

Institutional and Political Frameworks of Environmental Licensing Processes

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This research sought to address the following questions:

- How can proponents, regulators and governments ensure accountability, participation and social inclusion in environmental licensing processes?
- What checks and balances are necessary to prevent excessive exertion of power in environmental licensing processes and to ensure they support sustainable development?

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Summary of Action Research Activity

Institutional and political frameworks of environmental licensing processes

This project examined the influence of political and institutional factors on environmental licensing processes, including environmental assessment and approval processes (EAAPs), for mining projects. It was aimed at devising better ways to take account of, and respond to, political and institutional factors as part of the EAAP. The research was based on the premise that while political and institutional dimensions exert a strong influence on regulatory impact assessment and approval processes, this influence is often poorly understood, leading to shortcomings in design and implementation, and in some cases to conflict that results in human and economic losses. Regulatory design and implementation often rest on assumptions that regulators are well placed to protect wider societal interests and have access to full, timely information. In practice, approval decisions occur within highly political negotiations on project design, with imperfect information, constrained timelines and limited regulatory capacity. These factors pose difficulties for conflict prevention in regulatory approval processes.

A conceptual framework was developed to analyse the role of political and institutional factors in EAAPs, and was used to examine two cases of mining Environmental Impact Statement (EIS) approvals in Peru. Regulatory design and implementation criteria to improve the approval processes are proposed, which centre around supporting inclusive dialogue on sustainable development. In the cases analysed, the results suggested that poor proponent-community relations, limited social science influence in EIS and a weak regulatory framework, lacking civil society trust, hindered constructive dialogue on sustainable development. The proposed framework principals relate to relationship building, an early start to dialogue, elected decision-maker commitment, integration of processes within and outside the EAAP, integrating social science input, managing incentives, balancing capacity gaps, designing adaptable processes and allowing for dialogue between different knowledge systems. Scope for implementing these principles is not limited to regulators or governments; various other participants can contribute to implementing many of them. The research resulted in a set of recommendations and a strategy for adaptation for training environments, aimed initially for a Latin American audience, but potentially for broader audiences.

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Institutional and Political Frameworks of Environmental Licensing Processes

REPORT TO THE INTERNATIONAL MINING FOR DEVELOPMENT CENTRE

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Centre for Social Responsibility in Mining

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The Centre for Social Responsibility in Mining (CSRМ) is a leading research centre, committed to improving the social performance of the resources industry globally.

We are part of the Sustainable Minerals Institute (SMI) at the University of Queensland, one of Australia's premier universities. SMI has a long track record of working to understand and apply the principles of sustainable development within the global resources industry.

At CSRМ, our focus is on the social, economic and political challenges that occur when change is brought about by resource extraction and development. We work with companies, communities and governments in mining regions all over the world to improve social performance and deliver better outcomes for companies and communities. Since 2001, we have contributed significantly to industry change through research, teaching and consulting. This centre is led by Professor Dr Saleem Ali.

Abbreviations

ANA	National Water Authority
CRR	Community Relationships Review
CSRМ	Centre for Social Responsibility in Mining
EAAP	Environmental Assessment and Approval Process
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement/Study
FPIC	Free, Prior and Informed Consent
IM4DC	International Mining for Development Centre
MEM	Ministry of Energy and Mines
MINAM	Ministry of Environment
OEFA	Assessment and Environmental Control Agency
SENACE	National Environmental Certification Service for Sustainable Investments
SCC	Southern Copper Corporation
UNEP	United Nations Environment Programme
UNOPS	United Nations Office for Project Services

Table of Contents

1. Introduction	7
1.1 Rationale	8
1.2 Methodology	9
1.3 Structure of this document	10
2. Conceptual Framework	11
2.1 A working Definition of Environmental Assessment and Approval Processes	11
2.2 A conceptual framework to analyse EAAP	12
2.2.1 Context	13
2.2.2 Project design, consequences and resulting incentives	14
2.2.3 Actors	15
2.2.4 Environmental Assessment and Approval Processes (EAAP)	16
2.2.5 Assessment criteria	16
2.2.6 Conflict	17
2.2.7 The Conceptual Framework in Summary	18
2.3 EAAP and the institutional and political context	20
2.3.1 The influence of institutional and political factors in EAAP	20
2.4 Strengthening EAAP to support sustainable development taking account of political and institutional factors	23
2.4.1 Enable early, broad-based dialogue on the sustainability contribution of the project	25
2.4.2 Seek commitment from elected decision-makers	26
2.4.3 Integrate dialogue, negotiation, consent, impact assessment and approval processes	26
2.4.4 Fully integrate social science into all stages of the process	27
2.4.5 Introduce checks and balances to compensate for perverse incentives	27
2.4.6 Support capacity building and address capacity unbalances	28
2.4.7 Implement flexible and inclusive public participation mechanisms with decision-making and trust building in mind	29
2.4.8 Design institutional arrangements to allow dialogue across different knowledge systems	30
2.4.9 Integrate EAAP with natural resource management strategies and initiatives at regional and national levels	31
3. Analysis of the Context for Mining in Peru and Case Studies analysis	32
3.a. Analysis of the Context for Mining in Peru	33
a.1 Peru (<i>Republica del Perú</i>)	35
a.2 Mining in Peru	35
Brief history of mining in Peru	36
Mining conflicts	37
Discourses on Mining and Sustainable Development	39

a.3 Institutional Context for Mining EAAP in Peru.....	41
a.3.1 Mining regulation and institutional arrangements.....	42
a.3.2 Frameworks for citizens' participation, and access to information and justice on environmental issues	46
a.3.3 Civil society organizations	49
a.3.4 Institutional Arrangements for Conflict Resolution	50
a.3.5 Decentralization Processes.....	51
a.4 Summary and concluding comments.....	52
3.b. Case Studies: Minas Conga and Tia Maria	54
b.1 Minas Conga	56
Executive Summary	56
Regional Context	58
The Project	60
Actors	61
Conga's Environmental Assessment and Approval Process (EAAP)	65
National significance	75
Regional dynamics	76
Conga's EAAP – Legal compliance, stakeholder consent and dialogue on sustainable development	77
Extent of application of design principles	81
b.2 Tia Maria Mining Project	84
Executive Summary	84
Regional Context.....	86
The Project	88
Actors	89
Tia Maria's Environmental Assessment and Approval Process (EAAP)	92
National Significance.....	100
Regional dynamics	100
EAAP – Regulatory enforcement, rigour in impact assessment and stakeholder consent	101
Extent of application of design principles	105
4. Conclusion	108
5. Recommendations	111
Governments	112
Regulators.....	113
Proponents	114
Communities and civil society organisations	114
6. Teaching Adaptation Strategy	115
Session 1. Conceptual framework and theoretical perspectives	115
Content.....	115
Training Activities	115

Training materials	116
Session 2. Facilitated discussion on context for mining in Peru	116
Session 3. Group case study sessions and plenary case study discussions	117
Content.....	117
Training materials	117
Teaching activities	117
Session 4. Group strategy game	119
Content.....	119
Training Activity.....	119
Training Materials.....	119
Take Home Analysis Paper	120
References	121

List of Figures

Figure 1. Conceptual framework to analyse the institutional and political dimensions of EAAP.	13
Figure 2. Conceptual framework to analyse the institutional and political dimensions of EAAP.	19
Figure 3. Conceptual framework.	33
Figure 4. Conceptual framework – Context.	34
Figure 5. Conceptual framework – Institutions, Power.....	42
Figure 6. Conceptual framework – Project.	60
Figure 7. Conceptual framework – Actors.	61
Figure 8. Conceptual framework – EAAP.	65
Figure 9. Conceptual framework – EAAP, Assessment Criteria.	78
Figure 10. Conceptual framework – EAAP, Conflict.	81
Figure 11. Conceptual framework – Project.	88
Figure 12. Conceptual framework – Actors.	89
Figure 13. Conceptual framework – EAAP.	93
Figure 14. Conceptual framework – EAAP, Assessment Criteria.....	102
Figure 15. Conceptual framework – EAAP, Conflict.	104

List of Boxes

Box 1. Conceptual framework to analyse the institutional and political dimensions of EAAP.	18
Box 2. Principles that can inform the design and implementation of EAAP.....	24

List of Tables

Table 1. Timeline for Minas Conga mining project.....	66
Table 2. Extent of application of design principles - Conga.	82
Table 3. Mining investment in Arequipa Region (updated May 2012).	87
Table 4. Tia Maria EAAP - Chronology of events.	94
Table 5. Table5 Extent of application of design principles - Tia Maria.	106

1. Introduction

This report examines the influence of political and institutional factors on environmental licensing processes, including environmental assessment and approval, for mining projects. It aims at devising better ways to take account of, and respond to, political and institutional factors as part of environmental assessment and approval processes. The research is based on the premise that while political and institutional dimensions exert a strong influence on regulatory impact assessment and approval processes (Tang et al., 2005, Bebbington and Bury, 2009a, Owens et al., 2004), this influence is often poorly understood, leading to shortcomings in design and implementation (Devlin and Yap, 2008, Glasson and Salvador, 2000, Doelle and Sinclair, 2006). The International Mining for Development Centre (**IM4DC**) funded the project with the aim of generating material that can be used in its training programs for developing country audiences. The Centre for Social Responsibility in Mining at the University of Queensland led the research, which was conducted in collaboration with Universidad de Los Andes (Colombia).

Environmental assessment and approval processes (**EAAP**) are often understood as an effort by independent regulatory agencies to control project activity for the common good, in a scenario of complete information. However, in practice, they are highly political negotiations on project design, occurring under imperfect information, constrained timelines and limited regulatory capacity (Bebbington and Bury, 2009b, Glasson and Salvador, 2000).

The legal and regulatory requirements that governments and regulators design and implement for EAAP are only one element of the process. Assessment, negotiation and decision-making processes associated with giving the ‘go-ahead’, or not, to a proposed mining project are far more complex and involve a number of stakeholders, as well as broader political and institutional forces. Proposed mining projects can carry significant changes and awaken the interest of many latent stakeholders. The decision of whether a project should go ahead and under what conditions is therefore a complex one that many will seek to shape.

Civil society organisations, communities and governments at various levels are increasingly active in seeking to influence the outcomes of regulatory approval processes. Collaborative dialogue approaches are necessary for stronger decision-making in this context (Castillo and Avila, 2008, Gibson, 2006) as are processes to guarantee accountability (Palerm, 2000). It is important to understand these multi-stakeholder dynamics (Owens et al., 2004) and to design regulatory processes that effectively respond to these dynamics to ensure that regulatory processes protect society at large, avoiding biases towards the groups most represented in formal regulatory processes or groups with more voice or power (Castillo and Avila, 2008, Tang et al., 2005, Lockie, 2001). This calls for as complete an understanding as possible of the values and interests of the groups that are least represented or included in formal processes, the mechanisms these groups use to influence EAAP, and how these groups interact with and shape the institutional and political dimensions that frame EAAP. Participation and public accountability mechanisms are important in addressing the concerns of those without formal roles in regulatory processes but who are interested in, and affected by a project. Participation and public accountability constitute key mechanisms for social inclusion. However, participation and public accountability mechanisms need to be designed to be fit

for purpose (O'Faircheallaigh, 2010) and this relies on a rich understanding of each case and context (Castillo and Avila, 2008).

Institutional frameworks, ideologies and incentives influence the behaviour of regulators, proponents, impact assessors, civil society organisations and community members. All of these affect the course of mining EAAP. This raises central questions that proponents, regulators and governments need to address in order to ensure credibility and governability, maximise project benefits, and obtain and maintain community support for major extractive investments.

This research concentrated on how institutional and political processes affect mining project EAAP. It sought to illustrate these effects and to provide frameworks to better understand them, by exploring the following questions:

- How can proponents, regulators and governments ensure accountability, participation and social inclusion in environmental licensing processes?
- What checks and balances are necessary to prevent excessive exertion of power in environmental licensing processes and to ensure they support sustainable development?

By analysing reports, scholarly publications and two project licensing cases, this research:

- Devises a conceptual framework to understand licensing as a complex negotiation process where multiple interest and values are at play; and
- Identifies possible strategies to help design and implement mining EAAP that are more supportive of sustainable development.

The research is intended for adaptation to training environments, aimed initially for a Latin American audience, but potentially for broader audiences. The cases studied are from the Latin American region. Both of them are proposed projects in Peru: Minera Yanacocha's Conga, and Southern Copper's Tia Maria.

1.1 Rationale

Driving this research is a strong sense that the political and institutional environment does not always inform the design and implementation of EAAP and that this can lead to conflict escalation, as various actors seek to open a process that fails to acknowledge them and to engage with their values and interests (see for example Lockie 2001, Delvin and Yap, 2008). There are multiple examples of mining EAAP that have escalated into violent conflict and led to loss of life and economic loss despite, or irrespective of, formal licensing being granted. In these cases, complex political and institutional forces meant that legal approval was not sufficient or even relevant to those opposing the projects, suggesting that these actors did not feel represented or protected through regulatory processes. Examples of such cases are numerous in Latin America and there are many still in early stages in countries like Colombia.

A careful analysis of the political and institutional frameworks of mining EAAP might help us identify potential process improvements so that EAAP can be implemented to contribute to sustainable development. Such analysis can assist those affected by, or involved in, mining projects to design strategies to build constructive EAAP, supportive of dialogue on sustainable development.

Importantly, this analysis can provide some insights on the key precursors of conflict within EAAP and on how EAAP can harness conflict to promote positive outcomes.

The research team is of the opinion that providing stakeholders with spaces to reflect on EAAP – outside of the significant tensions and pressures that these processes can represent in practice – might better equip them to engage in the process in a constructive manner. We hope that the cases here presented can provide such opportunities for reflection on past experiences.

1.2 Methodology

This research comprised a review of relevant literature and documents on the political and institutional frameworks of EAAP; the design of a conceptual framework; analysis of the context for mining in Peru; and two case study analyses, building on the previous elements.

We reviewed literature and relevant reports on environmental impact assessment and environmental licensing processes with two purposes. First, to identify what others have said about the influence of institutional and political frameworks on EAAP. Second, to identify strategies that have been effective in constructing EAAP supportive of sustainable development.

We created a simplified conceptual framework to use in analysing EAAP cases. EAAP, understood in the broad fashion proposed in this research, are highly complex. Producing a conceptual framework that represents them was an equally complex task that we undertook in stages. This involved an iterative process of analysis and synthesis that led to the existing conceptual framework. Still a work in progress, this framework is proposed as a tool to support students in analysing mining EAAP cases or regulatory frameworks. It is hoped that students will contribute to refining the framework based on their valuable first-hand experience.

Minas Conga and Tia Maria were the selected cases because they offer rich stories and complex processes to analyse, abundant information and a common regulatory framework and national history. Peru is also one of IM4DC's priority countries. The case study selection was done in consultation with IM4DC and following the kind advice of in-country experts.

Each case study builds on the country-specific context analysis and looks at the case based on the conceptual framework proposed earlier. The cases also comment on whether the lessons that emerge from the literature review are of relevance to the particular case.

1.3 Structure of this document

This document consists of six chapters: introduction, conceptual framework and lessons found in the literature, analysis of Peruvian context for mining and case studies, conclusions, recommendations, and teaching adaptation strategy. The second chapter proposes a conceptual framework and introduces key concepts. It also outlines prominent aspects in the literature that are relevant to analysing and understanding the political and institutional frameworks of environmental licensing processes. The third chapter presents the case study material and is divided into two sections: section A provides an analysis of the context for mining in Peru and section B presents the case studies of Minas Conga and Tia Maria. A series of short chapters follow which outline the research's conclusions, recommendations for key actors, and a proposed teaching adaptation strategy for consideration by IM4DC.

2. Conceptual Framework

Based on a review of the literature on EIA, participation in EIA and EIA's political aspects, this chapter:

- discusses the key concepts that will be used for analysis, including a working definition of EAAP
- introduces a conceptual framework comprising the main elements to be used in analysing case studies
- discusses why EAAP are inherently political
- presents factors that, in other EAAP cases or analyses, have been found useful in responding to the political and institutional context to build EAAP that support dialogue on sustainable development.

The aim of this section is twofold. First, it aims to provide framework to organise and focus the case study analyses. Second, it seeks to ground the case studies on the lessons that other studies provide, so as to produce analyses and recommendations that take account of experiences elsewhere.

The key messages from this section are around the need to analyse and design EAAP based on a holistic perspective. First, the definition of EAAP that we present calls for it to be understood in broad terms that go beyond formal regulatory processes and roles, and encompass other processes and actors. Second, we discuss the arguments that have been put forward in other research about the relevance of understanding the political and institutional environment of EAAP. From this emerges a key idea informing this work: that a successful EAAP is one that allows for constructive multi-stakeholder dialogue on sustainable development (Castillo and Avila, 2008, Gibson, 2006). Third, in order to conduct that holistic analysis later in the report, we propose a conceptual framework that centres on the following elements: the context, the nature of the proposed mining project, the actors involved or affected, formal processes, assessment criteria and conflict. Finally, we outline some of the key lessons and messages from previous studies, articulating them as design principles that can be considered for other EAAP contexts. These design principles cover relationship building, dialogue on sustainable development including dialogue between various knowledge systems, interaction with elected-decision makers, integration within various processes part of EAAP and integration of EAAP with other broader governance and planning processes, social science integration, and addressing incentives and actor capacity needs or gaps.

