanism for hearing people's grievances. However, since this first meeting takes place after a decision for giving out concessions in the area has already been made in Lima, the population considers it is too late for them to express their position. These mechanisms for citizen participation should be reviewed and reformed in light of their proclivity to generate conflict.

* **Imperfect Community Participation:** *Poor participation mechanisms to inform the local population about extractive industries and to listen to their points of view.* The legal participatory requirements for extractive industries have had a considerable evolution in Peru and include mechanisms for informing the population and for gathering their points of view (Oxfam, 2009). However, they are still extremely controversial and are at the origin of most conflicts^{xiii}. An analysis of their practical application in specific cases would be useful to study why they have or have not worked and identify areas of improvement. Four conflictive projects could be picked for analyzing the citizen participation mechanisms applied in each case and assess how effective they were. The citizen participation mechanisms used by the Camisea project should be particularly studied to assess their effectiveness and the possibility of using them in other extractive industry projects.

A good participatory mechanism should include an initial contact with the population to be affected by the natural resource development well before a decision is made about giving out licenses in their territory, to avoid conflicts down the line. Their points of view should be heard, their grievances considered, and they should be given an honest assessment about the potential pros and cons of extractive developments in their land. The information gathered could be used to evaluate the natural resource potential of that area and to design development plans together with the communities for attending their needs. Extractive industries may or may not come into play later on in this process.

Participatory workshops are usually organized around the EIA, before or during its elaboration, and once it is concluded. The EIA is the ultimate document that guarantees the project will be environmentally and socially sound. But the process of elaborating it EIA has been much criticized, particularly because communities feel it does not truly represent their points of view (GIL, 2009). They claim EIAs are too technical and that they lack analytical expertise to give their opinion, as requested by the procedure for elaborating the document.

Citizen participation to inform the population about extractive industries investments should be independent of the EIA and should take place much earlier. Once the EIA is in the process of being elaborated, it is assumed that local communities are in agreement with the oil or mining development, which is not always the case. The institutional mechanisms for processing community claims mentioned in the previous bullet point and the mechanisms for citizen participation in extractive industry projects go hand in hand and should be revised.

*** Consultation vs Information:** *Communities view the right to be consulted about an extractive project as a right to veto it, but the government sees it as a mere informative process.* This point is related to the two previous ones. There is much controversy and disagreements around the mechanisms used for introducing the extractive industry project to the communities. There is also a dichotomy between what communities and the government understand by consultation versus information that is at the heart of many of the conflicts, particularly when indigenous communities are affected. For indigenous communities, consulting gives them the right to veto an extractive project in their territory. However, the ILO Convention 169 that defines the mechanisms for consultation does not give them veto power (see footnote 6).

The process of consultation and citizen participation includes an initial participatory event (*Evento Presencial*) mentioned earlier and three subsequent workshops around the design of the EIA. The government considers the four events fulfill the requirements of the citizen participation regulations (see footnote 13) and of the prior consultation in the case of indigenous communities as required by international law (see footnote 6). Local communities and the civil society however, consider this process is not participatory enough. They argue the procedure merely informs communities of a project to come to their territories, without giving them the option of rejecting it because the license has already been granted. It is common to hear from community members that “by the time they (the company and the Federal government) come to ask us what we think of the project, it is too late because the license has already been given to the company.”

In general communities affected by extractive industries are not totally opposed to extractive industries, at least not initially. What they demand is for their views to be properly taken into consideration through consultation, before developing natural resources in their territories. If they feel they are not being properly consulted, they may decide to reject the project and a long conflictive situation may develop.

Peru has taken an excellent first step in producing a Consultation Law (this point is discussed later on) that is now being debated in Congress. It is important the law be passed quickly, and with proper popular endorsement for it to be effective.

*** Companies as designers of local development strategies:** *Companies engage in imperfect negotiations and become the main goods and service provider in order to obtain a “social license”.* Once the extractive company is introduced to the community, a direct relationship is established between the two that will last throughout the duration of the license. Both actors enter into a process of quasi-continuous negotiations for defining the price the company will have to pay to access the natural resource it wants to develop. That price is often in the form of the provision of basic needs and services to local communities, such as drinking water, a hospital, school material, or transportation in and out of remote areas where they live. This involvement of the company in local development activities becomes in many cases the most tangible extractive investment benefits that local communities see. This is particularly true in light of the structural imperfections with the decentralization process described above that prevent the sound distribution of extractive revenues among the local population. .

Given the absence of a government-sponsored local development program and limited presence of local or national authorities social and investment decisions for local communities are decided at a negotiating table by the company and community leaders. This is an imperfect and many times paternalistic mechanism between two very unequal actors, aimed at defining and responding to the social priorities of communities. It often leads to conflict. Furthermore, this process does not promote the development of long run sustainable productive activities for the local communities.

Communities often keep increasing their demands and if the company does not respond, there may be open conflict. Other times, this process causes divisions within the communities such as when they question decisions made by their representative leader in negotiations with the company. This leaves companies without a legitimate party to negotiate with, and they often opt to negotiate family by family. This also exacerbates divisions between communities when one family receives more from the company than the other or makes poor decisions.

This process of bargaining for development should be replaced by a more structured system that should involve development actors, such as health and education authorities and local planning authorities, and should be based on local development plans. In the Niger Delta, in Nigeria, community foundations are being set up with a Board whose members include the community, local authorities, NGOs, companies and other development actors, to decide on investment priorities and to manage the voluntary funds provided by companies. This could be an alternative to the “social license” bargaining used by companies in Peru.