2.1 A working Definition of Environmental Assessment and Approval Processes

In this report, we use the term Environmental Assessment and Approval Processes (**EAAP**) to refer to the people, organisations, processes and institutions that are involved in:

- gathering information and generating knowledge about a proposed project
- understanding the changes it will introduce and how to manage and monitor them
- deciding whether the project should go ahead and under what conditions
- adjusting the project designs to gain community and government support or approval.

EAAP includes the dialogue, negotiation and decision-making associated with project design and approval/acceptance and encompasses formal, or regulated, processes as well as broader societal processes that seek similar aims and might involve one or more actors. Our definition of EAAP includes but is not limited to, standard processes such as environmental impact assessment (EIA) and the resulting formal documents required by regulatory authorities such as Environmental Impact Statements (EIS). A core idea in this work is that if proponents, governments, communities, regulators, civil society organisations, investors and other stakeholders look at EAAP only on the basis of formal regulatory processes, this will limit their understanding of EAAP as well as their capacity to effectively implement it and respond to shifts in the processes.

An understanding of EAAP needs to begin from acknowledging a range of actors that is broader than those formally included in regulations and the same applies to the scope impact assessment or analysis (for example Sinclair et al., 2008 call for inclusive governance in EIA, and Gibson, 2006 advocates for a broad scope of assessment that centers on sustainable development contribution). Individuals and groups have a much wider range of avenues to influence project design and viability than those prescribed or allowed in regulation (see for example Bebbington et al., 2008). While EAAP begins with an 'environmental' brief often set by regulations, a number of social criteria as well as broader impact assessment are necessary to fully understand the implications of project implementation and to inform decisions on project design, viability and implementation conditions.

2.2 A conceptual framework to analyse EAAP

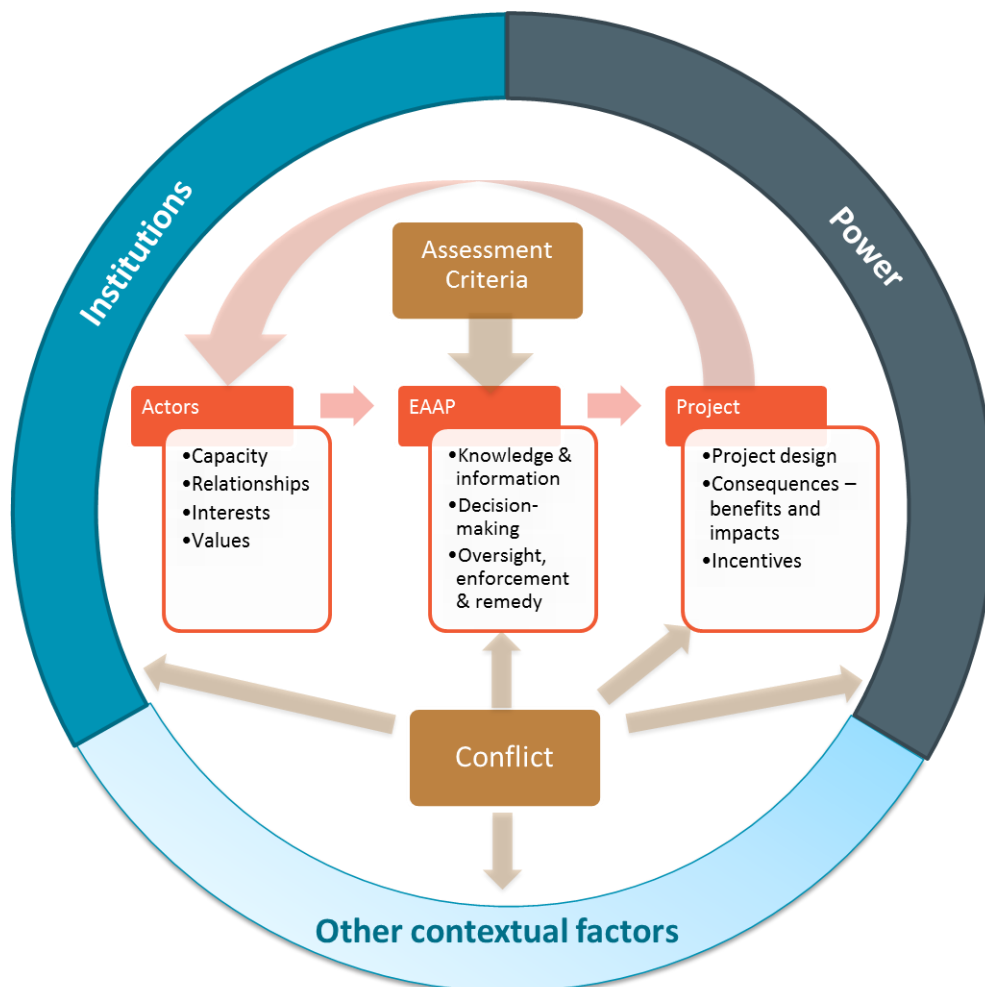
Below we propose a conceptual framework to understand EAAP in its institutional and political context. We discuss the elements of the conceptual framework and the links between these elements. EAAP are complex and many elements would be relevant in their analysis. We have prioritised the following to form the basis of a conceptual framework:

- The context, including institutions and power relations: proposed extractive projects occur within a dynamic context of institutions and power relations, and other socio-economic, cultural, physical and environmental factors.
- The project design, its consequences and resulting incentives.
- The actors of the process: actors (people, groups of people or organisations), interpret how the design of a proposed project will affect them and decide on strategies to respond.
- EAAP as defined in the previous section: is the space where actors meet to provide and obtain information about the project, analyse project consequences, and make or seek to influence decisions about the project.
- The assessment criteria used in EAAP: specific assessment criteria inform EAAP and the analyses and decisions within. In doing so, assessment criteria can shape processes and outcomes, as well as the way actors interact.
- Conflict of various magnitudes might emerge within EAAP. Conflict might be dealt with through established processes within EAAP, but if those are not present, the conflict might be externalised. In other words, conflict might go beyond the scope of EAAP to affect broader societal processes that are not directly related to the project. Externalised conflict can become a

motivation for actors to implement change in institutions – including EAAP institutions themselves (Bebbington and Bury, 2009a) – and alter power dynamics . These changes might result in changes in the broader context or changes to the project and might motivate actors affected to implement more actions in response.

These elements and their interconnections provide a framework to analyse EAAP. We summarise the framework in Figure 1 and discuss each of the elements, in more detail, below.

Figure 1. Conceptual framework to analyse the institutional and political dimensions of EAAP.



2.2.1 Context

A landscape of institutions and power relations provides a dynamic context for proposed extractive projects. Projects also affect and are affected by dynamic socio-economic, cultural, physical and environmental factors.

Institutions have a fundamental role in EAAP. This study uses Young (2002) broad definition of institutions as the combined result of “constellations of rules, decision-making procedures, and programs that define social practices, assign roles to the participants in such practise, and govern

the interactions among the occupants of those roles". Institutions are central to the learning and decision-making processes part of EAAP. They influence how people exchange ideas and come to understandings of projects, in other words how knowledge about the project is generated (Bebbington and Bury, 2009a). Institutions shape decision making processes and influence how people act and interact to create knowledge. They create and support spaces for interaction, and establish rules as well as roles. Institutions also prescribe and enable decision-making on impact assessment and on approval decisions, including who takes part and at what points. In the context that will be analysed in the case studies ahead, examples of institutions include regulatory processes for EIS development, review and approval; the decentralisation regulation and apparatus; established processes and roles for conflict prevention and resolution; or corporate environmental management procedures and systems, amongst others.

Looking beyond the formal stages of regulatory processes, it becomes apparent how political processes and power frame EAAP. Despite it often being construed as purely technical, EAAP is political (Owens et al., 2004, Tang et al., 2005, Lockie, 2001). For example, the timing of project approval or of opposition to a project can be linked to the timing of election processes and significant projects can receive substantial attention in electoral campaigns, or a proposed project might be seen as a threat to existing livelihood or development models thus becoming highly political. A project might bring to the surface existing tensions or affinity across different sectors of society thus polarising antagonisms or strengthening alliances, even creating unlikely ones. On the other hand, power influences each actor's ability influence EAAP (Gibson, 2006, Palerm, 2000). It shapes the design of institutions, which may in turn favour the values and interests of a particular actor over those of another. It might give access to knowledge, again adding to the power of some and diminishing that of others. It helps determine the type of knowledge and priorities that institutions favour, and in doing so it influences who is in a position to understand and participate in EAAP (Lockie, 2001).

Finally, other dynamic factors frame and influence EAAP. These may include socio-economic factors such as the predominant economic activity of a region, cultural factors, physical factors such as topography, or environmental factors like access to water. These dynamic contextual factors can inform and contribute to shaping perceptions, behaviours, and possibilities for actors. These factors are influenced by and exert an influence on institutions and power dynamics. Therefore all of them need to be considered to have a complete understanding of the context for mining EAAP. For example, community opposition to a project that is likely to change livelihood systems might be stronger where environmental, economic and social factors mean that there are limited alternative livelihoods. Another example is that similar institutional designs might vary in effectiveness in different geographic contexts where there are economic limitations such as poor transport or communications infrastructures, and physical factors might add to those barriers.

2.2.2 Project design, consequences and resulting incentives

The way a project is designed has repercussions on actors and provides incentives or motives for them to respond to the project. EAAP occur because a proponent puts forward a project that has social, economic and environmental consequences that are at the centre of analyses and deliberations within EAAP. Consequences can include benefits or impacts, but also changes that are

difficult to categorise either way. Project consequences affect actors' values and interests and in doing so create incentives for actors to influence the project.

Through EAAP, actors influence project design, making the project design a dynamic concept. The design includes not only technical extractive and project development aspects (such as the location of a pit or processing or transport facilities). It also includes programs, projects or initiatives intended to maximise project contributions or benefits (locally, regionally or nationally), as well as those that seek to mitigate or minimise impacts. As project design evolves in response to EAAP, so does its influence on various actors. Alternative project designs might have different implications for actors, these implications inform the strategies and attitudes of actors towards the project and how they seek to influence its design.

2.2.3 Actors

The project's consequences will affect actors (people, groups or organisations), and some actors will be involved in EAAP by virtue of their formal roles. Through their decisions actors direct the progress of EAAP.

An actor's capacity to participate in and influence EAAP depends on a number of factors. It springs from experience, knowledge, skills, time, resources and access to information, and is directly linked to power dynamics. Each actor will have different access to: knowledge about the project and its effects, the processes that generate this knowledge, information, time and resources to facilitate its participation. Actors will also have varying degrees of experience and competence in interacting effectively with other actors and with institutions. For example, depending on the strength of democracy within different national contexts, civil society organisations might have varying levels of capacity to participate in EAAP (Tang et al., 2005). Capacity amongst civil society organisations might also vary according to their access to financial resources, in turn linked to the levels of education and power of their supporters. For example, Tang et al. (2005) comment that in the case of Taiwan, the most powerful civil society organisations were environmental movements backed by the educated and financially prosperous middle class, while in the Peruvian case, local civil society organisations leverage power through international support networks (Bebbington et al., 2007, Castillo and Avila, 2008)

EAAP involve actors from multiple arenas (government, private sector, community, etc.), with varying values and interests, subject to different incentives, and akin to particular ways of looking at problems, all of which provide motivations for various courses of action. Diverse actors are likely to understand and respond to proposed mineral extraction projects in multiple ways. This might be because of differences in perceptions of the way a project is likely to affect their interests; because of differences in ways of understanding the project and its associated changes; or because of combination of the two.

The history of relationships and the conditions of current relationships need to be considered in order to understand the workings of EAAP. The dynamics of existing relationships, including aspects such as trust and power, will likely alter the course of interactions within EAAP. Power dynamics shape relationships to a large extent and establish the terms of engagement between different actors as well as the future possibilities of their interaction. Trust is necessary to enable dialogue

around contested issues or about significant social, economic and environmental changes. Where it is absent, mechanisms to address this gap might be necessary.

2.2.4 Environmental Assessment and Approval Processes (EAAP)

EAAP is one of the mechanisms by which actors seek to understand the project and to influence project design and approval processes. EAAP includes mechanisms and institutional arrangements for producing knowledge and information, making decisions, and providing oversight, enforcement and remedy. These mechanisms and institutions might vary in their levels of formalisation. A combination of formal and informal processes is likely to be present. EAAP creates knowledge about the changes that a project will bring, uses this knowledge to inform decision-making on project design and viability, and produces these decisions. EAAP includes the enforcement and remediation mechanisms used to ensure projects state within the boundaries agreed in EAAP decisions.

EAAP produces a number of formal decisions, including the approval/licensing determination, but also other determinations such as those outlining conditions for the project, or selecting between alternative designs. There are flows of information about actors' positions on the project that might be made explicit as part of EAAP and may or may not influence project design.

It is useful to look at EAAP as a sequence of negotiations or dialogues between actors, and not simply as processes that create definite answers or unquestionable knowledge or decisions. Formal environmental approval decisions do not preclude conflict around an approved project. It has been documented that contestation continues to occur after an approval determination has been made. So actors will likely continue to negotiate project conditions through the life of the project. The EAAP process itself offers an opportunity to build mutual understanding and trust between actors.

2.2.5 Assessment criteria

The desirability of a project, from the perspective of each actor, is based on an analysis of the project's alignment with actors' values, aspirations and interests. From a formal regulatory perspective, project acceptability relies on alignment with formal policies and existing institutional arrangements such as environmental regulatory regimes. Regulators, governments, communities and proponents will put forward arguments on whether the project is desirable or acceptable from their perspective. An analysis process is implicit in articulating these arguments.

Each actor assesses whether a project is acceptable based on actor-specific criteria. Therefore the scope of analysis and assessment of project acceptability might include different criteria depending on each actor's interests. For example, some actors might prioritise environmental science criteria, while others might prefer financial or long-term livelihood criteria.

Core amongst assessment criteria are those that implicitly or explicitly inform formal EAAP. Explicit criteria such as those formally prescribed in regulations may or may not be aligned with the assessment criteria, values and interests of various actors (Bebbington and Bury, 2009b). Other assessment criteria can be implicit. These include the values of those who conduct formal

assessment, as they will govern how norms and regulations are interpreted, and how assessment criteria are implemented.

Criteria that are implicit or explicit in the formal assessment components of EAAP enable or constrain actors' capacity to influence project design and approval. Compatibility between the criteria of different actors might affect the scope for mutual understanding. Formal assessment criteria pre-empt the types of arguments and evidence that are understood as valid and relevant within formal EAAP and in doing so, constrain the interventions and arguments of actors within the EAAP. Therefore, formal assessment criteria can determine what concerns are heard. Compatibility between the implicit and explicit criteria embedded in formal assessment and the criteria of other actors influences the scope for dialogue, negotiation and mutual understanding, and the likelihood of conflict or tension in EAAP.

2.2.6 Conflict

Differing actor interests or unbalanced influence on project design and approval, in combination with historic or igniting factors can result in tensions or conflict within EAAP. Conflict can be a productive force in bringing about positive transformations, where negotiation avenues and principles are available and there is political will to resolve it. However, it is important to prevent violent, escalating conflict by providing resolution pathways and an environment conducive to conflict resolution.

Conflict is one of the avenues that might allow actors to influence EAAP. The EAAP might internalise or externalise conflict depending on the magnitude of the conflict and on whether the EAAP has dialogue and/or negotiation spaces, and open enough decision-making processes to deal with the conflict. Where conflict is externalised, it might motivate changes in institutions and power relations, including EAAP institutions themselves.

Conflict can emerge when there is seemingly difficult to reconcile divergence between ways of understanding, values, interests and incentives, which can in part result from historic or contemporary igniting factors. Understandings of a project and the changes it will introduce will be contested. So will be the decisions on project design and acceptability. A proponent might see a project as an opportunity to generate revenue and enter a promising mining region. A farmer living in the vicinity of the project might see it as a threat to family livelihoods. One of them might be more comfortable discussing the project in technical environmental terms, while the other might prefer to use local/traditional indicators of environmental quality or sustainability (see Bebbington and Bury 2009).

The precursors of conflict might lie in a combination of historic and igniting factors. Historic factors can be present in the context of institutions and power relations, in cultural or economic patterns, or in existing relationships between the actors involved. For example, International Alert refers to these factors as structural or root causes or their manifestations (*proximate causes*) (International Alert, 2007). Igniting factors might emerge from actions undertaken as part of, or in parallel to, EAAP but do not necessarily reflect systematic or established patterns. They might be a single event or decision. For example, International Alert terms these factors 'triggers' (see International Alert, 2007). Historic factors might include patterns of socio-economic exclusion, while igniting factors

refer to events such as a significant instance of miscommunication between a proponent and an affected community.

Conflict is one of the mechanisms that can allow actors to influence EAAP. Conflict can be dealt with within formal EAAP or it might be externalised, moving beyond the scope of formal EAAP. Whether conflict can be addressed within EAAP depends on existing relationships, actor willingness to resolve conflict, existing processes, and the magnitude and underlying causes of conflict. Where the underlying causes are not directly related to the project or cannot be addressed through changes to project design, or when actors cannot agree on avenues to deal with conflicting positions, conflict will likely be externalised. Externalised conflict might change existing institutional and power dynamics. Constructive confrontation on principles of engagement and values that a community considers meaningful can motivate actors to bring about institutional innovations (Bebbington and Bury, 2009a), including changes to existing EAAP institutions and processes.

Actors with limited formal scope to participate in EAAP might have wider opportunities to influence the process when conflict is externalised. The formal design of EAAP may or may not allocate roles to all interested or affected actors, but this does not preclude them from participating to influence the general understanding of the project, the decisions on project design and approval, and the processes that inform or formulate those decisions. Externalised conflict can give affected actors access to a wider scope of actor networks, resulting in access to a wider range of capabilities. For example, if conflict between proponents and local residents does not get addressed within the formal EAAP, it might take the form of protests that involve local or regional NGOs and civil society organisations, and even escalate to bring in international campaigners, be it organisations or individuals (such as class action specialists).

Seeing EAAP this way allows us to frame it as an iterative process, that is very context sensitive and malleable, and where various actors have influence regardless of whether they have formal roles in the regulatory EAAP. We outline this conceptual framework in Figure 2 and Box 1.

2.2.7 The Conceptual Framework in Summary

In Figure 2 we see all the elements of the framework. Conflict and Assessment Criteria are part of EAAP but are highlighted in the diagram to illustrate the significant role they play in EAAP. Dynamic contextual factors that interact with the EAAP, the project and actors appear in the framing circle.

Box 1. Conceptual framework to analyse the institutional and political dimensions of EAAP.

Context - a landscape of institutions and power relations provides a dynamic context for proposed extractive projects. Other dynamic contextual factors such as socio-economic, cultural, physical and environmental factors interact with EAAP.

Project design and resulting incentives – proposed extractive projects have consequences that may or may not be compatible with actors' values and interests. This creates incentives that motivate actors' positions and strategies in relation to the project.

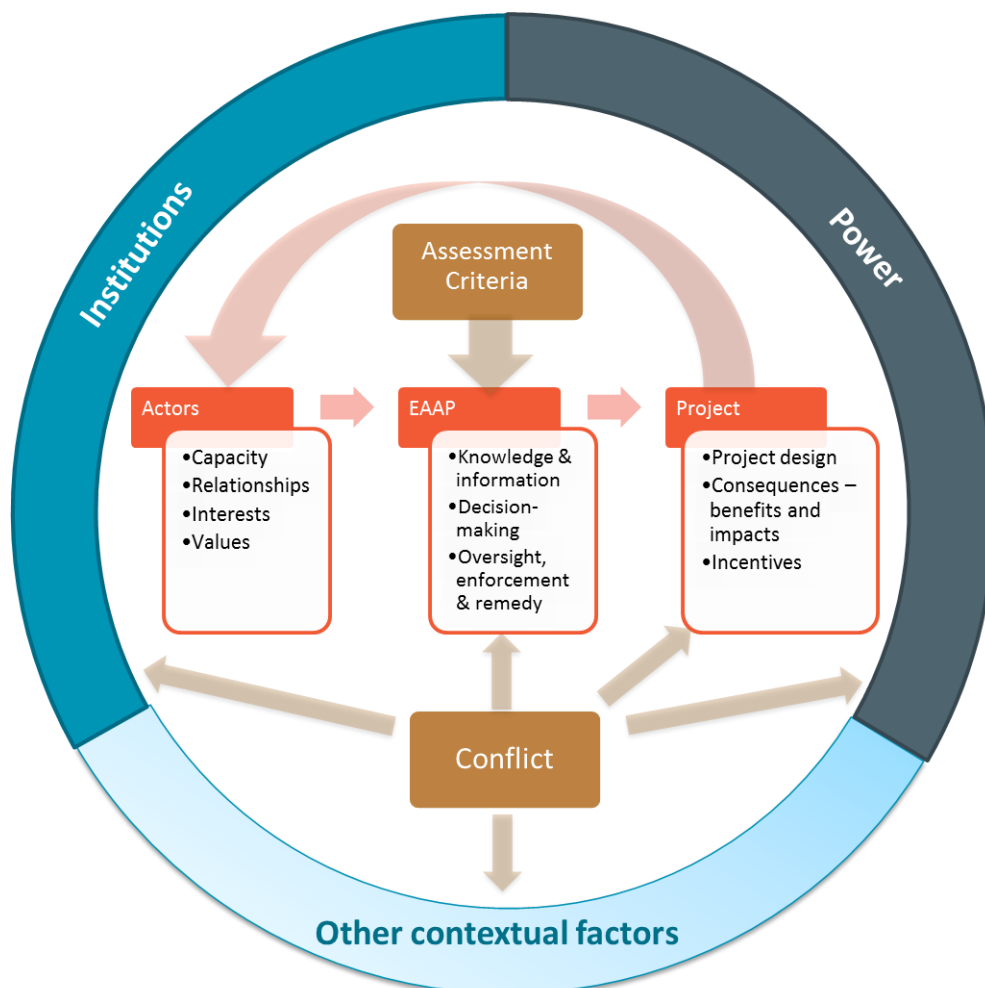
Actors – the project’s consequences will affect actors (people, groups or organisations), and others will be, by virtue of their formal roles, involved in EAAP. Through their actions they direct the progress of EAAP.

Environmental assessment and approval processes – through EAAP actors create knowledge about the project and seek to influence its design. In this process actors are constrained or enabled by their capacity and by institutional and power dynamics.

Assessment criteria – the assessment criteria for project acceptability can vary from actor to actor. Formal assessment criteria determine what concerns or views are taken into account. The compatibility of formal assessment criteria with actors’ values and interests is a determinant factor in the scope for conflict or mutual understanding in EAAP.

Conflict – differing actor interests or unbalanced influence on project design and approval can result in tensions or conflict. EAAP might internalise or externalise this conflict depending on the dimensions of the conflict and on whether EAAP has dialogue, negotiation spaces, and open enough decision-making processes to deal with the conflict. Where conflict is externalised, it might motivate changes in institutions and power relations, including EAAP institutions themselves.

Figure 2. Conceptual framework to analyse the institutional and political dimensions of EAAP.



2.3 EAAP and the institutional and political context

While there are few studies that deal directly with the political and institutional aspects of EAAP, many others that discuss aspects of EAAP or EIA provide useful insights on key factors such as participation, conflict and influence of EIA on decision-making amongst others. The literature on EIA, on participation in environmental decision making, and on institutional arrangements and sustainable development all offer relevant information. This literature discusses how political processes and power dynamics shape EAAP, the role of institutions in sustainable development, and the ways those involved in EAAP can take account of institutional and political factors. These include the implications of political and institutional factors on: the scope of impact assessment and dialogue around sustainable development, the preferred methods of enquiry, and the design and implementation of participation, deliberation and decision-making processes around impact assessment and project approval.

Discussions on project characteristics, power dynamics, capacity, time and resource availability, ideological and disciplinary differences between various actors, differences between knowledge systems, and conflict occur consistently throughout the literature.

2.3.1 The influence of institutional and political factors in EAAP

Institutional and political factors frame and affect the progress of EAAP in various ways. EAAP become political because they represent significant social transformations, attract the confluence of diverse views on those transformations and involve decision-makers immersed in networks of political institutions and relationships. EAAP depend directly and indirectly on institutions such as environmental regulations, concession-granting processes, land-tenure systems or social responsibility systems, all of which are shaped by political processes. Political and institutional factors might determine the preferred approach to impact assessment and to public participation, which affect EAAP's capacity to generate knowledge and dialogue around potential mining developments.

EAAP are political because they are part of social transformations that have significant social and political consequences (Howitt 1989, p. 154 in Lockie, 2001) and these consequences are in turn dependent on political and institutional factors. Tang et al. (2005, p. 22) assert the political nature of EIA based on its distributional consequences and state that *"[d]epending on how the process is structured – who prepares the reports, how the reports are reviewed, approved, and implemented, how information is disseminated and so on – EIA may create different distributional consequences"*.

Political factors can influence the design of impact appraisal methods, affecting appraisal results and decision-making. According to Owens et al (2004, p. 1953), it is possible for the general political climate and dominant discourses in a policy sector to favour certain kinds of analysis. Project proponents, who often finance impact assessment studies, might favour disciplinary approaches that are more compatible with the predominant disciplines of their organisations. Mining sector organisations might favour the 'rationalist' approach to appraisal. The interests of those in control of the appraisal stage will inform the choice of appraisal methods, in this sense Howitt (1989; cited in Lockie, 2001) has commented that in fear of resistance from affected communities, proponents often favour technocratic approaches at the expense of deliberative methods. Depending on the

political and interest alignment and the dependence relationship between regulatory institutions and the mining industry, regulatory institutions might also favour rationalist appraisal methods.

EAAP are political because they are embedded in a network of political institutions (Crawford and Ostrom, 1995 in Tang et al., 2005, p. 22) and processes such as those related to elections, governments at various territorial and natural resource management regimes. Our understanding of EAAP is incomplete if it does not include an understanding of its political context. This also applies to decision-making processes that are part of EAAP.

EAAP are political because around them converge multiple perspectives on how and whether a project should be implemented and on the consequences of the project. The transformations that a project can bring about affect actors with different values, interests, incentives and ideas of development. The perceived effects will vary from actor to actor. So will the positions that each actor can adopt in relation to the project (Craig, 1990, Gibson, 2006, O’Faircheallaigh, 1999, Tang et al., 2005). For example, Lockie (2001; p. 282, following Craig 1990) states that the issues raised in resource management conflicts are about:

“what sort of social and natural environment people want to live or work in, their livelihood aspirations, lifestyle goals, sense of cultural identity and aesthetic judgments. They are as much, if not more, for example, about what sorts of development will provide opportunities to enhance local lifestyles and traditions as about which development options may objectively create more employment or economic growth”.

Acknowledging the presence of these multiple perspectives, Palerm (2000) portrays impact assessment as a sequence of discourses where different actors make claims about the design, assessment process, effects and acceptability of the project. The conflict or contestation that can, and often does, occur as part of EAAP illustrates how multiple perspectives interact in the process and exemplify its political nature.

Decision makers are immersed in a network of political interests and institutions. Owens et al (2004, p. 293) comment that on EAAP "decisions reached are likely to depend more upon underlying interest, reflecting the norms and values of decision-makers who are usually operating within a political arena", while Leknes (2001) highlights that ‘political considerations’ are more likely to prevail at later stages (i.e. decision making stages) of EAAP.

EAAP are highly dependent on the make-up of institutions that are shaped by political processes and power dynamics. Institutions are important in determining the quality of development and resource management (Bebbington and Bury, 2009a). A number of studies have spoken of the role of institutions in these processes (Bebbington and Bury, 2009b, Kates and Parris, 2007, Young, 2002). Tang et al (2005) state that “environmental management structures and processes reflect the distribution of power in a political system” (p. 25). The powerful actors have wider scope than others in influencing the design of institutions directly involved in EAAP and the design of institutions that interact with EAAP such as broader environmental regulation (i.e. environmental regimes) and with processes of territorial organisation and consultation, as well as concession granting, to mention some.

Bebbington and Bury (2009a), provide an illustrative analysis of the role of institutions in the Peruvian case. They describe institutional limitations that present challenges for the sustainability of mining. At the time of their study these challenges included:

- conflict of interests in mining institutions because the Ministry of Energy and Mines (**MEM**) would grant mining concessions, promote mining investment, regulate social and environmental impacts and approve Environmental Impact Statements
- lack of alignment between land use and ecological zoning and the process of granting mining concessions
- no consent sought from civil society before the granting of usually large concessions occurring at the top of watersheds
- lack of opportunity for local actors to express their views on mineral exploration and exploitation as decision-making occurred in Lima.

Bebbington and Bury (2009a; p. 2) found the institutions of the time to “favour promotion of mining over its regulation or its synergy with local livelihoods and environment”. These institutional constraints contributed to conflict emerging, as mining brought uncertainty to landowners, there were conflicting understandings of land use, and there was a lack of trust in the information that authorities and environmental groups provided.

The above exemplifies how institutional barriers can block the flow of information in EAAP, limiting its scope to function as a dialogue and negotiation process. While Peru has since introduced some institutional reforms, Bebbington and Bury’s (2009) analysis illustrates how institutions can determine to a large extent the course that EAAP can take. The issue of lack of input from local actors is significant as it signals potential for local views to diverge from the formal determinations produced in EAAP and for these differences to remain unresolved. If powers are concentrated on one national authority and its decisions are disconnected from land and ecological zoning decisions, this increases the chances of national planning around mining to occur divorced of regional or local social, economic and environmental priorities.

Public participation in EAAP is another dimension where political and institutional factors play an important role. As O’Faircheallaigh (2010) points out, most authors see participation as beneficial. For example, Doelle and Sinclair (2006 p. 186) state that “much has been written on the importance and benefits of public participation and the proposition is well established”. Arguments in favour of participation include that it opens up processes, allows for social and institutional learning, can help enrich knowledge and reach better informed solutions and is a vehicle to validate outcomes and processes (Sinclair et al., 2009, Doelle and Sinclair, 2006). Doelle and Sinclair (2006, p. 188) state that planning and approval processes that consider all affected parties equally and fairly are more likely to contribute to sustainability than processes that take a more narrow focus and concentrate on mitigating negative impacts of set project designs. Whether participation is effective depends on a number of political and institutional factors (see Castillo and Avila, 2008). Participation needs to be context sensitive (Palerm, 2000), designed consistently with its purpose and relation with decision-making, supported by institutional arrangements and political will, and implemented by actors with the capacity to bring it to fruition (Chávez and Bernal, 2008, Gibson, 2006, O’Faircheallaigh, 2010). All of these depend on political and institutional aspects such as institutional capacity in the government, industry and civil society sectors; on the institutionalised processes of decision making

around mining EAAP; and on the quality of existing relationships between the actors involved in participation processes.

The political and institutional environment can enable or constrain actor's capacity to have a constructive and effective involvement in EAAP. Formal components of EAAP may or may not support involvement of various actors, either by precluding it or by not including it in established processes. Assessment, participation and decision-making processes can be more or less accessible to various actors depending on the type of knowledge and communication they favour and how these interact with the particular social, economic and political limitations and possibilities of each actor. These limitations and possibilities emerge from existing institutions and political processes. It is important to identify not only the institutional and political barriers to effective EAAP but also the types of institutions that would in fact promote trust building and enable constructive dialogue on sustainable development. For example, capacity to participate in and understand EAAP depends on factors such as levels of education and health, access to transport, financial resources and time, all of which depend at least in part on how relevant state, civil society and market institutions work.

2.4 Strengthening EAAP to support sustainable development taking account of political and institutional factors

Based on other studies on assessment and approval processes, below we identify some of the lessons from other experiences. We present these lessons here as principles that can be considered to inform the design and implementation EAAP, so that it can respond to enabling and constraining political and institutional factors. These are general principles that may or may not be applicable to different contexts and specific cases. In the case study section we will reflect on the applicability of the principles proposed to each of the cases we will analyse.

We need to begin by asking ourselves what is considered a successful EAAP. Jay and Jones et al. (2007) state that to judge the success of impact assessment we need to refer back to its foundational purposes and to those described in regulation. Others have explored the question of what constitutes a successful EAAP, but there is no definitive answer and some authors recommend that more research be conducted on the subject.

Based on the scope of this work which is aiding the design of EAAP that are inclusive and supportive of sustainable development, and on the practical difficulty that represents attempting to assess effectiveness in EAAP, we see a successful EAAP as one that allows constructive multi-stakeholder dialogue about sustainable development. We will concentrate on how EAAP can be designed to enable this dialogue a not on the relationship between EAAP and final outcomes. Conducting assessment of the sustainability outcomes of various EAAP processes is not within the scope of this work.

Based on a review of the literature, 'principles' that can inform the design of EAAP so that it takes account of political and institutional constraints and opportunities (See Box 2) cover:

- relationship building through early dialogue on sustainable development
- elected decision-maker commitment
- integration of planning, negotiation and decision making processes within EAAP

- social science integration
- incentives
- capacity
- process adaptability
- dialogue between different knowledge systems
- integration of EAAP with other relevant planning and decision-making processes.

Other authors have discussed how addressing most of these dimensions can support a process that is more conducive of dialogue and of wider consideration of the sustainable development implications of projects (see for example Gibson, 2006, Doelle and Sinclair, 2006, Castillo and Avila, 2008, Owens et al., 2004, Jay et al., 2007). For example, Gibson (2006) in discussing the negotiations around planning and approval for the Voisey Bay case in Canada – which involved long term multi-stakeholder dialogue and a significant level of contestation – highlights aspects that are important in creating a context conducive to assessment, dialogue and decision-making processes centred on sustainability. This dialogue is a necessary condition to foster a relationship between the actors involved, allowing them to engage in the broad range of long-term benefits and to balance power disparities.

Box 2. Principles that can inform the design and implementation of EAAP.

- Enable early, broad-based dialogue on the sustainable development contribution of the project: this assist actors in understanding the positions, values and interests of other actors, and may allow for relationship and trust building.
- Seek commitment from elected decision-makers to ensure that there is political commitment to enforcing EAAP and its outcomes.
- Integrate dialogue, negotiation, consent, impact assessment and approval processes: these process hold many synergies and where possible could be connected. Consent needs to be built on an informed understanding of the proposed project, and based on balancing not only impacts but benefits, hence the importance of integrating negotiation to other processes. Approval needs to take account of consent and negotiation processes.
- Fully integrate social science into all stages of EAAP: to ensure that actors have an informed understanding of the social ramifications of the proposed project and are supported in interacting with different knowledge systems and communication styles.
- Introduce checks and balances to compensate for perverse incentives that might be present within existing institutions such as conflicts of interests or regulatory capture.
- Support capacity building and address capacity unbalances amongst various actors to ensure that the process is as inclusive as possible.
- Implement flexible public participation mechanisms with decision-making and trust-building in mind: participation processes need to be designed based on the impact they will have on decision-making, but are also a good opportunity for trust building.