*** Weak relations between Federal and Local governments:** *Lack of communication or legal complications make relations difficult between the federal and Regional and local governments.* Exploration and development of mining and oil and gas licenses are given in Lima. Many times the local government where the mining or oil/gas development will take place is not aware of the granting of the license. Maybe due to this miscommunication or for political reasons, it is not uncommon for local governors to oppose a specific project and to take the side of the affected population in a given dispute. This creates confusion, affects the legitimacy of the government and may add a political dimension to an already complex dispute. So it becomes essential to improve the communication channels so that information between the different government levels flows *before* granting the extractive license.

The regional offices of the MEM do not always have the qualified personnel needed to carry out their specific tasks. This is in spite of periodic capacity building workshops and internships organized by the MEM. There is a high personnel rotation at sub-national government levels that may render the MEM's capacity building efforts ineffective. The Office of the Ombudsman reported legal problems with the transfer of human resources from the Federal to regional governments, mainly related to the incompatibility of labor laws at both these levels or to lack of regulations to make that transfer effective (Defensoria del Pueblo, 2009*). The MEM's efforts at improving the skills of regional authorities should be strengthened and the legal impediments to a smooth exchange of personnel between federal and regional and local government offices should be guaranteed.

*** Proliferation of conflict units within the government:** *The government responded to the increase in conflicts by creating dozens of conflict prevention departments, but their efficacy is questionable.* There are at the moment at least two high level conflict units within the Presidency of the Minister's Council (*Presidencia del Consejo de Ministros-PCM*): the Office for Social Conflicts (*Oficina de Conflictos Sociales*) and the Multisectorial Commission for the Prevention of Social Conflicts (*Comision Multisectorial para la Prevencion de Conflictos*)^{xiv}. It is unclear if a third unit (*Unidad de Analisis y Prevencion de Conflictos Sociales*) that was created in 2006 is still functioning. There also is an Office of Social Management working at the MEM since 2005, and last year, almost all ministries created conflict monitoring departments within the federal government, and at a regional level. These ministry level departments are still in the process of being organized. Given the fact that the public sector has few professionals trained in conflict management, it is not surprising that getting these units going will take some time.

The role of each of these units is still unclear, particularly because there does not seem to be a national conflict prevention and management policy that could dictate their mission. Two issues should be taken into consideration that would contribute to the effective work of these units. First, they should have a strong regional presence in order to respond to constant demands for increased government presence by the local population affected by the extractive industry conflicts. Secondly, the personnel working in these units should have a solid

background on early warning and prevention of conflicts to effectively attend the local disputes. Also, it would be important to ensure that the work of these government units complements, not contradicts, the outstanding work being carried out by the Office of the Ombudsman. The apparently now defunct *Unidad de Analisis y Prevencion de Conflictos* of the PCM produced conflict reports that were very similar in scope to those published regularly by the Ombudsman Office, and did not seem to add much more clarity to the issues. A national conflict prevention and management policy could help to create the necessary synergies between government offices.

A positive initiative by the PCM was the two-year capacity building program on conflict management aimed at government officials at the three government levels known as PrevCon^{xv}. The PrevCon produced an excellent first approach at a mapping of conflicts and actors. It has also provided theoretical analyses for developing conflict prevention and resolution policies. The studies done by the PrevCon should be more vastly disseminated among government offices, Universities, and other organizations and experts. The PrevCon ends on December, 2010 and a second, more practical phase of the project might be useful to test the program's findings and develop action policies to address some of the recorded problems.

Unfortunately, government representatives interviewed in the process of this consulting work were not aware of the extent of the PrevCon and requested instead increased involvement on the part of international organizations such as UNDP to educate public officials directly on the causes and nature of the conflicts in Peru. They suggested doing this through a series of conferences in government offices and/or publications.

After almost two years since their creation, it is now imperative the government design the program of action and goals for each of the conflict units that exist within the public administration, and that they are appropriately staffed with qualified personnel. The preliminary work of the PrevCom in designing conflict prevention and resolution policies could be used as a basis for the design of the action plans for these conflict units.

B) Legal Framework

Peruvian legislation tends to be disperse and overlapping. In many cases, various laws are applied to a single issue granting more than one right in a specific case. There is an overabundance of legislation that is not always applied harmoniously to solve a specific problem. Furthermore, laws can be easily created or just ignored to suit political ends. Social conflicts serve to impose legal frameworks that did not exist before either due to negligence, or for political reasons. For example, the Consultation Law that is now being debated in Congress was the product of civil society demands after the violent Bagua events of 2009. Also, Peru incorporated the legal requirement of re-injection of waste-water for oil

developments, as a result of demands from local communities during decades of conflicts in the Rio Corrientes, in the Northern Amazon. This section will show some of the inadequacies of the legal framework in Peru.

*** Consultation Law:** *The lack of a consultation Law designed with the consent of all stakeholders exacerbates conflicts.* Peru's Congress passed a Law on May, 2010 that includes the requirement of consultation with communities about development projects that affect them. The Law had been produced with the consensus of indigenous communities and civil society organizations in a participatory process led by the Office of the Ombudsman. But it was revised by the government in June and returned to Congress. It has yet to be approved. Indigenous organizations have warned that if the government revisions are added to the consultation law it would fall short of their needs and of meeting international standards, opening the door for further conflict. It is important for the consultation law to be approved under popular consensus to avoid massive opposition to it later.