- Design institutional arrangements to allow dialogue across different knowledge systems: proponents, governments at various levels, and different sectors of society might operate within a range of knowledge systems that need to be acknowledged within the EAAP.
- Integrate EAAP with natural resource management strategies and initiatives at regional levels: regional water management or territorial organisation have critical links to EAAP so it is important to connect these processes. EAAP needs to build on existing natural resource management and planning structures and decisions.

2.4.1 Enable early, broad-based dialogue on the sustainability contribution of the project

Impact assessment tends to occur late in the design of a project, when many crucial decisions, with significant social, economic and environmental implications, have already been made (Devlin and Yap, 2008). However, the political nature of EAAP requires that deliberations on the sustainable development contribution of the project commence early. Furthermore, the specific needs of the Peruvian context require that companies accept a role as development agents and define this role in a participatory fashion (Castillo and Avila, 2008). This can allow the proponent to anticipate contentious issues and improve the project from a sustainable development perspective (Doelle and Sinclair, 2006).

Key aspects to take into account in designing processes to enable dialogue include:

- appropriate timing (i.e. commencing early)
- appropriate participation methods
- expanding the focus from impact mitigation to benefit negotiation
- considering enabling factors present within the legal framework.

An early start to the dialogue provides more time for actors to build relationships. If conflict emerges relationships already exists that can be drawn upon. Early dialogue also allows actors the time to be comfortable with their understanding of the proposed project and to articulate decisions or positions.

As previously discussed, appropriate participation methods might vary according to the context. In establishing a dialogue on projects in indigenous lands, the concept of Free Prior and Informed Consent (**FPIC**) provides some of the parameters on what appropriate dialogue should encompass (Voss and Greenspan, 2012). *“Free, prior and informed consent recognizes indigenous peoples’ inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent”* (United Nations, 2004). The underlying principles of FPIC include information and consultation on proposed initiatives and their impacts, meaningful participation, and the involvement of representative institutions (United Nations, 2004). Implementing FPIC also requires a number of accompanying measures (United Nations, 2004). The design of processes involving wider populations can rely on modes of participation such as deliberative democracy, defined as “decision-making by discussion among free and equal citizens” (Elster, 1998, p. 1 cited in Hartz-Karp and Pope, 2011). Deliberative democracy encompasses principles such as

representativeness, to allow broader public interest to be taken into account; deliberativeness, to allow actors to understand other perspectives; influence in decision-making and trust building (Hartz-Karp and Pope, 2011).

Discussion on the project's contribution to sustainable development requires discourse to shift from mere impact mitigation to a negotiation process about potential benefits. Such negotiation allows the project design to account for regional and local community aspirations and not only project impact and mitigation measures. For example, Gibson (2006, p. 341) explains that the 'contribution to sustainability test' applied in the Voisey Bay case in Canada encompassed the project's capacity to contribute to long-term community livelihoods in line with community aspirations. He states that the panel in charge of evaluating the proposed Voisey Bay mine and mill "urged the decision-making authorities to ensure that the life span of the project was sufficient to permit establishment of lasting benefits".

Legal and regulatory frameworks are one of the strongest drivers of negotiation processes around proposed extractive projects (Brereton et al., 2011, O'Faircheallaigh, 2000). Brereton et al. (2011) found that a key driver for agreement making in a number of jurisdictions is the presence of enabling regulatory frameworks. O'Faircheallaigh (2000), in the context of negotiations between developers and Australian indigenous peoples, found that corporate policy is a much weaker basis to pursue land-owner interests than are legal instruments.

2.4.2 Seek commitment from elected decision-makers

O'Faircheallaigh (2011) and Gibson (2006) have provided examples that illustrate how important political commitment is in guaranteeing that what is learned in appraisal and negotiation processes ultimately affects EAAP outcomes. Owens et al. (2004, p. 1952) state that if elected decision-makers are not involved in the process, its outputs may lack political backing. For EAAP to successfully embed sustainable development principles, it is necessary to have the support of elected decision-makers. Project appraisal experience in the European Union suggests that early involvement of elected decision-makers is more effective in that context (Owens et al., 2004). However, Van Eeten (2001, p. 424) warns that involvement that occurs too early might turn assessment processes into political performances that only reinforce existing positions. The most appropriate time and method for involvement of elected decision-makers is likely context dependent.

Key questions to consider in EAAP design and implementation include:

- When and how to involve elected-decision makers?
- What incentives are necessary to guarantee elected decision-maker commitment?

2.4.3 Integrate dialogue, negotiation, consent, impact assessment and approval processes

Experiences such as Voisey Bay (Gibson 2006) illustrate that in practice, the process of understanding and reaching agreements around project benefits, impacts and required mitigation responses is difficult to separate from community consent and regulatory approval processes. These processes are highly interdependent. To achieve informed consent and support from communities, proponents and governments can be better placed if they openly provide accurate information on project impacts and benefits. For that information to be accurate, the affected actors need to have

participated to inform the assessment processes and given input into project design, in particular with regard to expected benefits and impacts on livelihoods. If formal approval processes are divorced from community negotiation and consent, formal approval will most likely lack legitimacy and rest on an incomplete understanding of the project.

An important design question is: how can knowledge generation, negotiation of benefits and formal approval be effectively integrated in different contexts subject to varying cultural, governance, political, regulatory and institutional realities?

2.4.4 Fully integrate social science into all stages of the process

In order for EAAP to effectively integrate political and institutional considerations it is important that it be informed by robust social science. Project planning and design, impact assessment and appraisal, negotiation and decision-making, all need a sound understanding of the social context. Social impact assessment including anthropological and economic research can help canvas issues to explore with communities in participatory EIA processes (O'Faircheallaigh, 2000). Social science can serve to visualise the values and interests of various actors, and aid dialogue and negotiation as part of assessment processes (Lockie, 2001).

Australia offers some examples of processes where social science has been integrated in impact assessment and in negotiation processes around resource developments. Kahn and O'Faircheallaigh (2010) describe the process followed as part of the strategic impact assessment of a gas development in the Kimberley region in Australia. The process included an Aboriginal Social Impact Assessment as a basis for Aboriginal input into statutory assessment processes. Another example is the 'Cape York Model', used for negotiations between Indigenous people in the Cape York Peninsula in the north of Queensland, and developers. The Cape York Model brought together anthropological work, economic, social and environmental impact assessment to inform a larger negotiation process (O'Faircheallaigh, 2000).

See also 2.4.6 Support capacity building and address capacity unbalances and 2.4.8 Design institutional arrangements to allow dialogue across different knowledge systems.

2.4.5 Introduce checks and balances to compensate for perverse incentives

The design of EAAP needs to build mechanisms to counteract any significant incentives to exclude sustainable development considerations in EAAP. EAAP design needs to prevent, wherever possible, incentives for economic or political power to be used to excessively manipulate assessment and decision-making processes (Owens et al., 2004).

Common incentives described in the literature include conflict of interest and regulatory 'capture' (Bebbington and Bury, 2009a, Tang et al., 2005). When there is insufficient separation of powers amongst regulatory authorities involved in impact assessment, consultation and decision-making, conflicts of interest might emerge, deterring regulators from effectively applying sustainable development principles. The ability of governments, proponents, industry associations, or other groups to capture regulatory agencies by applying political pressure, or through other mechanisms, can also compromise agency capacity to prioritise sustainable development principles.

Within proponents, impact assessors and political institutions there can also be incentives that affect the scope for sustainable development focus in EAAP. From the perspective of proponents, the EAAP

occurs at a critical time in the financial life-cycle of a project. This can lead to attempts to ‘cut corners’ or accelerate assessment or dialogue processes to an unrealistic phase. Significant costs would have occurred in the process of locating an ore body and conducting feasibility studies and the EIA itself can be a costly process. These together with cost of capital considerations might lead to a sense of extreme urgency amongst proponent personnel. This may be compounded with other pressures such as those associated with commodity price cycles. For example, a proponent might wish to secure fast approval while commodity prices are favourable. Furthermore, one of the most obvious perverse incentives in EAAP processes is the financial dependence relationship between the proponent and impact assessment consultants, which can compromise independence in impact assessment.

In designing and undertaking EAAP processes the actors involved need to be cognisant of these incentives and provide sufficient ‘checks and balances’. In other words, it is necessary to introduce additional incentives and/or oversight mechanisms to keep perverse incentives in check. Appropriate checks and balances will depend on the context. They can include: separating regulatory powers to allow for a healthy competition of priorities, without precluding dialogue between regulatory or planning agencies; involving external experts to assist in overseeing impact assessment or facilitating multi-stakeholder dialogue (Gibson, 2006, Glasson and Salvador, 2000); or designing public participation as a check and balance avenue (Palerm, 2000).

Key questions to consider in EAAP design include:

- What are the most significant perverse incentives in existing EAAP designs?
- What checks and balances could be applied that are context-appropriate?

2.4.6 Support capacity building and address capacity unbalances

The literature on EAAP highlights the issue of actor capacity as determinant in the success of EAAP (Chávez and Bernal, 2008, El-Fadl and El-Fadel, 2004, Gibson, 2006, Glasson and Salvador, 2000, Jay et al., 2007, Lockie, 2001). Here we understand capacity as a combination of time, resources, competence and an enabling organisational and institutional environment.

The capacity of governments, proponents, civil society organisations and community members to engage in EAAP affects the process in different ways. Governments need the capacity to implement the technical and deliberative aspects of EAAP (Owens et al., 2004). Where there is limited government capacity to implement existing procedures, a gap between procedure and practice develops (Glasson and Salvador, 2000) and this depletes actors’ trust in institutions. This is particularly the case for regulatory institutions. For example, formal regulations may require the regulator to conduct technical assessment of environmental impact statements. However, in practice the regulator may not have sufficiently qualified personnel to scrutinise proponent assessment outputs. When exposed, this gap between procedure and practice can compromise civil society trust in regulatory institutions. Similarly, if formal regulations promise participatory processes but authorities do not have the capacity to conduct them or to use their results to inform decision-making, participation processes will likely be seen as tokenistic (Hartz-Karp, 2011).

Proponent capacity can enable or constrain EAAP focus on sustainable development. When project design and viability are highly contested, proponents need the ability to understand the perspectives of other actors. For this, the proponent needs to have strong competence in social sciences and

natural resource management, and ability to work effectively with various stakeholders and to engage in dialogue and in negotiation with them.

For civil society organisations and community members to participate effectively in EAAP, the process needs to offer possibilities to address any capacity gaps (for example see Castillo and Avila, 2008). It might be necessary to support people from non-technical backgrounds in understanding scientific perspectives on environmental processes and data, and/or in articulating their own perspectives on the same environmental processes. Often environmental organisations serve to address technical capacity gaps within civil society, but support might none the less still be necessary.

Overall, EAAP needs to allow spaces for various communication styles and knowledge systems to interact effectively. The process needs to involve personnel with the expertise to negotiate any differences, and appropriate mechanisms to address capacity gaps where needed (Owens et al., 2004). Cases such as Voisey Bay in Canada and Cape York negotiations in Australia, illustrate the importance of involving external expertise to help actors from multiple backgrounds negotiate their perspectives (Gibson, 2006, Kahn and O'Faircheallaigh, 2010, O'Faircheallaigh, 2000).

See also 2.4.8 Design institutional arrangements to allow dialogue across different knowledge systems.

2.4.7 Implement flexible and inclusive public participation mechanisms with decision-making and trust building in mind

While participation might add to the completion timelines of EAAP it might also lead to more durable outcomes. However, participation needs to be judged on its merits for the specific purpose (O'Faircheallaigh, 2010), considering the extent of influence that participants will have in decision-making processes (Hartz-Karp, 2011, O'Faircheallaigh, 2010) and it needs to allow enough flexibility in the process to respond to a changing context (see for example Castillo and Avila, 2008) as well as vehicles to align with citizens' different gender, linguistic or other needs (see Castillo and Sorias, 2011, for a discussion on gender aspects of participation in the mining sector in Latin America).

According to Delvin and Yap (2008) the evidence indicates that contestation continues to occur after approval decisions are made. Therefore, from the perspective of governments and proponents, participation mechanisms designed to accompany the project throughout its life-cycle can offer ongoing capability to prevent and address conflict by building and maintaining relationships and feedback loops between all actors. Participation mechanisms will likely be negotiated in the public arena and therefore they need to be designed with flexibility in mind. It is possible for the public's response to lead to new participation avenues. As O'Faircheallaigh (2010) states:

"[...] the dynamic and political nature of public participation [...] involves inherent tensions between the desire of public officials to keep control over decisions; their need for public involvement; and the agency of the public in responding to opportunities for participation, in some cases by circumventing decision making processes created by public officials and legislators." (p. 25)

O'Faircheallaigh (2010) maintains that while most of the literature on public participation in environmental decision-making advocates that participation is inherently good, its merits need to be

judged on the basis of how it can serve the purpose it is designed for (see also Baldwin and Twyford, 2007). He provides a critique of existing hierarchies and classifications of public participation mechanisms, highlighting that some of these hierarchies make assumptions on the merits of various modes of participation without considering the purpose or context of participation.

A key parameter to consider is the influence that participants can have on decision-making (Hartz-Karp, 2011, O'Faircheallaigh, 2010). The possibility of influencing decision-making can be a determinant factor in people's decision on whether to participate. Limited scope for influence in decision making can lead to withdrawal from public participation or to actions aimed at opening up decision making processes (O'Faircheallaigh, 2011), and it has been one of the criticisms of traditional community engagement (Hartz-Karp, 2011).

With clarity on purpose, communication around participation can deliver a consistent message to participating audiences on the bearing that their input will have on decision-making. This is not only transparent, but also serves to maintain realistic expectations on participation processes. Castillo and Avila (2008) have argued that early in the process there needs to be an agreement between relevant stakeholders on what participation will encompass and what it will aim for. Furthermore, these authors found that to implement effective participation, it is necessary amongst others to:

- build local and regional capacity amongst organisations and residents so that they can exercise the rights and responsibilities attached to participation, and
- design participation so as to strengthen institutional networks instead of weakening them, as the latter has emerged in some cases of mining EAAPs.

2.4.8 Design institutional arrangements to allow dialogue across different knowledge systems

The multiple actors involved in EAAP bring different perspectives on the project and are likely to operate within different knowledge systems (Bebbington and Bury, 2009a). EAAP needs to allow space for different knowledge systems to interact to open room for negotiation and understanding. It is necessary for EAAP to provide spaces and vehicles so that:

- different perspectives, regardless of whether they are based on 'technical' understandings or on traditional knowledge (Bebbington and Bury, 2009a), have a space in the dialogue process
- the position of each actor can be conveyed in ways that other actors, functioning under alternative knowledge systems, can make sense of
- overall understanding of issues related to the project can be based on input from multiple knowledge systems
- there is information available in an appropriate format to support actors using different knowledge systems in articulating their positions.

Bebbington and Bury (2009a) found that this principle is important to local sustainability and serves to balance power and information asymmetries amongst actors, these authors articulate this clearly in relation to the Peruvian case:

“As mining expands, modern knowledge systems responding to national and international objectives encounter livelihood-based knowledge grounded in local objectives. These knowledge systems have distinct criteria of credibility and legitimacy, and distinct normative

conceptions of how things should be. Managing the boundaries between these systems is essential for local sustainability, and is a particular challenge given that some actors involved possess far more information and power than others.” (p. 1-2)

2.4.9 Integrate EAAP with natural resource management strategies and initiatives at regional and national levels

Bebbington and Bury (2009a), referring to the case of Peru, have discussed the need to create connections between planning and deliberation processes associated to local livelihoods with those associated to mining developments, concessions granting and impact assessment. This integrative approach is advocated in much of the EIA literature as supportive of sustainable development (Bhatt and Khanal, 2011, Brugmann, 1996, ICMM, 2008, Jay et al., 2007, Saeed et al., 2012) and is encouraged in the Seven Questions to Sustainability Framework (IISD, 2002), which provides a framework to assess the of contribution mineral extraction projects to sustainable development.

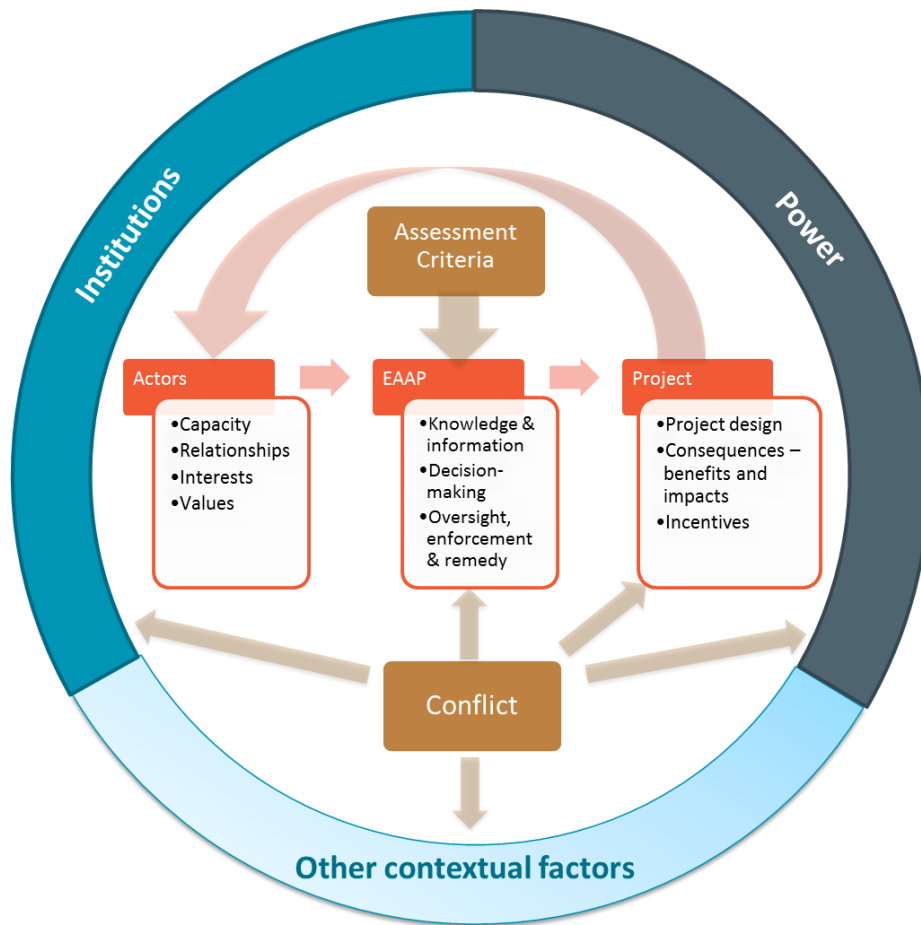
This integrative perspective can be beneficial during the impact assessment process and beyond. Proponent engagement and planning strategies overall, need to be cognisant and integrated with regional and national planning processes relevant to sustainable development.