The Consultation Law was the result of Dialogue Tables formed to bring opposed parties together after the deadly events of Bagua in 2009 (BBC Mundo, 2010)^{xvi}. Its content was agreed upon by consensus during that process. For that reason, subsequent government opposition to some articles of the legislation created much frustration, mainly about indigenous communities.

This is a very controversial issue. Opposition to the Law could turn into outright opposition to extractive industries in general in the future. This would be detrimental to Peru's policy of attracting private investments. Once the Law is passed, it will be important to do a massive information campaign to educate the population about the extent of the law, how it should be applied and what are people's rights under the new law. Any step taken to clarify the extent of the consultation mechanism would be very useful to avoid future mis-interpretations.

*** Illicit activities:** *Illegal mining is not appropriately sanctioned by the law.* The Ministry of Environment has tried to legalize informal mining for the past year, but without much success. The government does not seem to have a planned strategy for dealing with informal mining, nor the necessary human and economic resources to supervise and control it. Some areas where illegal mining proliferates are thought to also have coca plantations that are said to be linked to revived branches of the Shining Path guerrilla group that terrorized the country twenty years ago. In general, poverty, lack of employment opportunities and the absence of the government in remote areas contributes to the unchecked proliferation of these activities. Some experts interviewed for this consulting work mentioned the need to increase legal sanctions for illegal mining, and to improve the monitoring capacity of regional governments. Illegal mining creates a bad precedent in terms of social and environmental safeguards.

A review of the legislation that addresses illegal activities and of its implementation becomes essential, prior to the design of a clear plan of action for

tackling these activities. UNDP could provide an invaluable contribution to this end through human and financial resources.

* **Voluntary Funds:** *Companies contribute large amounts to voluntary funds supposedly aimed at development projects, but it has been difficult to assess if they are effective.* Producing companies contribute to a special voluntary fund created under the Mining Program of Solidarity with the People (PMSP)^{xvii} when they realize extraordinary revenues. The voluntary funds are to be invested in priority development areas such as health, child nutrition and education projects in the producing areas. The PMSP was controversial from the start. It was introduced in lieu of the tax on the windfall gains realized by companies that President Alan Garcia had promised during his presidential campaign. This switch from a tax to a voluntary solidarity program was perceived by the population as a capitulation to private pressure on the part of President Garcia. This was one more element that contributed to building an image of the government as being on the side of private businesses.

The PMSP establishes that companies must contribute 3.75% of their net utilities to voluntary development projects between 2007-2011. At the end of that period, the program must be reinstated to continue. The funds are managed by private trusts under company control, and local authorities and the civil society are supposed to be part of that management.

Civil society organizations have complained that lack of transparency on the part of companies about these funds makes it difficult to assess their management and investment priorities and how effective they have been until now. Data provided by the MEM suggests that less than 50% of the funds have been invested so far (Avila and Baca, 2010).

It would be important to assess the results of this voluntary program before a second phase is established in order to determine its efficacy. The assessment should be done in the regions that the funds are supposed to benefit, with active participation of the civil society and the population. The initial controversy around the PSMP has turned it into such a politicized and sensitive issue in the eyes of the people that any misstep could ignite a storm. For that reason, a public consultation about the effectiveness of the program, the changes that would need to be made to improve it, and the programs that have benefited from it is essential to avoid future conflicts.

C) Stakeholder Responsibility

All stakeholders play an important role in contributing to preventing or igniting the natural resource-related conflict. In the case of the government, that contribution could be either by action or by inaction, depending on the situation. Companies have a tremendous responsibility due to their role as the main economic providers, particularly in remote, poor areas where government presence is

minimal. Civil society organizations have proved to be key in training local communities for negotiations with companies and in giving them legal tools to frame their demands, although sometimes they may indirectly contribute to the radicalization of conflicts. Finally, communities are the main pawn in the intricate game of natural resource developments because their actions define the direction and intensity of conflicts.

*** The Government:** *Popular belief is that the government is on the side of the company and not its citizens.* When a conflict breaks in relation to a mining or a hydrocarbons project, local communities almost invariably demand increased government presence to help solve it. But very often, the federal, regional or local government takes a secondary role. This is because in Peru, community relations are the responsibility of companies, not of the State. Once the exploration or exploitation license has been granted, companies and communities start a negotiating process that generates a sort of bargaining momentum by which the community makes demands and the company responds with counter-offers. The company provides the basic needs the community lacks, creating a sort of privatization of the social welfare.

The general perception is that the government's role during the negotiations between the community and the company is that of a mere observer, indifferent to the needs of the population. The population also believes the government is on the side of the company, a perception that is emphasized when a state owned company is a partner in an extractive project (for example, Tambogrande)^{xviii} (PAREDES, 2008). This wears down trust in the government and affects its legitimacy.

However, when conflicts break, particularly large ones, it is common for the Office of the Ombudsman to play a key role in reducing its intensity. An analysis of natural resource conflicts in Peru clearly shows the Office of the Ombudsman and to a lesser extent the Catholic Church as the only actors that hold enough legitimacy to effectively try to bring the parties together. The Office of the Ombudsman as an institution holds a tremendous degree of legitimacy in Peru, like no other government organization in the country, and probably in the whole of Latin America.

It would be necessary to design an action plan for the government to ensure early contacts between federal and sub-national government officials and local communities before the development of the actual extractive project. It would be useful to develop indicators for a rapid assessment, during those early visits with the communities, of local needs, cultural characteristics and community position with regards to extractive industries. The information gathered at this stage would be useful later on for making an educated diagnostics of that particular community in relation to extractive industries.

*** Companies:** *A large percentage of oil and mining companies operating in Peru are Juniors and don't always apply the highest environmental and social*

standards. It would be wrong to refer to all extractive industries in the same way. Larger mining or oil companies tend to have more elaborate environmental and social standards and better trained personnel to apply them than their smaller counterparts. This distinction was made evident by the case of the 33 miners that were trapped in a mine in Chile on Oct, 2010, due to safety issues^{xix}.

A mining project is preceded by a long exploration period before actual production starts. It is during this exploration period –of sometimes seven or eight years-- when the relationship between the local community and the company is established. Normally a small –junior-- company carries out the exploration activity, and then sells off its stake to a larger one, which is responsible for the decades-long production phase.

Junior companies do not always have the financial strength of the large ones to adopt costly and elaborate corporate social responsibility rules during the initial exploration period. Furthermore, as explained above, the nature of the exploration work means that the time horizon of junior companies in the area where they operate is much shorter than that of the large ones in charge of production. So juniors tend to devote fewer resources to environmental and social issues because they do not expect to spend long periods of time in the area (VASQUEZ, 2011).

Also, companies from developing countries where the notion of corporate social responsibility may not be as well developed as elsewhere, are sometimes less keen on investing large resources on developing sound environmental and social policies that are tailor-made to address the particular issues of the areas where they operate. Instead of developing long-term sustainable engagements with the local community, these companies many times chose to engage in paternalistic relations with those affected by the natural resource extraction. Oil company officials interviewed for this report generally commented about the difficulties of convincing old management cadres within their companies, about the rewards of investing in good corporate social responsibility practices.

One of the main causes of conflicts are false expectations. The main tool for convincing a reticent and poor community to welcome the extractive development in their territory has been to promise them jobs. However, the oil industry is not labor intensive, and the newer mining techniques employ less workers than in the past during the production phase. Companies often resort to offering temporary and rotating jobs, which allows for the employment of more low-skilled workers, especially during the exploration phase.

Risks in extractive industries are bound to happen and the community should know about them. The company on its part should inform its detailed risk mitigation policies in case of unexpected dangers. An active dialogue with the community from the very early stages of the design of the project is essential. This dialogue should complement earlier such exchanges between government officials and communities, before signing of the extractive development contract. As mentioned above, the

information gathered during these early government communications efforts would have served to produce an early diagnostic of the characteristics of the community.

The government should develop the appropriate economic and human resource tools to be able to engage in sound monitoring of company compliance with the law and with the conflict and risk mitigation and prevention policies they should be required to design early on. UNDP could support these monitoring efforts with funding and/or human resources. Private sector associations should also participate.

In order to assess company compliance of standards, three case studies could be carried out of emblematic projects that led to conflict due to lack of solid environmental and social policies on the part of the private actor. The analysis of these cases could open the door for a review of existing industry standards in Peru and the extent of their application, both by large and junior companies. They would also serve to analyze the actual applicability of the environmental legislation.

* **Civil Society:** *Some radical NGOs oppose extractive activities altogether, which may not fully represent the community desires, while others that accept extractive development provided it is environmentally and socially sustainable are well respected by local communities.* It is important to have a clear strategy on how to engage with the various types of civil society organizations. It is common to hear much criticism about the role that civil society organizations play in relation to natural resources and conflict, especially among government or private sector officials. They disapprove of the environmental and social policies these organizations preach, which are seen as too radical, against development, and not always representative of the communities' viewpoint. There may be some truth to this argument with regards to the most radical organizations, for example, those that are against any kind of development in the Amazon basin altogether. Others realize the tremendous economic contribution that extractive developments mean for Peru, but support an environmentally and socially sustainable agenda for these industries. It is important to make this distinction when designing conflict management or prevention policies and to know which organization represents what perspective in any particular situation. This is why a mapping of all stakeholders, including civil society organizations, is important in order to understand the position of all actors involved, before the start of the project. This is useful for being able to assess the potential quality of their input: if it corresponds to the local reality and to the views of the community, and if they have a clear strategy on how to engage with these organizations.

* **Communities:** *Given poor institutional and participatory mechanisms, communities often need to resort to protest or violence to express their position. However, communities' views are not always homogenous.* Most communities are not entirely opposed to mining and oil and gas developments. They simply demand to be treated fairly when these affect them directly or indirectly. They want to know how the extractive industry project will benefit or harm them, but most importantly, they want better living conditions with improved schooling for their children, and

better health services. To say that communities do not want development is not entirely accurate. However, their view of development may be different from that of people living in Lima. Knowing from the start what a particular community expects from an extractive development is fundamental to be able to create and gear social development projects to their needs and expectations using natural resource funds.