3. Analysis of the Context for Mining in Peru and Case Studies analysis

This section analyses the context for the EAAP of Conga and Tia Maria and builds on this contextual analysis to present the two case studies. It aims to identify and analyse political and institutional factors present in the Peruvian context as well as those that occur in each of the cases as a result of specific processes, actors, or the projects themselves. In section 3a, we present an analysis the context of the cases, in particular institutional frameworks, common to the two case studies, as there is significant contextual commonality given that both cases take place within the same national regulatory framework. This analysis will provide a platform for both cases studies. Later in sections 3.b.1 and 3.b.2 we present the case studies of Conga and Tia Maria respectively. Each case study will build on the conclusions of section 3a (context), provide brief discussion of specific regional contexts, institutions and actors, and analyse the case based on the conceptual framework (see below and Box 1. Conceptual framework to analyse the institutional and political dimensions of EAAP) and design principles introduced in section 2 (see

Box 2. Principles that can inform the design and implementation of .). As we present information and analysis we will indicate in the diagram what element of the conceptual framework we are visiting.

Figure 3. Conceptual framework.



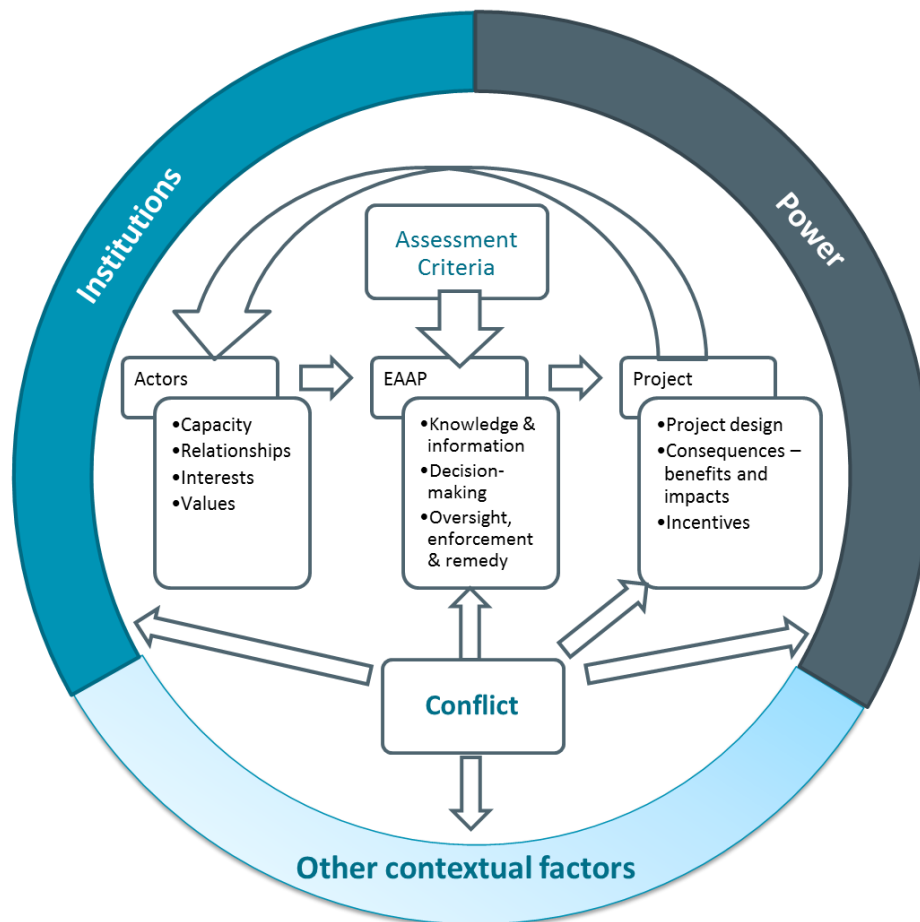
3.a. Analysis of the Context for Mining in Peru

This section begins with brief background on the Republic of Peru (section a.1), its mining history and the contemporary dynamics of the sector (section a.2). Mining has been historically significant in Peru and for this reason we start with a brief discussion of its historic socio-economic role. Later we touch on the increasing trend in conflict around mining activities and refer to contemporary discourses on mining and sustainable development in Peru.

A discussion of the national institutional context for mining follows (section a.3). We provide an overview of the key legislation and institutions that regulate the mining sector, which are mainly national institutions, and analyse the overall landscape of incentives that these institutions configure. After this we discuss civil society participation in environmental management, provide some comments on civil society organizations, and discuss the conflict management infrastructure and decentralization processes. At the end we provide a brief summary and some concluding ideas (section a.4), which will introduce the analysis of the Minas Conga and Tia Maria Case studies.

Figure 4 indicates the elements of the conceptual framework that this section addresses.

Figure 4. Conceptual framework – Context.



The key messages of this section revolve around the many historic and contemporary factors that have contributed to fuelling conflict around mining projects in Peru. There are a number of institutional and social factors that interact at various levels. These factors include:

- perverse incentives and capacity issues affecting the institutions in charge of mining EAAP due to Peru's contemporary and historic economic dependence on the mining sector
- lack of credibility of the State apparatus and a perception that it colludes with industry
- limited state presence in regions with high poverty and deprivation levels
- social hierarchy and power dynamics that have historically been discriminatory
- the traumatic legacy of the violence of the late 20th century in Peru (poverty, human rights violations, moral damage and distrust)
- increasing civil society awareness and dissatisfaction due to negative social and environmental legacies from mining
- limited evidence of extractive industry contribution to sustainable development despite this contribution being a core element of industry and National Government discourses on mining
- capacity, transparency, accessibility and scope issues affecting in citizen access to participation, information and remedy on environmental issues

- a conflict management infrastructure that is not yet effective
- competition for canon moneys at the local and regional levels
- the effects of a nascent decentralisation process, aggravated by capacity issues amongst government, industry and civil society actors.

a.1 Peru (*Republica del Perú*)

Peru is, by area, the third largest country in South America. It has three main geographic regions: a small arid coastal region, the central Andes mountain ranges and the Amazon basin in the east. Peru has a population of approximately 29.8 million people (ECLAC, 2011) that has transformed from predominantly rural to predominantly urban (INEI, 2007). Its population is largely indigenous (Peasant/Native community) with 45% of residents identifying as Amerindian. People of mixed European and Amerindian ancestry account for 37% of the population and an additional 15% are of European decent (U.S Stats., 2010). Spanish is the principal language and Roman Catholic the main religion.

Peru is the seventh largest economy of Latin America, and one of the main players in the mineral extraction sector. During 2011, key economic activities by GDP contribution included agriculture, fishing, and mining and oil (BCRP, 2012). In spite of experiencing growth contraction during 2010 (INEI, 2010), mining has remained one of the biggest contributors to the national GDP (BCRP, 2012). Key commodities include iron ore, gold, copper, lead, silver, zinc and molybdenum. Agricultural production consists mainly of mango, palm oil, cacao, asparagus, rice, banana, alfalfa and potato. While the fishing industry production has decreased, it still remains an important economic activity (INEI, 2010).

Despite a significant drop in the proportion of people living below the poverty line in the last decade, rural communities (and in particular women) continue to more significantly affected than the rest of the population (Oxfam America, 2009). The state has limited presence in regions with high poverty and deprivation levels (Castillo and Avila, 2008). In addition, it has been argued that regulatory frameworks have not evolved to a point where they can provide the necessary conditions for mining to contribute to sustainable development (Castillo and Avila, 2008).

a.2 Mining in Peru

In order to understand the complex dynamics around mining EAAP, it is important to consider the historic significance of mining in Peru and its key contemporary challenges. Mining has been and continues to be a significant activity in the country, but it is increasingly affected by conflict and its sustainable development credentials remain under question. The country's historic reliance on mining has compromised the development of a sound regulatory framework for the mining sector. To date Peru has not yet built the institutional architecture to allow it to transform its mining wealth into sustainable development.

This section aims at providing a brief overview of the historic and contemporary role of the Peruvian mining industry. We briefly discuss how mining activity has changed throughout history until modern day Peru, and provide an overview of contemporary mining conflicts as well as of discourses on mining and sustainable development.

Brief history of mining in Peru

In 1491, the Inca was the greatest empire on earth (Mann, 2006). During their reign, the Incas would mine, smelter and work precious metals including silver and gold to adorn their courts and sacred sites (Bebbington and et al., 2007). The Inca Empire lasted just about a hundred years, being put to an end by the Spanish conquest in the sixteenth century. The conquistadors found a densely populated territory of between 6 and 14 million (McEwan, 2006)). They used a variety of methods to control and organize labour to exploit the silver and mercury mines in Peru and Bolivia. They established institutions such as the *encomienda*, the *mita*, the *reducciones* and the *trajin*, all of them designed to (Acemoglu and Robinson, 2012):

“(…) force indigenous people’s living standards down to a subsistence level and thus extract all income in excess of this for the Spaniards. This was achieved by expropriating their land, forcing them to work, offering low wages for labour services, imposing high taxes, and charging high prices for goods that were not even voluntarily bought.”

The exploitation and abuse of native people at this time in history is considered to have nurtured a legacy of ‘deeply rooted resentment’ that continues to present times (Bebbington and et al., 2007). A post-conquest census conducted at 1571 shows a decimated population of less than 1.5 million, as a result of epidemics and the harsh working regime (Rowe, 1946).

After Peru became an independent state in 1824, metal mining continued to be its key economic activity. Today Peru is a leading producer of minerals¹. The mining sector’s share in exports is 62%, and 32% in total tax collection (Sociedad Nacional de Minería Petróleo y Energía, 2012). The Peruvian government expects to attract about US\$ 53.4 billion in mining investments during the next decade (BNamericas, 2012). The National Government’s fiscal and political success is tied to the mining royalties to be collected.

Large mining projects are economic enclaves to a large extent. No effective industrial policy to transfer or develop technology in/for the mining sector or to diversify the economy has consolidated so far in Peru. In the absence of a policy of using natural resource rents to foster research, technology and innovation and build human capital, royalty transfers to local communities create a regionalized form of the so called ‘Dutch disease’: through different transmission channels, sudden income inflows harm tradable production. Additionally, weak institutions and lack of a strong local taxation base lead to poor public spending and corruption.

Though Peru has made efforts to improve the quality of social services delivery in rural areas and combat racial and social inequalities, its economy and politics continue to be of the *extractive* type: that is, the legal arrangements place political power in the hands of a small elite, natural resource rents are not transformed into knowledge or productive assets, property rights are poorly delineated and enforced, an innovation is deterred. Significant mining revenues have been extracted from regions with otherwise low incomes (Castillo and Avila 2008). The discriminatory ‘class system’

¹ Peru is the world’s second largest producer of copper, silver and zinc; the third largest producer of tin; the fourth largest producer of lead and molybdenum; and the sixth largest producer of gold (Sociedad Nacional de Minería, Petróleo y Energía, 2012).

imposed by the Spanish during the conquest continues to influence the state apparatus today (Arellano-Yanguas, 2008), fostering inequitable development and placing Andean and Amazonian native populations at the bottom of the class structure (Munarriz, 2008).

Because of Peru's economy dependence on mineral exports and issues of institutional weakness, commodity price volatility translates into political instability, which exacerbates the basic situation depicted by Otto et al. (2006) that is common worldwide: *"In matters of mining taxation, governments rarely believe that companies pay too much tax; companies rarely believe that they pay too little tax; and citizens rarely believe that they actually see tangible benefits from the taxes that are paid."*

Peru has had to reinforce the stability agreements made in the 1990s to isolate mining company revenues from the impossibility of political commitment: anti-market and pro-market, despotic and democratic governments have alternated in power during the past half century, bringing a noisy environment for foreign investment. These stability agreements are intended to protect investors from changes in tax regime, and legal and administrative procedures. In the context of higher competition with other countries to attract foreign investors, Peru has introduced additional incentives to attract foreign direct investment in mining (accelerated asset depreciation, profit tax deduction of public infrastructure investments). These measures bring a bias favouring extraction speed over other economic, environmental, and social issues.

Recent changes in *government take* look progressive, but whether they will be lasting remains to be seen. Once President Humala took office in the second semester of 2011, he changed the old royalty scheme to a sliding rule charging between 4-9% on a company's operating margin. Thus, royalty rates have increased but are now levied on profitability, which mirrors the Chilean approach. The change was justified to increase social spending from miners and will only apply to those who did not sign tax stability agreements with the Peruvian government in the 90s (Aquino et al., 2011).

Mining conflicts

Conflicts between communities and mining projects are becoming more frequent in Peru, supported by the historical factors just discussed and a number of contemporary igniting factors. Present day factors include:

- diverging positions on the appropriate development model for Peru (Lesova, 2012)
- limited state presence in regions with high poverty and deprivation levels (Castillo and Avila, 2008)
- poverty, social exclusion and vulnerability
- significant rents being extracted through mining from low income regions (Castillo and Avila, 2008)
- limited evidence that mining has contributed to inclusive development
- frustration due to the ineffective use of funds assigned to sustainable development and poverty alleviation (World Bank, 2011);
- the fact that mining in new regions meets negative perceptions due to environmental and social legacies (World Bank, 2005)
- an erratic and weak regulation system (Bebbington and Bury, 2009b) that lacks civil society trust (Consejo de Ministros del Peru, 2012)
- limited institutional capacity for conflict resolution (Office of the Ombudsman, 2012).

The Peruvian Ombudsman Office has tracked the incidence of social conflict related to mining operations over time. In 2009, the incidence of conflict was recorded at 250 of which 125 were socio-environmental in kind and 89 related to mining (Office of the Ombudsmen, 2009). Three years later, the incidence of conflict has slightly increased with 253 recorded conflicts of which 129 were socio-environmental in kind (Office of the Ombudsman, 2012).

Increasing social conflicts meet limited institutional and political capacity for conflict resolution leading to loss of life and injury, which in turn contributes to polarising conflicts.

The Conga and Tía María² social conflicts epitomize the economic and political interests at stake in Peru's mining sector. The mining conflicts may be part of a larger dispute among political forces about the development model of the country. Marketwatch (Lesova, 2012) reports in that regard:

"On a recent July evening in Lima, Miguel Santillana drew a map of Peru and recounted its history since the Spanish defeated the Incas at the battle of Cajamarca in 1532, plundering their gold and bringing devastating smallpox to the Andes."

"Santillana, an analyst at the Peru Institute who has also worked as a consultant for foreign mining companies, said there was bad blood from the beginning between the local community and the Yanacocha mine operators, as people in Cajamarca tend to associate mining with abuse of resources."

"The current conflict over Minas Conga has much more to do with politics than environmental concerns and it's an effort to redefine the country's economic model, according to Santillana, who believes that political leaders in Cajamarca want to weaken Humala and redirect Peru toward left-wing policies like those pursued by Ecuador, Venezuela and Bolivia."

The historical factors discussed previously concur on communities that have endured centuries-long social conflict in which economic basis and political incentives are entrenched in a vicious circle. Indigenous/peasant communities in the high Andes remain poor, physically isolated and socially excluded. Current small-scale agriculture in high-altitude Peru is much more vulnerable than it used to be during pre-colonial times. The exchange system that once supported communities' consumption and risk management is no longer in place. Communities' vulnerability is exacerbated by the competition for hydric resources with large-scale mining. Water is scarce in many areas of the western Peruvian Andes, both in the high Andes and in the ocean coast strip. Concerns about water supply to the communities, as well as the quality factor, have been a persistent problem of the mining sector in Peru (Bebbington and Williams, 2008). Water supply in Peru is under stress as well, not least by the unfolding changes in the global weather regime (Fraser, 2009).

The record of conflict resolution between foreign firms and communities in Peru is far from being impressive. In general, environmental damage episodes have been poorly managed by some foreign firms in the past. Acknowledgement of incidents has come reluctantly and compensation to the affected communities perceived as insufficient and late. Mining companies claim, by default, that their operations are lawful, sustainable, and intensively consulted with communities. Independent reports find that these claims are difficult to confirm (IRDC, 2003). The relationship between foreign

² Conga is a Newmont, US\$4.8 billion project (6.1 million gold ounces and 1.7 billion pounds of copper). Tía María is a Southern Copper, US\$1.0-1.2 billion project (120,000 tpy of copper during 21 years).

mining firms and local communities is prone to contentious episodes. There is a legacy of environmental problems where rights enforcement and solutions have not come voluntarily from companies or by intervention of central government (possibly seen as an ally of foreign companies) but from direct confrontation.

As a result, communities view foreign mining firms through the lens of suspicion. In general communities impacted by mining operations perceive developments as having a negative impact with limited overall benefit (World Bank, 2011). Mining has also significantly encroached on 'native lands' (Palacin, 2003) which has fuelled the protests and violent confrontations (Bebbington, 2009).

In addition, the environmental licensing process for mining projects in Peru is erratic and weak. For example, Inter Press Service (Páez, 2011) reported that opposition to the Conga project revived the debate on the weakness of mining EIAs:

- there was debate on separation of powers as the Ministry of Energy and Mines (MEM) is responsible for fomenting industry investment and approving EISs
- plans to improve institutional structures were met with scepticism due to layoffs of MEM environmental experts who rejected flawed EISs
- the MEM unit responsible for reviewing company EISs had approximately one third of technicians as staff and the remaining were industry-paid consultants
- a previous head of the MEM unit responsible for EISs stated that business and political pressures made it imperative that the unit be part of the Ministry of Environment, and all experts involved in assessment be government employees
- there were significant bottlenecks in the EIS review system, including 378 EISs submitted since 1993, which remained unresolved.

The weakness of the environmental licensing process makes it very malleable to political pressure. In the case of Tía María, for example, electoral considerations may have led MEM's General Directorate of Environmental Mining Affairs (*Dirección General de Asuntos Ambientales Mineros, DGAAM*) to declare the EIA's nullity without discussing with Southern Copper the observations of the United Nations Office for Project Services (UNOP) – see Gestión (2011).

Discourses on Mining and Sustainable Development

The discourse on mining and sustainable development has taken force in Peru partly in response to national conflicts around extractive industries, and as response and continuation of long-standing concerns on 'resource curse' dynamics and negative environmental and social legacies. The mining industry, nationally and internationally, and the Peruvian state advocate a role for mining in achieving sustainable development for the country.

The increasing trend in mining-related conflicts in Peru poses a threat to mining operations (Bebbington and et al., 2007) and affects the country's risk profile as an investment destination (Fraser Institute, 2008). For example, Celfin Capital (2012), a Latin American asset management firm with operations in Chile, Peru and Colombia, commented that the conflicts on Conga and Tia Maria

were a source of macro and political partly because the government was taking too long to resolve the conflicts and losing support from some allies³.

Conflicts result in financial, operational and reputational damage which the industry and government have sought to counteract by involving mining in poverty alleviation and development strategies (Arellano-Yanguas, 2008, EITI, 2005, ICMM, 2008, IIED, 2002, MEM, 2010). This is operationalised through private sector and government initiatives and voluntary and mandated financial contributions.

However, a study on mining and local development sponsored by a Canadian public agency in different Latin American countries (including Peru) concluded that (IRDC, 2003) “[w]ithout exception, the predominant discourse of companies is ‘Sustainable Development’, but only some of them translate that concept into corresponding activities and programs.”

However, within government funds, extractive industry revenues are significant and exceed international financial assistance (World Bank, 2011). According to the World Bank (2011), the Peruvian Government is likely to look to extractive industry funds to fill the poverty alleviation gap that has been traditionally covered by international aid. This resonates with the discourse of current president Humala, who has stated in a number of occasions that revenues from mining will serve to finance his government’s social inclusion agenda (Radio Programas del Peru, 2012).

The concern over mining’s contribution to sustainable development is long-standing. The Mining, Minerals and Sustainable Development global assessment exercise, undertaken over a decade ago, identified a number of changes necessary for mining to increase its ability to contribute to sustainable development (IIED, 2002). For Peru, it recommended improvements in local development and environmental performance outcomes, with improvements to local capacity and institutional design as prerequisites (Glave and Kuramoto, 2001).

The urge to articulate ways that mining can contribute to sustainable development continues to resonate in the industry. The ICMM’s Resource Endowment initiative has sought to develop strategies so that resource wealth can be transformed into sustainable development. It recommended that multi-stakeholder partnerships be formed to work on revenue management, regional development planning, poverty reduction, socio-economic development, increasing local

³ Celfin Capital CELFIN CAPITAL 2012. Peru’s water: social conflict risk expands. *Celfin Capital.*, commented:

“The dispute over Newmont’s Conga project in Cajamarca is now only one of some 223 that the government is struggling to manage. As indicated in our reports, we initially believed it was an isolated event, since the demands were largely coming from a minority group, apparently driven by political interests rather than community concerns; but now the top elected official in the Cajamarca region, Gregorio Santos, after leading the opposition to Conga, has teamed up with political leaders in Peru’s 25 regions to increase the pressure on President Humala.”

“We see this wider movement as a potential source of macro and political concern – partly because the government in our view is taking too long to resolve social conflicts, and this has caused high-profile defections from Humala’s coalition. This is exacerbated by pro-market policies, which have disappointed traditional allies, weakening his legislative control base.”

“(…). In another major delay, Southern Copper has postponed the start date for its US\$1.0bn 120,000tpy Tia Maria copper project in the Tacna region of Peru until 2015, announcing it was starting a new environmental impact study. Prime Minister Valdes has said President Humala will meet authorities from the region in an attempt to resolve concerns.”

content as part of mining projects, and dispute resolution (ICMM, 2008). In Peru, the ICMM (2008) found that except for substantial partnership activity, there was inconsistent progress on the remaining priority areas and significant challenges were present. These challenges included addressing institutional and administrative barriers, institutionalising local and regional planning with links to industry activity, and managing and resolving local disputes (ICMM, 2008).

a.3 Institutional Context for Mining EAAP in Peru

This section discusses the following aspects of the institutional context for mining EAAP in Peru:

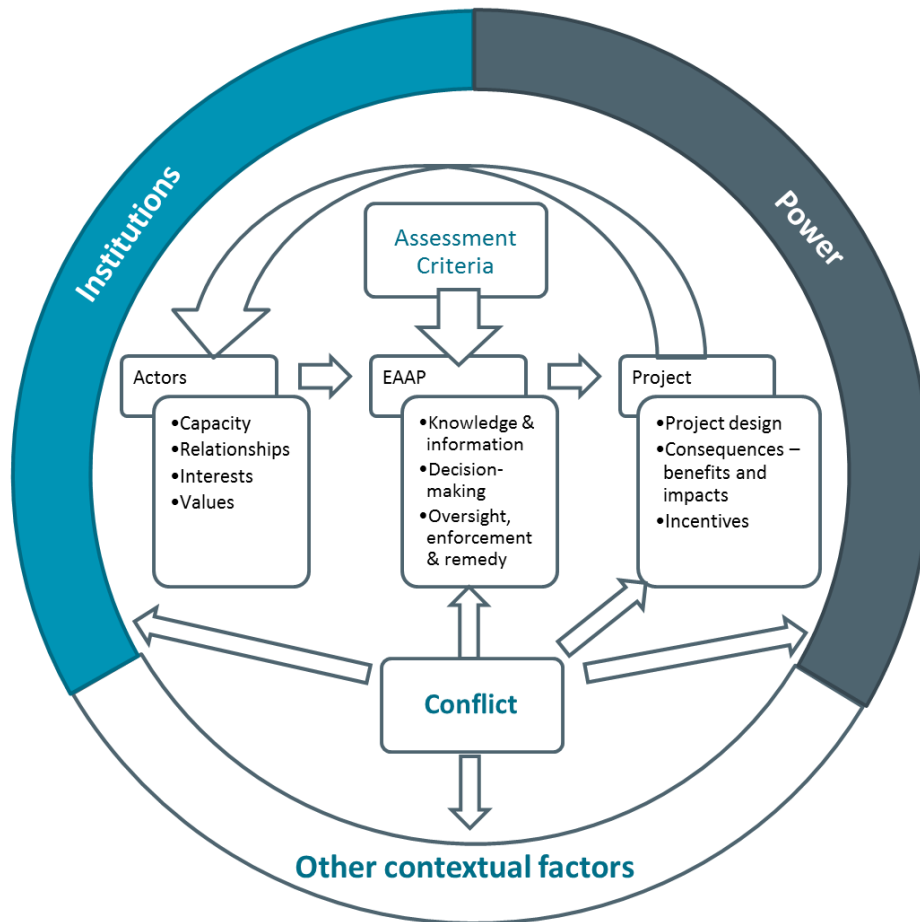
- legal framework and associated organisms and government bodies, in particular those relevant to environmental licensing and to royalty regimes
- arrangements for civil society access to information, participation and justice on environmental issues
- civil society organizations
- national conflict management architecture
- national decentralization processes.

These seemingly separate institutions, processes and organizations come together in the context of mining EAAPs. They define roles for various actors and lay down rules of engagement relevant to EAAP.

Following (Bebbington and et al., 2007, p. 5-6) we highlight the inherent conflicts of interest embedded in the functions of MEM (which are now to undergo changes based on legislative reform) and key regulatory and implementation aspects relevant to citizens' access to information, participation and justice on environmental issues. We also provide a brief outline of the key civil society organizations that are active in the mining space in relation to EAAP. Finally we discuss effectiveness issues in Peru's conflict management architecture and some of the challenges of decentralisation processes.

Figure 5 indicates the elements of the conceptual framework that this section addresses.

Figure 5. Conceptual framework – Institutions, Power.



a.3.1 Mining regulation and institutional arrangements

This section briefly outlines relevant regulations for the mining sector. Regulations on citizens' participation in the mining sector are presented in section a.3.2.

Until recently, mining regulation and institutions in Peru have been centralized, lacking checks and balances arrangements and strong citizens' participation (beyond information provision); facts which are consistent with a pattern of extractive institutions. Below we present the legal framework and key formal institutions related to mining, the royalties scheme and the evolution of environmental licensing, followed by a discussion of institutional incentives.

The Peruvian regulatory framework for environmental licensing will undergo reform, based on the recommendations of a Multi-sector Commission ascribed to the Ministers' Council, which in June 2012 was tasked with improving the social and environmental norms that govern economic (in particular extractive) activity (Supreme Resolution No. 189-2012 – PCM). Our analysis centres on the existing regulatory framework which governed the EIAs of Conga and Tia Maria during the study period. However, we also provide some reflection on the announced reforms in the section 'Evolution of environmental licensing' (see page 43).

Legal Framework

Legislative Decree (*Decreto Legislativo*) 708 of 1991 modified the General Law of Mining (Ley General de Minería) to introduce fiscal, exchange rate and administrative stability to investors in mining activities. The new General Law of Mining establishes that mining companies are required to obtain a concession title to explore, exploit and process underground mineral resources. The property rights of rural and indigenous communities and economic activities on surface activities are warranted *de jure*.

Supreme Decree (*DS -Decreto Supremo*) 018-92 EM of 1992, which compiles and unifies the General Law of Mining, states that, before undertaking any activity, the concessionaire must get approval from The National Culture Institute (*Instituto Nacional de Cultura*), obtain an environmental license, obtain a land utilization permit all comply with all other licenses, permits and authorizations requested by the state (Article 23).

The Environment and Natural Resources Code (*Código del Medio Ambiente*) was set up in 1991. DS 016-93 EM defined the scope of EISs and preliminary ESs, set activity limits and defined the contents of Environmental and Adjustment Management Plans (PAMA for their acronym in Spanish). DS 042-2003-EM requires mining companies to aim for environmental excellence, support local development and provide local employment, and grant purchasing preference in local goods and services.

Legal and fiscal stability contracts (*contratos de estabilidad legal y tributaria*) have been used in Peru since 1940 (Flury, 2008). With the business climate measures and changes in the role of the state that were introduced in the early 90s, the scope and depth of the stability contracts increased through Legislative Decrees (*Decretos Legislativos*) 662 (Foreign Investment), 708 (Mining) and 757 (Private Investment) of 1991. These measures are supported by Laws 27342 and 27343.

Formal institutions

The key institutions in charge of/related to mining activities in Peru are the Ministry of Energy and Mines, the Geological, Mining and Metallurgical Institute, the Energy and Mining Investment Regulator and the Ministry of Environment, all of which are National level institutions.

The Ministry of Energy and Mines (*Ministerio de Energía y Minas*, MEM) is in charge of policy, technical standards, investment promotion (through Proinversión, mainly), mining concession granting and, until 2007, of environmental issues. Its environmental responsibilities were transferred that year to OSINERGMIN (see below), but MEM retained the control of EIS approval processes (which is set to change based on recent legislative reform).

The Geological, Mining and Metallurgical Institute (*Instituto Geológico Minero y Metalúrgico*, INGEMMET) absorbed the National Institute of Mining Concessions and Cadastre (*Instituto Nacional de Concesiones y Catastro Minero*, INACC) in 2006. INGEMMET keeps record of mining concessions and legal norms, as well as an inventory of mining rights and contracts. INGEMMET is the first institution acting in the concession granting process, as it must confirm that concession requests have no outstanding rights or conflicts.

The Energy and Mining Investment Regulator (*Organismo Supervisor de la Inversión en Energía y Minería*, OSINERGMIN) is in charge of regulating, supervising and overseeing national compliance with legal and technical dispositions related to activities in the electricity, hydrocarbon and mining industry sectors, as well as ensuring compliance with legal and technical norms on environmental conservation and protection within these activities (Business News Americas, 2012a). Its environmental duties were transferred in 2010 to OEFA (see below).

The Ministry of the Environment (*Ministerio del Ambiente*, MINAM) was created in 2008 and is in charge of leading the application of the General Environmental Law (*Ley General del Ambiente*; Law 28611). MINAM's unit for environmental supervision is the Assessment and Environmental Control Agency (*Organismo de Evaluación y Fiscalización Ambiental*, OEFA), created by Legislative Decree 1013 of 2008. OEFA is responsible for the follow up of EISs, approval and follow up of SEAs, and environmental license approval.

Royalties

Mining royalties were traditionally set at 1-3% of company revenues until 2011, when they were changed by the Humala government. Since 1993, the Peruvian government has transferred back 50% of the total government take (royalties plus income and other taxes) to the regions. These transfers are called *Canon Minero* and must be distributed as follows:

- 10% to the District (municipality) where the mine is located
- 25% to the Districts in the same Province (a group of Districts)
- 40% to the Districts in the same Region (which groups several Provinces)
- 25% to the Regional Government.

The *Canon Minero* has very specific uses. These include education, health, infrastructure investment and maintenance, project investment studies of regional plans, funding of research and development in regional universities.

However, there has been concern that *canon* moneys are used and distributed ineffectively. Canon flows have concentrated in some regions, fuelling inter-regional inequality (Arellano-Yanguas, 2008) and possibly contributing to conflict on the basis of in-migration and poor planning (World Bank, 2011). There is limited community knowledge regarding *canon* allocation and limited evidence of *canon* contribution to poverty alleviation and economic development amongst disadvantaged sectors (World Bank, 2011).

Evolution of environmental licensing

The MEM centralized until very recently the environmental decisions in mining. The decision to transfer environmental license approval to OSINERGMIN in 2007 was an attempt to introduce an improved system of check and balances. OSINERGMIN was created in 2007 as an accrual of functions of OSINERG, the regulatory agency created in 1996 to regulate the electricity and gas sectors. OSINERG had a technocratic tradition and a track record on network industry problems (competition and natural monopoly regulation and incentives), but no experience on environmental or mining

issues. Now, MINAM and MEM share responsibilities in environmental issues, the former in license approval, and the latter in EIS approval.

Originally, the MEM issued the guidelines to produce EISs, which were not legally binding. Supreme Decree 053-99 EM stipulated that EISs should follow the environmental guidelines for the mining sector (MINAM, 2012). EISs are currently approved by MEM's General Directorate of Environmental Mining Affairs (*Dirección General de Asuntos Ambientales Mineros, DGAAM*). Any project involving use of water for mining production and processing requires the favourable opinion of the National Water Authority (*Autoridad Nacional del Agua, ANA*).

Recent environmental licensing reform

On 31 October 2012, the Peruvian Congress passed a law (*Proyecto de Ley 1461/2012 PE*) which will change the regulatory institutions in charge of assessment and approval for projects that require detailed EISs (i.e., projects that are likely to have significant environmental impact). The law modifies the structure of the Ministry of Environment by including a new National Environmental Certification Service for Sustainable Investments (*Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles –SENACE*).

SENACE's structure will comprise a Chief, a Council of Directors and a Technical Advisory Council as well as other offices to be defined. SENACE's Chief will be designated by the Council of Directors, based on nomination by the Ministry of Environment. The Chief's serving period will be of 3 years with possibility for one renewal. The Council of Directors will comprise the Ministers of Environment (as President), Economy and Finance (Vice-president), Agriculture, Energy and Mines, Production, and Health. Decisions are to be made by absolute majority with the Environment Minister having the final decision-making power where majority is not reached. The Technical Advisory Council will comprise five specialists who would be at SENACE's disposition upon request.

SENACE will assess and approve decisions on detailed EIS. However, individual productive sectors (represented by their respective Ministers) retain discretion on exempting detailed EISs from SENACE's review. Other SENACE functions include maintaining a registry of Environmental Consultants and of Environmental Certifications and establishing a system of decentralised offices. OEFA will retain environmental follow up and supervision functions.