There are a few cases where communities have been opposed to a particular mining or oil project in their territories from the start. But ensuring that their opposition is known early on is not easy for lack of an adequate institutional structure and of organized participatory mechanisms from before the actual extractive project begins. This situation obviously leads rapidly to open and sometime violent opposition. The expansion of the Yanacocha gold project to the Quilish mountain in the province of Cajamarca was a good example of this reality. The project was strongly resisted by the local population, fearing that the mining at the Quilish mountain would pollute water supplies that feed the capital Cajamarca some 30 kilometers south. Community opposition to mining at the Quilish mountain was not new, it had started in 1999 and reached a zenith with the opposition strike of February 27, 2001, that resulted in violent confrontations between demonstrators and the police. By 2004, huge marches, a regional strike and the blocking of access roads in opposition to the project led to more clashes. In the end, exploration activities in the Quilish mountain were suspended. This might have been avoided if earlier discussion would have taken place. A conflict with similar characteristics seems to be currently in the process of developing in Arequipa, with the Tia Maria mining project, to be developed by the Mexican company Southern Copper Corporation^{xx}.

Fractures within communities are common. Community leaders represent communities in negotiations with companies, governments and in their relations with civil society organizations. Many times these leaders do not seem to entirely represent the wishes of the community and there have been instances of removal of some of them by the community for this reason and also for corruption charges. When companies do not find a representative leader they tend to try to negotiate family by family within a community. This is also controversial because it sometimes creates conflicts within the community, as some families adopt a favorable position *vis a vis* the company while others take the opposite view.

In the case of oil developments, when these community divisions occur, companies tend to set their work camp closer to those families that are for the project. This leads to conflicts within the community --for example when those "for" the project are seen as receiving more company benefits (jobs, etc) than those "against" it--, and ultimately with the company. Situations like these are common among indigenous communities when confronted with an oil development in their territories, as seen in oil Block 64, which is being developed by Canadian oil company Talisman^{xxi}.

D) Incomplete Policies

* **An unclear development model:** *Government plans for investing extractive revenues are not clear. People feel the ultimate goal of the government is to attract investments, more than to invest in their region for their benefit.* What the population perceives is that the main goal of the country's extractive industry policies is the attraction of investments for the benefit of Lima. The general perception is that mining and hydrocarbons investments are an end in themselves rather than a tool for the improvement of the living standards of the population or the creation of direct or indirect employment. There is an urgent need to better communicate Peru's economic growth model at the local level and have a more active outreach to explain the country's development policies and overall benefit of extractive industry. The government could support a national debate to discuss these issues in a participatory and inclusive manner. At the end of the debate a participatory economic development plan would have been designed with a clear role for extractive industries and suggestions on how to improve revenue distribution.

* **Absence of territorial planning:** *There is little or no territorial planning for mining and/or hydrocarbons and so licenses are given all over the country, even in national reserves.* There does not seem to be a well-planned territorial design that would predetermine which areas to use for mining and/or for oil, and which to be destined to other uses, such as agriculture, tourism, or biodiversity preservation. One of the main sources of conflicts is in relation to the use of formerly agriculture land for extractive industries.

The lack of proper zoning allows for certain largesse in the way protected and non-protected areas are created or abandoned, which in turn gives way to conflicting situations. So for example, the Matses National Reserve was created in 2009 in the province of Loreto^{xxii}. The Matses indigenous group living there had been requesting the creation of the national reserve for 14-years, and it only came in exchange for them agreeing to oil developments in their territory. In the case of the Reserved Zone Santiago Comaina, located in the Amazonas region, it was created in 2000 after years of demands by local indigenous communities living in the area. The creation of the reserved zone helped to build trust between the government and the communities. However, that trust was breached in 2007, when the government granted an oil license that covered 55% of the reserved zone, creating much uneasiness among the local populations. While granting the oil license may have been permitted under the law, it tainted the old trust gained between the government and the indigenous communities when the original reserved area was created, and initiated a conflictive relationship with the oil company (Vasquez, 2011)^{xxiii}.

It becomes essential to review the mechanisms for handing out extractive industry licenses and ensure these are based on good territorial planning. In carrying out this review, it would be useful to analyze cases where the lack of sound

territorial planning led to conflicts. The study of actual cases would allow for a better understanding of the dynamics that result in territorial disputes.

*** Lack of a strong commitment to conflict prevention and management: at the top level:** *There is no strategy for treating violent conflicts. Once they explode, they are usually mediated directly by the Prime Minister and in imperfect ways.* When a conflict becomes violent or difficult to manage, the highest government authority, the Prime Minister usually intervenes directly to find a solution (Espinar, for example). A mediator –the Church or the Ombudsman—is called in and a negotiating table (*mesa de dialogo*) is subsequently formed, provided the violence stops first. Dozens of isolated dialogue tables (*mesas de dialogo*) have been created in relation to several conflicts, but a large percentage of them failed to succeed in finding permanent solutions to the disputes. Dialogues are called in the heat of the events, when national attention is behind them. But once the intensity of the dispute diminishes the dialogue loses its initial strength. Government officials participating in the negotiating tables have many times been accused of skipping the meetings, which in turn contributes to building up tensions again.

The dialogue tables as a form of conflict resolution mechanism seem to have lost steam and in some cases even its legitimacy. But the underlying problem is the lack of a conflict prevention strategy that would allow for the development of particular early indicators for spotting potential conflicts before they actually break out or become violent. There are no conflict prevention policies in Peru, rather the government usually acknowledges there is a problem once the dispute has turned violent or out of control. Developing early indicators of conflict that could be regularly monitored would be really important and have a clear strategy of when to intervene and at what level would create much more clarity in what various stakeholders could expect from the government.