This change might help mitigate the conflicts of interests and independence issues affecting current EIS approval and review processes, as it introduces expert external advice and a system of checks and balances in the public sector - between productive activities and wider social and environmental considerations. However, MEM would be able to unilaterally exempt some projects from SENACE's review and approval process. There is no clarity as to the criteria that exempt projects would need to meet, if any. It appears still possible for the EIS of economically significant mining projects with potential to generate considerable royalty streams to be exempted from the proposed system. Furthermore, given that MEM has influence on decisions regarding SENACE Chief's selection and renewal, there is still some room possible for conflict of interests to emerge.

Institutional incentives, checks and balances

The government of Peru has an incentive to attract foreign direct investment in mining. The institutional arrangement favours the expansion of mining activities above all other considerations, not least because royalties are fundamental to fund public expenditure. Bebbington et al (2007) described the environmental licensing arrangements as of 2007 as a process where MEM's "functions [were] designed with a conflict of interest built into their very core" and where MEM had excessive power supported not only by the economic significance of mining but also by laws and regulations:

- MEM was responsible for promoting mining investment and regulating and monitoring its social and environmental impact
- MEM's power emanated from relationships with project proponents/investors and not with social or environmental advocates, its conflict of interests leading MEM to "privilege investment over environmental and social protection" (Bebbington and et al., 2007, p. 5).
- MEM was responsible for all the decisions on mine project development and approval, including the granting of concessions, and the review of Environmental Evaluations (a requirement for transition into exploration) and Environmental Impact Assessment review and approval
- Consultation on Environmental Evaluations and EIAs was also in charge of MEM
- Consultation processes were flawed with issues of accessibility for rural residents, women and those with literacy limitations
- MEM decided whether project proponents had resolved community concerns or not and did not notify the concerned about the resolution of the issues they raised.

Bebbington et al (Bebbington and et al., 2007, p. 5-6) also state that though Law 28964 of 2007 passed operational environmental monitoring to OSINERGMIN, "MEM however retains its judge and jury role in all other respects as it will retain control over the approval of Environmental Evaluations and Environmental Impact Assessments (EIA) and over the monitoring of social impacts (this going against World Bank recommendations in 2005)." Bebbington and Bury (2009a) point out the late establishment of the Ministry of Environment, which did not exist in Peru until 2008.

There has been considerable debate inside the government of Peru regarding the convenience of having transferred the environmental licensing process from OSINERGMIN to OEFA. In April 2010, OSINERGMIN's President announced to the press that the Council of Ministers had (informally) stated that OSINERGMIN was preferred over MINAM to undertake environmental licensing and supervision (Business News Americas, 2010). Environmental licensing in developing countries requires a lot of technical and administrative skills to be built (World Bank, 2011, p. 57-58) and it is likely that OEFA is the candidate to lead these endeavours, whenever it avoids being captured.

a.3.2 Frameworks for citizens' participation, and access to information and justice on environmental issues

Institutional frameworks for civil society participation, access to information and to justice or remedy define some of the mechanisms by which citizens can influence the design and ongoing

regulation of mining projects. We briefly discuss existing frameworks and summarise key limitations and opportunities for improvement.

Relevant frameworks include those of a general nature such as the Rio Declaration and the Constitutional framework, as well as specific legislative and regulatory instruments, including mining sector specific regulations on citizens' participation. Peruvian regulations in this regard evolved significantly over the last decade. While some improvements have been documented there still remains room for improvement in providing local communities influence in decision making processes and EIS processes, and in addressing issues of transparency as well as credibility.

Key principles, legislative and regulatory frameworks

The Rio Declaration, principle 10 provides a framework for citizen access to information, participation and justice on environmental issues:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”
[our emphasis] (UNEP, 1992)

The Peruvian constitution and the Law of Transparency and Access to Public Information (2002) establish the rights to public information, including environmental information. The General Environmental Law N° 28611 (*Ley General del Ambiente*) declares citizens' rights to express opinions and perspectives in environmental management processes. It states that this should be done responsibly, in good faith, with transparency and accuracy. It requires that public authorities implement mechanisms to facilitate participation and promote capabilities amongst organisations that protect the environment and natural resources.

Peru is signatory to the International Labour Organisation's Convention 169 on the Rights of Indigenous People and introduced the Prior Consultation Law in 2011 (29785 - *Ley del Derecho a Consulta Previa a los Pueblos Indigenas u Originarios*) which is in early stages of implementation. The right to consultation is one of the principles of ILO 169 resolution. Prior consultation involves the State and indigenous people engaging in dialogue to reach agreement or consent on administrative or legislative matters that might affect indigenous people. It is a separate process to the participation undertaken as part of EISs. Prior Consultation is a government responsibility, while EIS participation is in the hands of proponents. These measures are meant to be complementary (Defensoria del Pueblo, 2011). The law prescribes that Prior Consultation should adhere to the principles of opportunity, inter-culturality, good faith, opportunity, flexibility, reasonable timelines, no coercion or manipulation, and timely provision of information (Congreso de la Republica del Peru, 2011). After a dialogue process has taken place the state organism responsible for the legislative or administrative change makes a decision on its introduction, taking account of the input provided by indigenous people as part of Prior Consultation (Congreso de la Republica del Peru, 2011). ILO Convention 169 does not intend to provide veto rights (see Castillo and Avila 2008, p. 42).

Regulations for the law, were released in April 2012. The Ministry of Culture is the entity responsible for implementing consultations.

Law 27446 of the National System of Environmental Impact Assessment (2001, modified in 2008) requires that EISs include a citizens' participation plan, an easily accessible executive summary, formal consultation and public audiences within specified timelines. The reviewing authority is to organise community consultation during the reviewing phase. Regulations (approved in 2009 - D. S. N° 002-2009-MINAM, *Reglamento sobre transparencia, acceso a la información Pública ambiental y participación y consulta ciudadana en Asuntos ambientales*) stipulate that citizens' participation is an ongoing, dynamic, flexible and inclusive process, using a range of mechanisms to support consultation, dialogue and consensus building. They specifically forbid provision of misleading information or actions that may jeopardise participation or information flow.

The mining sector has specific citizens' participation rules (**D.S N° 028-2008-EM**, *Reglamento de Participación Ciudadana en el Sub Sector Minero*) requiring that citizens' participation take place prior and during the EIS submission to the relevant authority. The rules seek to guarantee the rights to participation, access to information, respect for cultural diversity, non-discrimination, citizens' oversight (monitoring of compliance with environmental and social obligations). The rules state the aim of promoting consensus building through dialogue that can allow affected populations to influence project design. Participation is to occur within the area of influence as specified in the EIS throughout the lifecycle of the project, based on protocols agreed with the community, financed through a voluntary fund and through a number of mechanisms. These mechanisms include: EIS publication, providing comments on the EIS, use of mass media to alert of the EIS, public audience, distribution of executive summaries, participatory workshops, information offices, participatory monitoring, surveys, site visits, or dialogue tables.

There are legal mechanisms to repair the denial of rights to information or participation. Where there is environmental damage, the mechanism to provide justice is a civil tribunal that provides remedy, as formal fines do not stipulate that funds should go to remedying damage (Valladares and Fuentes, 2005). However, in order to access remedy mechanisms citizens require economic and technical capacity, as citizens' interests can be both 'diffuse' and complex; on the other hand, alternative conflict resolution mechanisms are part of the law but not used by all parties (Valladares and Fuentes, 2005).

Achievements, limitations and opportunities

A 2005 assessment by the Access Initiative found (Valladares and Fuentes, 2005) that while access to information for citizens as well as institutional attitudes on disclosure had improved with the insertion of the Law of Transparency and Access to Public information, significant room remained for institutional strengthening, process improvements, awareness raising on legal rights, transparent communication on environmental emergencies and accessibility of information. A later study by Castillo and Avila (2008), which focused on participation within the mining sector, pointed to some improvements on information provision in terms of quantity, variety of mechanisms and accessibility. However, it confirmed that transparency, institutional strength, accessibility and

process limitations still remained. Castillo and Sorias (2011) highlighted the limited requirements in mining regulations for monitoring and consideration of gendered dimensions of impact and called for stronger requirements and better monitoring.

Key limitations and opportunities for improvement as outlined by Castillo and Avila (2008) include:

- Accessibility of information based on linguistic, gender or other needs of local residents and organisations see also (see also Valardes and Fuentes 2005).
- Capacity and awareness limitations including lack of knowledge of rights and gaps in institutional capability (see also Valardes and Fuentes 2005).
- Narrow design scope and/or focus on mere information provision during participation, in particular during the EIS stage (see also Valardes and Fuentes 2005).
- Issues of independence in information and institutional credibility in relation to State institutions.
- While the focus of participation needs to remain on those directly impacted, a flexible and responsive approach that acknowledges a participatory role for wide range of interest groups contributes to transparency.
- Regional governments should have participation in the legal decision-making processes pertaining permit granting and environmental control
- It is necessary to undertake regional dialogues on sustainable development and the role of mining.
- Mechanisms to respond to citizens' opinions and concerns expressed as part of participation processes are necessary (see also Valardes and Fuentes 2005).

Overall, there are a number of legal instruments that provide for citizens' participation in EAAP, however, the extent to which participation goes beyond information provision and is inclusive is largely left in the hands of proponents, thus relying on social science capability and organisational will. This is further complicated by capacity issues in the public, private and community sectors.

a.3.3 Civil society organizations

Civil society organizations are an integral part of the network of institutions shaping mining EAAP. Peru's institutional fabric includes a wide range of civil society organizations working at the local, regional and national level, some with connections with, and support from, international networks active or interested in Peru. Peruvian NGOs and civil society organisations play important roles in facilitating conflict resolution, providing support to communities and activists, defending environmental interests – including through environmental monitoring – and promoting accountability and transparency (Bebbington and et al., 2007, Glave and Kuramoto, 2001, Slack, 2009). When conflict emerges, local communities might use civil society organisations or the church as their first port of call for arbitrage or advice as oppose to the central government (see Castillo and Avila, 2008). Below we mention some of the most prominent civil society organisations in the context of mining:

- Civil society organisations operating within the national level include those founded to protect citizens' rights and interests in the context of extractive industry expansion such as

CopperAccion and The National Confederation of Communities Affected by Mining (CONACAMI). CONACAMI concentrates on the rights of indigenous communities and has affiliations with indigenous organisations in other South American countries, as well as with international networks such as Oxfam America.

- Other organisations concentrate explicitly on providing spaces for dialogue around mining. These include Pro-Dialogo, and the multi-stakeholder Dialogue Group on Mining and Sustainable Development. The latter brings together representatives of civil society, government and industry.
- Some civil society groups have strong local or regional networks of support. Amongst them are the *rondas campesinas*, “peasant vigilante groups whose primary purpose had been to guard against cattle rustling and later assure community security more generally during the times of rural violence in Peru” (Starn, 1999 Bebbington and et al., 2007, p 2895).

In the case studies we will analyse, civil society organizations have played important roles in mobilizing citizen participation. Organizations of particular relevance to each case will be introduced in the case study section.

a.3.4 Institutional Arrangements for Conflict Resolution

Peru has an institutional architecture for conflict management, however issues of institutional capacity continue to constraint the scope for sound resolution of social conflicts. Peru’s conflict monitoring and resolution institutions include a Conflict Management Unit under the Ministers’ Council, and regular monitoring of conflict instances by the Peruvian Ombudsman (*Defensoria del Pueblo*). The Ministers’ Council’s Conflict Management Unit is in charge of “directing the management of social conflicts at all levels of government and throughout the national territory, as well as to evaluate the results of the management of social conflicts”. This comprises designing strategies to prevent, manage and resolve conflict; managing national information on social conflicts; undertaking government capacity building; conducting research and providing advice on mediation and conflict resolution (Presidencia del Consejo de Ministros, 2012).

The Ombudsman is an independent body, created under the 1993 Constitution with the aim of defending fundamental rights, and overseeing the State’s compliance with its obligations and the provision of public services (Defensoria del Pueblo, 2012a). The Ombudsman’s functions include research, reporting, participation in processes associated with the Constitution, initiating legal reform and promoting treaties on human rights (Defensoria del Pueblo, 2012a). It is a “strong, independent, and professional” body playing a significant role in articulating how government should respond to the needs of affected communities and individuals (Bebbington, 2009).

This institutional architecture for conflict resolution has not necessarily translated into a track record of effective conflict resolution. Referring to violent conflict in Peru in general, the Ombudsman states that (Defensoria del Pueblo, 2012b):

- The dozens of fatalities and injuries resulting from violent social conflict in recent years have mainly affected citizens who engaged in public protest when they felt their rights were compromised.

- The State's inability to resolve complex situations and the use of force by civil society result in situations where human life, health, tranquillity and freedom are at risk.
- Peru has gone through several decades of violent conflict resulting in loss of life, bringing poverty, and depleting community cohesion and democratic processes.
- The terrorist violence of the 80s and 90s figures prominently in this process. The human rights violations and moral and material destruction it produced debilitated Peru's political mediation structures, produced economic loss and created an environment of distrust amongst citizens and towards the state.

The Ombudsman (Defensoria del Pueblo, 2012b) also refers to the role of weak democratic institutions in social conflict. Economic expansion has come with increased expectations of social inclusion. However, democratic institutions have not matured on par with economic growth. There has been no improvement in political representation, modernisation of the State, management of public resources or attention to social demands. As a result there is widespread distrust in the State and in several instances of State-Community-Company conflict (Defensoria del Pueblo, 2012b).

a.3.5 Decentralization Processes

Recent research in Peru has concluded that decentralization processes have played a role in igniting mining related conflict (Arellano-Yanguas, 2011). However, decentralisation is often construed as one of the elements necessary to address the causes of mining conflicts. Decentralization is a complex process in the Peruvian context, with its own legislative framework and institutions, which we do not attempt to discuss comprehensively here. The legislative and institutional framework includes a Decentralisation Law, a National Assembly of Regional Governments and the Decentralisation Directorate (which replaces the previous National Decentralisation Council) (Revista de Gestion Institucional, 2012). There are also laws on Regional Governments, Fiscal Decentralization and Regional Integration amongst others.

The 1979 Peruvian Constitution called for the decentralisation and regionalisation of the State and created 11 regional jurisdictions in addition to Lima and Callao and a Regional Assembly governance body (Dammert, 2003). However, this was scrapped during the Fujimori dictatorship, stalling the process (Dammert, 2003). Peru recommenced the decentralization processes with the first election of Regional Governments in 2002, which configured Peru's 3 tiered government system of one National Government, 25 Regional Governments and Local governments (made up of 95 municipalities subdivided in Districts). The function of Regional Governments according to the law is to promote regional sustainable development, public and private investment, and employment in accordance with national, regional and local development plans (Congreso de la Republica, 2002). Furthermore, during the 2010 decade, the Peruvian government undertook to localize the distribution and expenditure of mining revenues and mandated local citizen consultation their expenditure (Arellano-Yanguas, 2011). However, responsibilities for mining concessions and overall regulation of the mining sector stayed in the hands of the National Government (as described in section 4.1).

Arellano-Yanguas (2011) found that during the boom period from 2004-2009 the localization of mining rents led to increased incidence of mining-related conflict, including conflicts around

proposed mining projects (i.e. conflicts in EAAPs) and argues that this is the result of a number of contextual factors:

- A weak central State, largely captured by industry
- A central State unable to regulate regional level conflicts
- Weak connection between local and national politics
- Limited regional scope to influence mining – as key functions rest with the National Government, Regional Governments elevate citizen dissatisfaction to the National level
- Increased competition for Regional Government posts due to their financial resources, leading to more fragmented regional politics
- Local leadership pursuing exclusively local agendas.

Areyano-Yanguas (2011) argues that together these factors have led to incentives that ignited various types of conflict around mining.

Decentralisation presents other challenges related to regional capacity for sustainable development and representation. It has been argued that despite improvements at the regional level, capacity to plan for development is still limited, and capacity building activity is necessary. Furthermore, citizens often do not feel represented by their authorities because they perceive their interests are incompatible or because of lack of accountability (Castillo and Avila, 2008).

a.4 Summary and concluding comments

A number of complex historic and contemporary factors create a dynamic and challenging context for mining in Peru. Historically mining has been significant economic activity and plays a crucial role in present day State budgets. However, historically it has also been part of the processes of dispossession that have disadvantaged native and Andean populations.

The mining industry and the National Government continue to advocate a strong role for mining in Peru's sustainable development, predicated on the magnitude of the financial flows it emanates. However, significant challenges remain for the Peruvian mining sector to deliver on its promise of contribution to development. Core amongst them are institutional and regulatory weaknesses and capacity issues in the public and private sectors. Limited state presence in regions affected by poverty, paired with limited regional level capacity for development planning, pose constraints (Castillo and Avila 2008). Furthermore, the management of environmental incidents and conflict by some mining companies, and their inability to articulate credible evidence of direct local benefit continue to affect the industry.

Peru's economic dependence on mining has compromised its regulatory framework for the mining sector. The framework has lacked credibility amongst the civil society that it is meant to protect. This is confounded by shortcomings in decentralisation processes, where incentives lead regional actors to elevate regional mining conflicts to the National level.

There is some evidence that access to information for citizens has improved within the regulatory process for mining, but while there are a number of legal instruments that provide for citizens' participation in EAAP, the extent to which participation goes beyond information provision and is

inclusive is largely left in the hands of proponents. Once again, capacity issues in the public, private and community sectors pose constraints. Partly as a result, civil society organisations and NGOs increasingly advocate social and environmental concerns, more so as there is limited evidence that mining has effectively contributed to Peru's sustainable development.