Section 2

Conclusion

This paper is a quick summary of some of the important issues related to conflicts induced by extractive industry developments in Peru. Evidently, this is a tremendously complex issue and this report is not meant to be comprehensive in its analysis, it rather intends to provide some pointers that may help with the design of a program of support for Peru. Some of the issues discussed go much beyond the problem of conflicts in extractive industry and directly touch on the future development of the country. The weakness of local governments in handling their new responsibilities and in managing increasing fiscal revenues in the context of the decentralization process needs to be addressed urgently, independently from the existence or not of local conflicts. It is a source of corruption, nepotism and poor development decision that undermines development in Peru. Political discretion in the implementation and adoption of certain laws undermines the legitimacy of the government and is a negative sign for building a healthy investment climate. This

also needs some action independently of the existence of conflicts. Then there are a number of other issues that have a more direct impact on local conflicts, such as the capacity of governments to act as mediations, or the role of environmental impact assessments, and how the population perceives these. This paper tries to address most of these issues, but they are complex. We need to understand the limitations of capacity building actions. If the Government is determined to support investment policies regardless of their social cost, capacity building efforts will not help and the mechanisms set up for their implementation soon appear to the population as bogus. The commitment of the government to act and political support are essential. It is clear that action is also needed to force junior companies to improve their environmental and social safeguards. Here also capacity building is limited unless the Government takes serious action, like in Chile now after the mining incident. This is why we suggest the support of real national debates on some of these issues in parallel to some capacity building. Finally it is important to stress that despite the increase of conflicts there are successful stories in Peru. The Camisea project has done some good work in many areas, the Peruvian Office of the Ombudsman seems to enjoy a level of legitimacy that few other public institutions have in Latin America. These positive experiences need to be publicized, and analyzed for expanding and possibly repeating them.

Section 3

Recommendations

These are some recommendations for a UNDP supported action to prevent and mitigate conflicts related to extractive industries in Peru. These are based on the diagnostic developed above. They do not try to address all aspects of the conflicts but focus on the issues where capacity building intervention and policy advice could have, in our view, the most effective medium term impact.

a) Support an open public debate on the role of Mining and Hydrocarbons in the economic development model of Peru

Launch a national public debate on the role of extractive industries in the economic development model of Peru. Today many important questions related to extractive industry and development are not debated openly until a conflict explodes. This is not a healthy situation and it contributes to creating many tensions that could be resolved by a more open national discussion on these issues. All the stakeholders (governments, communities, civil society, private sector) should be part of the debate and contribute their perspectives. The debate should touch upon existing rules for citizen participation and also on the development of sound mining and hydrocarbons policies. This would help understand the efforts and intentions of some policies. For example the Environmental Impact Assessments (EIA) is seen by local communities and civil society as a mechanism for allowing extractive developments in their territories rather than as an objective tool to assess environmental compliance. The purpose and design of the EIA is not an issue open

for discussion at the moment, which reinforces the suspicions about its proper use. The debate could be organized in neutral ground, like universities, research centers and with the support of the media.

b) Adopt National Conflict Prevention Policies

Contributing to the development of a national conflict prevention policy would be important. The Government has started to develop capacity building programs on conflict management and prevention, but it needs to be less theoretical and more grounded in the practical realities of Peru. The conflict prevention capacity building efforts should particularly reach out to local governments and communities affected directly and indirectly by extractive industries projects.

In order to provide more material for a grounded capacity building on conflict prevention and management, the UNDP could support a series of studies that could provide initial inputs. For example, a study of four emblematic extractive industry conflicts in order to understand the mechanisms in place them and the policy decisions adopted to address.

One or two of the case studies should be examples of positive resolutions: positive elements that prevented the outburst of conflicts. A good example of a positive case study could be the *Las Bambas* mining project in the department of Apurímac, which in the course of this consulting work came out as a rare example of relative efficiency in relation to citizen participation, company community relations scheme and consultation practices. Several stakeholders contacted for this consulting work have stressed the good conflict prevention initiatives adopted there by the central government much before the actual mining project was established. They also highlighted the sound community work done by the company, and the fact that because the government had extensive contact with the community early on, opposition was minimal or inexistent when the mining project came later on. One fundamental reason for this seems to have been the preliminary work done by the government in engaging the local community in development projects that benefited them, from early on, much before the arrival of the extractive industry.

c) Adopt conflict management approach implemented by the Ombudsman

Do an in-depth study about the organizational, institutional and other mechanisms that contributed to turning the Peruvian Office of the Ombudsman into the most legitimate actor in trying to mediate to solve extractive industry-related conflicts. Expand the study to the performance of the Camisea Ombudsman (*Defensoria Camisea*) for preventing and managing conflicts in relation to the Camisea natural gas project. Finally, the study could also analyze the Australian Mining Ombudsman, an independent non-profit organization created in 2000 to deal with conflicts involving Australian mining companies abroad and that is seen as a very innovative model. The study could support a debate on the usefulness of replicating the mediation mechanisms adopted by all or some of these Ombudsman offices in relation to high-risk extractive industries in Peru.

Following the experience of the Camisea Ombudsman Office, the government should consider setting an Ombudsman for each large extractive industry project. This Ombudsman could work hand in hand with the national Office of the Ombudsman in a collaborative effort at gathering information on conflicts. But it should have more liberty in mediating in specific conflicts related to the particular project it is supposed to monitor. The national Office of the Ombudsman was created to monitor that government actions do not negatively affect citizens, but it is not meant to be a mediator in conflicts. Rather, the national Ombudsman takes that role exceptionally when the parties in the conflict demand its presence for solving a dispute. The project specific Ombudsman however, would be especially active in mediating conflicts.

d) Assess Effectiveness of PrevCon (Programa de Apoyo para una Cultura de Paz y el Fortalecimiento de Capacidades Nacionales para la Prevencion y el Manejo Constructivo de Conflictos)

An assessment of the success of the PrevCon is needed to understand if it has fulfilled its goals. This assessment could help design a second, more practical phase of the PrevCon that could expand on the work done so far by putting in practice some of the lessons learned in the first phase. The central government does not have at the moment much credibility on local conflict resolution and the local population generally perceives a lack of commitment on the part of the government for solving conflicts. For that reason, the second phase of the PrevCon should be developed by an organization with high legitimacy among the population, especially among those directly affected by mining and oil, in order to prevent future questioning of its credibility. The conflict and actor mapping done by the PrevCon could provide a good initial contribution to this second phase.

e) Capacity building for public officials at the local level (region and local government)

UNDP could support the creation of temporary internships in the different federal ministries that have a role to play in the development of extractive industries –such as the MEM and the Ministry of Environment-- to train regional and local government officials on extractive industry development policies and conflict prevention and resolution.

* The Office of the Peruvian Ombudsman was organizing conflict prevention workshops aimed at forming regional government officials until recently, under a project called “Fortalecimiento de Capacidades de Actores Regionales y Locales para la Prevencion, Gestion y Transformacion de Conflictos,” that was funded by the Catalan Cooperation. The project has been interrupted due to the economic crisis Europe. The project seems to have been successful and after evaluating it, UNDP funding could help extend the program. This is especially important given the involvement of the Office of the Ombudsman, and its strong credibility and legitimacy with local actors.

f) Mapping of Conflicts and Actors

UNDP could support an in-depth mapping of the conflicts that should include detailed information about the nature of the conflicts, the conflict resolution and prevention actions; effectiveness of these actions; the various stakeholders responsibilities and involvement; economic assessment of affected population; structure of the regional and local government; and regional and local political alliances, among other issues. The conflict mapping would be an essential first step for developing national conflict prevention and resolution policies and for targeting these to each particular regional scenario. The initial conflict mapping done by the PrevCon could be used as a first step for this work.

g) Assessment of Public Investment Mechanisms

An assessment of the public investment mechanism --SNIP (*Sistema Nacional de Inversión Pública*)—would be useful considering the widespread criticism about its lack of functionality and extreme complexity that prevents regional and local governments from getting their development projects through the system. The United Nations ECLAC (Economic Commission for Latin America and the Caribbean) did a Seminar on this issue last July ^{xxiv}. The assessment should include an analysis of the investments done so far by the regions using extractive industry funds, in order to understand how investment decisions are done and why. Just as way of example, the decision by the province on Ancash to invest in a soccer stadium instead of a network of drinking water has been much criticized but it would be useful to understand why that investment was made and the explanation used for picking the stadium rather than the water network.

h) Design of a Private Company Peer Review Mechanism.

UNDP could support, in partnership with mining and hydrocarbons industry associations and the government, the design of a peer monitoring process that will guarantee companies' adoption of high social and environmental standards, particularly juniors. The peer review should include mechanisms where when a company does not comply with high standards its performance will affect its peers within the industry (through bad publicity, or by not being considered for another license, or through a generalized fine, for example). This would guarantee that the other companies will put pressure on their non-complying partners to get things right. On the contrary, when a company does comply with high standards, it would receive benefits (such as public recognition, tax incentives, or having first choice at the next bidding round, for example). This system could be developed together with local and international mining and hydrocarbons associations and also with the number one international mining and oil companies.

The social and environmental standards applied by the mining and oil/gas industries in Peru should be reviewed in collaboration with the respective industry

associations. The review should assess the financial and business reasons that may hinder adoption of such standards by Junior companies in particular.

i) Pilot Cases to study the application of the Legal Framework:

Pick three pilot cases for a study on the legal framework that was applied with regards to social and environmental issues. The case studies should provide examples of the flaws that exist in applying the existing legal framework to resolve conflicts related to extractive industries. The final product will provide recommendations on how to improve the laws to make them more functional. The studies should assess the extent of the implementation of the law to examine issues such as: 1) how effective it was; 2) degree of its implementation; 3) if there was contradictory/confusing legislation that applied to the case; 4) timeliness of the judicial actions used to solve the conflict.

j) Case studies to better understand problems with the SNIP

Study of four representative local and regional governments that use the SNIP system (two mining and two oil/gas producing areas) and which have experienced difficulties in getting their development projects approved in the past years. An in-depth analysis of these difficulties should provide the basis for developing recommendations for improving the SNIP.

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Endnotes

ⁱ Peru is one of the world's top producers of gold, silver and copper, and its mineral exports represent some 62% of total export revenues.

ⁱⁱ Law 27783: Ley de Bases de la Descentralización. Passed in 2002.

ⁱⁱⁱ Peru's Constitution - Article 66.

^{iv} Law 26505: Ley de la Inversión privada en el desarrollo de las actividades económicas en las tierras del territorio nacional y de las comunidades campesina y nativas. Passed in 1997 (Modified by Law 26570).

^v Supreme Decree D.S. No 017-96-AG, published on Oct.19, 1996, which implements Article 7 of Law 26505. S.D. No 017-96-AG was modified by D.S. No 015-2003-AG, published on May 07, 2003.

^{vi} International Labor Organization (ILO) Indigenous and Tribal Peoples in Independent Countries Convention, Articles 6,7, and 17, which was ratified by Peru in 1993 by Legislative Resolution No 26253. The ILO 169 Convention requires among other things, that indigenous and tribal peoples be consulted on issues that affect them, such as extractive industries in their territories. The Convention states that indigenous and tribal peoples should be allowed to participate in a free, prior and informed process for the formulation of policies and development processes that affect them.

^{vii} Supreme Decree D.S.028-008-EM.

^{viii} Legislative Decree 1013, May, 2008.

^{ix} NUMES Project, approved in January, 2009.

^x Ley de Canon No 27506 and its implementation decree D.S. 005-2002-EF, passed in June, 2002.

^{xi} In the case of mining, the canon is formed by 50% of the income tax paid by companies; the oil canon is extracted from the royalties paid by companies; and the gas canon is formed by 50% of the income tax and 50% of the royalties paid by gas companies.

^{xii} Defensoria del Pueblo del Peru (2008). "Uso o abuso de la autonomía municipal. El desafío del desarrollo local." Informe Defensorial No133. Lima, Peru.

^{xiii} Citizen participation in hydrocarbons activities is defined by Ministerial Resolution 571-2008-MEM-DM: *Lineamientos para la participación ciudadana en las actividades de hidrocarburos*. In the mining industry: *Reglamento de Participación Ciudadana en el Sub Sector Minero*: D.S. 028-008-EM, and *Normas que Regulan el Proceso de Participación Ciudadana en el Sub Sector Minero*: R.M.304-2008-EM/DM.

^{xiv} The Office for Social Conflicts was created in 2010 by supreme decree: D.S. 010-2010-PCM; the Multisectorial Commission for the Prevention of Social Conflicts was created in 2006 by ministerial resolution R.M. N^o 380-2006-PCM.

^{xv} The Programa de Apoyo para una Cultura de Paz y el Fortalecimiento de Capacidades Nacionales para la Prevención y el Manejo Constructivo de Conflictos (PrevCon) was financed by the European Commission and the Peruvian government, and administered by UNDP.

^{xvi} BBC Mundo (2010). *Cronología de un Desastre Anunciado*". June 3, 2010.

http://www.bbc.co.uk/mundo/america_latina/2010/06/100602_peru_amazonia_cronologia_baguazo_rg.shtml

^{xvii} Created in 2006 by Supreme Decree DS. 071-2006-EM.

^{xviii} In the controversial Quilish mining project (which never materialized due to popular opposition) the government was to have a 25% stake through the state company Minero Peru. The majority partner was to be Manhattan Minerals Corporation (MMC), a Canadian junior company.

^{xix} Financial Times, (2010). *Accident puts the focus on safety*. October, 13. Mina San Jose, Chile.

^{xx} La Republica (2010). *Tía María: otro conflicto a punto de estallar en el sur*. October 18. Lima, Peru at: <http://www.larepublica.pe/archive/all/larepublica/20100410/8/node/260104/todos/15>

^{xxi} El Diario.pe (2009). *Nativos Achuar acusan a petrolera Talisman de promover enfrentamientos*. October 2.

<http://eldiario.pe/nativos-achuar-acusan-a-petrolera-talisman-de-promover-enfrentamientos>

^{xxii} Supreme Decree 014-2009 MINAM.

^{xxiv} See: *Balance del sistema nacional de inversión pública en el Perú a los 10 años de su creación y retos al 2021* at: <http://www.eclac.org/cgibin/getProd.asp?xml=/ilpes/noticias/noticias/5/40015/P40015.xml&xsl=/ilpes/tpl/p1f.xsl&base=/ilpes/tpl/top-bottom.xsl>.

Annex I
Matrix of Programs and Policies

ANNEX II - People Contacted

Name	Organization	
Civil Society	Jose de Echave	Accon Solidaria para el Desarrollo
	Caroline Gibu	CAD Ciudadanos al Dia
	Adda Chuecas	CAAP
	Daysi Zapata	AIDSESP
	Oseas Barbaran Sanchez	CONAP
	Jose Luis Lopez	Care Peru
	Javier Aroca	Oxfam
	Manuel Glave	Grupo de Analisis para el Desarrollo
	Magdiel Carrion	CONACAMI
Government	Jorge Merino Tafur	Pro Inversion
	Eric Soriano	Ministerio del Ambiente
	Nancy Chauca Vasquez	Ministerio del Ambiente
	Carlos Salazar	Presidencia del Consejo de Ministros
	Federico Negron Peralta	Presidencia del Consejo de Ministros
	Andrea Staeheli Tortosa	Presidencia del Consejo de Ministros
	Embajador Julio Munoz Deacon	Ministerio de Relaciones Exteriores
	Ivan Lanegra	Defensoria del Pueblo
	Jose Luis Carbajal	Ministerio de Energia y Minas
	Antonieta Noli	Ministerio de Agricultura
Academia	Mirian Morales Cordova	Pontificia Universidad Catolica del Peru
	Cesar Guzman Barron	Pontificia Universidad Catolica del Peru
Private Sector	Oscar Delgado	Xstrata Copper
	Ing. Luis Navas Santillana	Rio Blanco Copper
	Pablo de la Flor Belaunde	Antamina
	Angel Murillo	Sociedad Nacional de Minería, Petróleo y Energía
Others	Orietta Rodriguez	Canadian Embassy