Conflicts emerge in the context of a legacy of distrust, weakened institutions, poverty, human rights violations and moral damage left behind by the terrorist violence of the 80s and 90s. The use of force in civil society protests and the limited capacity of the State to resolve conflict – despite having an institutional architecture for this purpose – as well as short-comings in the public force have led to loss of life and injury to civilians.

Recent changes to tax regimes, citizen participation regulation and EIS approval regulation signal possible positive change in a climate where conflict affects the interests of civil society, government and international investors. However, change will likely be gradual, requiring strong cooperation and building trusting relationships between governments, communities, civil society organisations and mining companies.

3.b. Case Studies: Minas Conga and Tia Maria

Section Structure

This section analyses the EAAP of Minera Yanacocha's Minas Conga and Southern Copper's Tia Maria projects. The case studies are presented and analysed based on the elements of the conceptual framework and design principles introduced in Chapter 2. We begin by visiting each element in the conceptual framework:

- Context: continuing the context analysis in the previous section each case describes the regional context including economy, demographics and mining history (where relevant).
- Proposed project: including commodity, location and overall expected benefits and impacts.
- Key actors: we complement the discussion of relevant national actors in the previous chapter with a brief discussion of the key regional actors and project-specific actors (such as the proponent).
- EAAP: we offer a summary of the EAAP and a detailed chronology of events.

After this we examine each EAAP based on the key EAAP components highlighted in the conceptual framework. In other words, each EAAP is analysed based on:

- EAAP assessment criteria
- information and knowledge creation
- decision-making processes
- oversight, remedy and enforcement mechanisms
- conflict.

Later we offer reflections on the relevance of the design principles to each particular case. General recommendations based on the cases are presented in the recommendations chapter (Chapter 5).

Minas Conga Overview

The first case study, Minas Conga, is a gold project proposed for the Cajamarca region in northern Peru by Minera Yanacocha, whose main shareholders are Newmont Corporation and Minas Buenaventura. Conga's expected financial and environmental implications make it of great interest to national and regional actors. The EIS and the project's overall licensing and broader approval or consent have been protracted, with multiple parties seeking to influence results. The main source of opposition to the project has been concern over its impacts on alpine water systems. Conga intends to dry a number of natural alpine lagoons and replace them with artificial ones in a context where poverty is rife amongst Andean *campesino* communities who undertake subsistence farming. Key actors in this case include the National and Regional Governments, civil society organisations, community members and National Government-appointed mediators.

In our analysis, we will highlight how this case illustrates the practical differences between legal compliance and approval, and broader stakeholder consent. We sustain that, that due to a number of process and contextual factors, this EAAP evolved in a way that was not supportive of consent

building, instead allowing the project to become the epicentre of a conflict of national significance. Key amongst those factors were:

- excessive focus on legal license on behalf of the National Government and the proponent
- poor proponent communication strategies
- poor understanding of regional politics
- generalised inability to deal effectively with social conflict both within EAAP and more broadly
- a perception of the situation as a 'zero sum game' where the benefit of one party comes to the detriment of others.

As distance grew between proponent and National Government positions and those of some sectors of the community and civil society organisations, regional political forces leveraged significant support to campaign against the project. The confrontations escalated overtime leading to violent conflict and loss of life.

Tia Maria Overview

The second case study, Southern Copper's Tia Maria, is a copper project proposed for the province of Islay in Arequipa. As with Conga, Tia Maria's EAAP has not been a smooth process. Around this EAAP converge the seemingly diverging interests of multiple actors, including the proponent, the National Government, local and regional industries, and civil society organisations as well as residents concerned about the project's impacts. The main source of resistance to the project has been its impact on water supplies, in an arid region, with well-developed agricultural and manufacturing industries reliant on water. Strong local resistance has clashed with the proponent's tight schedule as it attempts to rapidly expand its production capacity, simultaneously, at a number of Peruvian sites.

We will argue that in this EAAP the scope for consent building was constrained by:

- gaps in regulatory enforcement
- unrealistic proponent timelines
- shortcomings in proponent-commissioned impact assessment
- poor community engagement
- a perception of State-industry collusion.

District level authorities, organisations and citizens sought to fill the gaps left by regulators and higher level governments. An antagonistic process emerged that escalated to violent conflict between police and protestors, leaving the suspension of the project as the only option. We will propose that the EAAP evolved into a 'war of attrition' scenario, with each party betting at exhausting its counterpart while exhausting itself based on the assumption that she would be more enduring.

b.1 Minas Conga

Executive Summary

Regional Context

Despite significant mining investment, Cajamarca remains one of the poorest regions in Peru, and historic events have led to negative symbolism being associated to mining. The Cajamarca region counts mining and agriculture as some of its key economic activities. Cajamarca receives the second largest share of mining investment in the country with three proposed mining developments in addition to Conga: Anglo Americas Michiquillay project, Lumina Copper's Galeno project and Rio Tinto Minera Peru Limitada's La Granja project (MINEM, 2012). However, in 2011, 52.7% of the population in the region of Cajamarca lived below the poverty line, being the region with the highest poverty index. Child mortality rates are higher than the national average.

The capital of the region, Cajamarca city, was the location of the execution of Inca leader Atahualpa by the Spanish during the conquest. These events are significant in the symbolism of mining extraction in the region: "Critics of mining activity often cite this historic event. They state that North American mining companies are undertaking a 'second conquest' on behalf of foreigners that are interested in gold" (Elizalde and Sabater, 2009).

Proposed Project

Conga is a large gold mining project, with significant economic and environmental implications. Minera Yanacocha, 51.35% owned by Denver based Newmont Mining, 43.65% by Minas Buenaventura and 5% by the International Finance Corporation, is the proponent of the Conga project. Conga is expected to create approximately 5,000 -7,000 jobs during construction, and is planned to be the largest mining investment in Peru's history. As originally approved by President Allan Garcia's administration, Conga would dry four alpine lagoons and create four artificial reservoirs, three of which would be destined solely to supply agricultural activity. This has led to significant concern at the regional level, which escalated into violent confrontations between police and protestors.

Actors

The actors of this case include the proponent, Minera Yanacocha; its major shareholders Newmont Mining Corporation and Minera Buenaventura; the National Government and its Ministries; the Regional Government; a number of regional civil society organisations, and the residents and businesses of various towns and settlements in the Cajamarca region, who will be affected by the project; and the mediators tasked by the National Government with facilitating a resolution to the conflict. (For a discussion of actors at the national level refer to the previous chapter).

At the regional level, there is a history of distrust between key actors. Cajamarca has a number of strong civil society organisations, including organisations that oppose mining. There have been several environmental and social incidents that have complicated the relationship between local and regional communities and the proponent. Historically regional communities have not trusted the national government.

EAAP

Conga's EIA and its overall licensing and approval have been protracted, with multiple parties seeking to influence results. A proposed project of significant interest for the Peruvian government and regional and local stakeholders, it has been prominent Peruvian national and regional politics. Events affecting the evolution of the EAAP go back to before the project was proposed, as Minera Yanacocha has already operated the Yanacocha mine in the region for a number of years.

Key events include:

- In 2000, a mercury spill in Choropampa, by a Yanacocha contractor truck, resulted in mercury poisoning of local residents. The incident was poorly managed. The spill remains in the memory of regional communities to date (Elizalde and Sabater, 2009).
- From 2000 to 2005, there was ongoing conflict around exploration and mining prospects at Cerro Quilish, a mountain of cultural and environmental significance for the people of Cajamarca City. Local residents succeed in halting the development of Cerro Quilish.
- In 2006, a farmer from the town of Combayo was shot and killed in confrontations during a community protest against Minera Yanacocha.
- In 2007, regional environmental NGO Grufides, a critic of Yanacocha, alleged that the FORZA security company, a Yanacocha contractor, had been spying on their leader Marco Arana.
- Between 2005 and 2010 the Conga EIA process took place. Concluding with its approval in October 2010 (Alan Garcia's government), the process included work in 35 local villages, a public audience with over 4,000 in attendance, and responses to over 300 requests for additional information.
- There was a change of National Government in July 2011, and of Regional Government in October 2011. The National Government became more supportive of mining once in government but cautioned of its impacts during elections. The new Regional Government has campaigned against Minera Yanacocha's Conga project on environmental grounds.
- During late 2010 and 2011 tensions between the proponent, the Regional Government, regional civil society organisations and the National Government (of President Ollanta Humala) grew. Local and regional actors opposed the development of Conga on environmental grounds. However, the proponent and the National Government insisted that approval was granted by the previous government. The proponent contested that there were any social or environmental conflicts and argued that communities in the 'area of influence' were highly supportive of the project.
- Tensions were aggravated by conflicting views between the Ministry of Environment and the Ministry of Energy and Mines with the former being critical and the latter being supportive of Conga's EIS. This led to significant changes in the cabinet, including the Environment Minister.
- During the second half of 2011, the tensions escalated into a significant strike that paralysed the Cajamarca region, after which President Humala declared a state of emergency and requested that Conga cease operations.
- In February 2012, the National Government commissioned an international expert review of Conga's EIS. It provided a report in April 2012 concluding that the EIS was sound but called for a

number of improvements to minimise impacts on water systems. On the basis of this President Humala imposed additional social and environmental conditions on Conga which were accepted by the proponent.

- A second strike begun in late May 2012, protests escalated into violent confrontation between the police and protestors in various occasions. Five protestors died in July 2012 five protestors died as a result of these confrontations. A state of emergency was declared in July 2012.
- In July 2012, President Humala's government commissioned two members of the Peruvian clergy to act as negotiators in the conflict.
- The second state of emergency was extended in August 2012 and both the National Government and the proponent announced an extended two year suspension to the development of Conga.
- Newmont Corporation announces changes in Minera Yanacocha's senior management.

Findings

Conga's EAAP evolved in a way that was not supportive of consent building, instead allowing the project to become the epicentre of a conflict of national significance. Key factors shaping the process included:

- excessive focus on legal license on behalf of the National Government and the proponent
- poor proponent communication strategies
- poor understanding of regional social and political dynamics
- lack of trust between key actors
- generalised inability to deal effectively with social conflict both within EAAP and more broadly
- a perception of the situation as a 'zero sum game' where the benefit of one party comes to the detriment of others.
- capacity gaps
- power unbalances within the process.

Regional Context

The Cajamarca⁴ region is located in the northern Andean region of Peru. The main economic activities of the region are mining (copper and gold), agriculture and cattle raising. Tourism is also an important activity. Despite being the host to large scale modern mining operations and the recipient of a large share of mining investment, the region remains amongst the poorest in the country. The history of mineral 'extraction' in Cajamarca includes the execution of Inca leader Atahualpa by the

⁴ Cajamarca is the name of a city, a district, a province and a region in Peru. Peru is divided into 25 regions, divided into provinces, in turn divided into districts. Cajamarca is the name of:

- one of Peru's 25 Regions. Regions are managed by Regional Governments
- one of 13 provinces within the Cajamarca Region. Provinces are divided into districts
- one of the 12 districts within the Cajamarca Province

Spanish, which has contributed to negative association of foreign mining companies with the process of dispossession led by the Spanish conquistadors.

The Cajamarca region receives the second largest share of mining investment within Peru. In 2012, the Ministry of Energy and Mines recorded that the region received US\$ 9,185 million in mining investment, representing 17.26% of all extractive industry activity in Peru (MINEM, 2012). The bulk of investment is generated through US owned Minera Yanacocha's Conga project. In addition, there are three proposed copper mine developments under exploration. These additional investments total at US\$4,200 million and include Anglo Americas Michiquillay project, Lumina Copper's Galeno project and Rio Tinto Minera Peru Limitada's La Granja project (MINEM, 2012).

The mining industry contributes the largest share of GDP at 29.3%, followed by government services 9.3% and agriculture 3.7%. In 2012, the Cajamarca region's high employment rate was 98.4%. Milk production has been one of the key sources of employment in the region (INEI, 2009).

The region has received significant migration from across Peru and population is expected to rise at an annual rate of 0.50% (INEI, 2012). The large majority of people (99.5%) learn Spanish in childhood (INEI, 2011b). The majority of residents are in Cajamarca city, followed by Jaen, Bambamarca and Cutervo (INEI, 2007).

In 2011, 52.7% of the population in the region of Cajamarca lived below the poverty line, being the region with the highest poverty index. In 2010, only 65% of households had access to municipal water infrastructure and in 2009 approximately 50% of households had access to electricity with 43% relying on candles for lighting and the remaining households on kerosene and other (INEI, 2011a)⁵.

The Capture and Execution of Inca Atahualpa

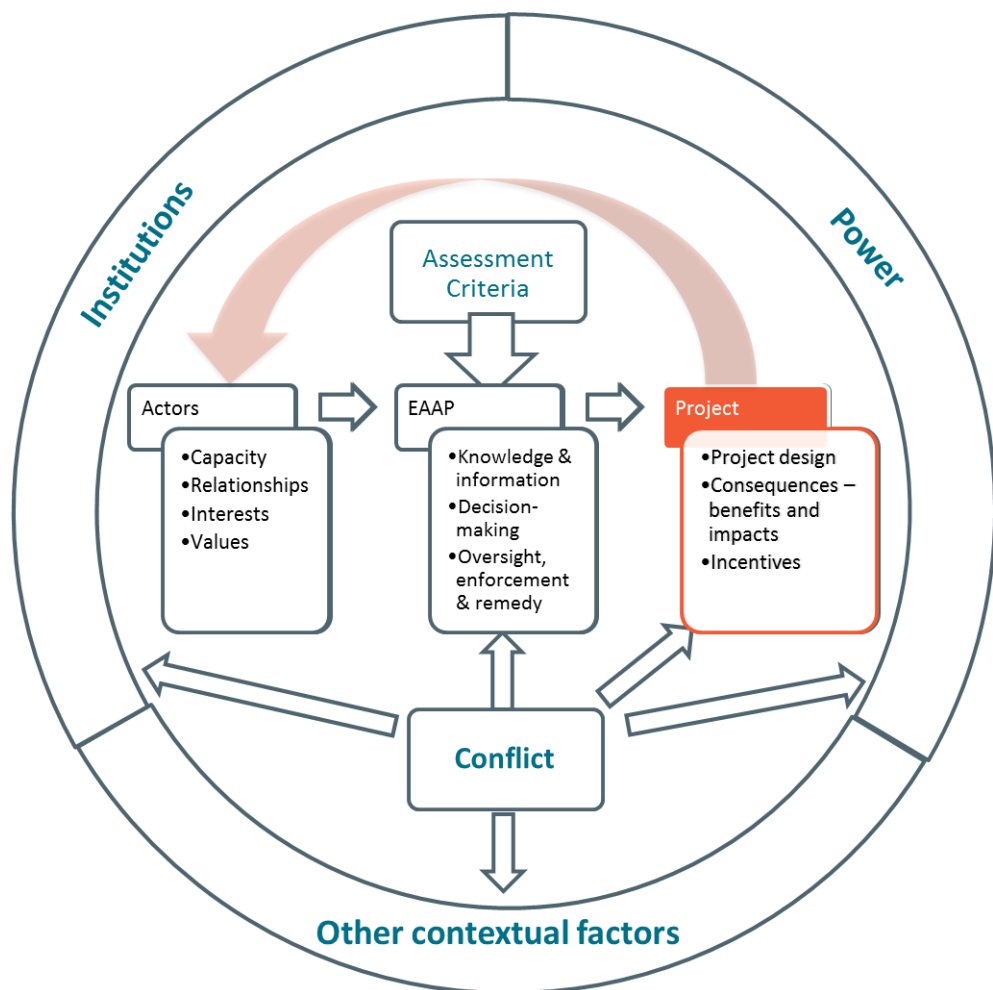
Human settlement in the city of Cajamarca begun approximately 3,000 years ago. The city's rich history includes the capture and execution of Inca leader Atahualpa. The events around Inca Atahualpa's capture and assassination by the Spanish during the conquest are a pivotal point in the symbolic understanding of Cajamarca's metal extraction history. Atahualpa was captured in the city of Cajamarca in 1532 by 168 Spanish men (Fabregat, 2000) led by Francisco Pizarro. Atahualpa had refused to submit to the Spanish or to adopt the Catholic religion. The story tells that in return for his freedom Atahualpa offered Pizarro that he would fill up a room with gold and fill up the same room twice with silver, but despite having fulfilled his part of the promise he was still executed by the Spanish (Municipalidad de Cajamarca, 2012). These events are significant in the symbolism of

⁵ In 2007 child mortality rates in Cajamarca were higher than the national average (21.8 deaths annually compared with the national average at 18.5) INEI. 2007. *Censos Nacionales 2007* [Online]. Lima: Instituto Nacional de Estadística e Informática. Available: <http://censos.inei.gob.pe/censos2007/> [Accessed]., and life expectancy rates at 72.9 years slightly lower than the national average (74.1 years) with women having longer life expectancy overall. Census data suggests a drop in illiteracy rates from 1993 to 2007, most significantly in its urban areas, however illiteracy continues to be high in rural areas (11% to 5.0% for urban areas and 39.5% to 24.5% in rural areas) INEI. 2007. *Censos Nacionales 2007* [Online]. Lima: Instituto Nacional de Estadística e Informática. Available: <http://censos.inei.gob.pe/censos2007/> [Accessed].

mining extraction in the region: “Critics of mining activity often cite this historic event. They state that North American mining companies are undertaking a ‘second conquest’ on behalf of foreigners that are interested in gold” (Elizalde and Sabater, 2009).

The Project

Figure 6. Conceptual framework – Project.

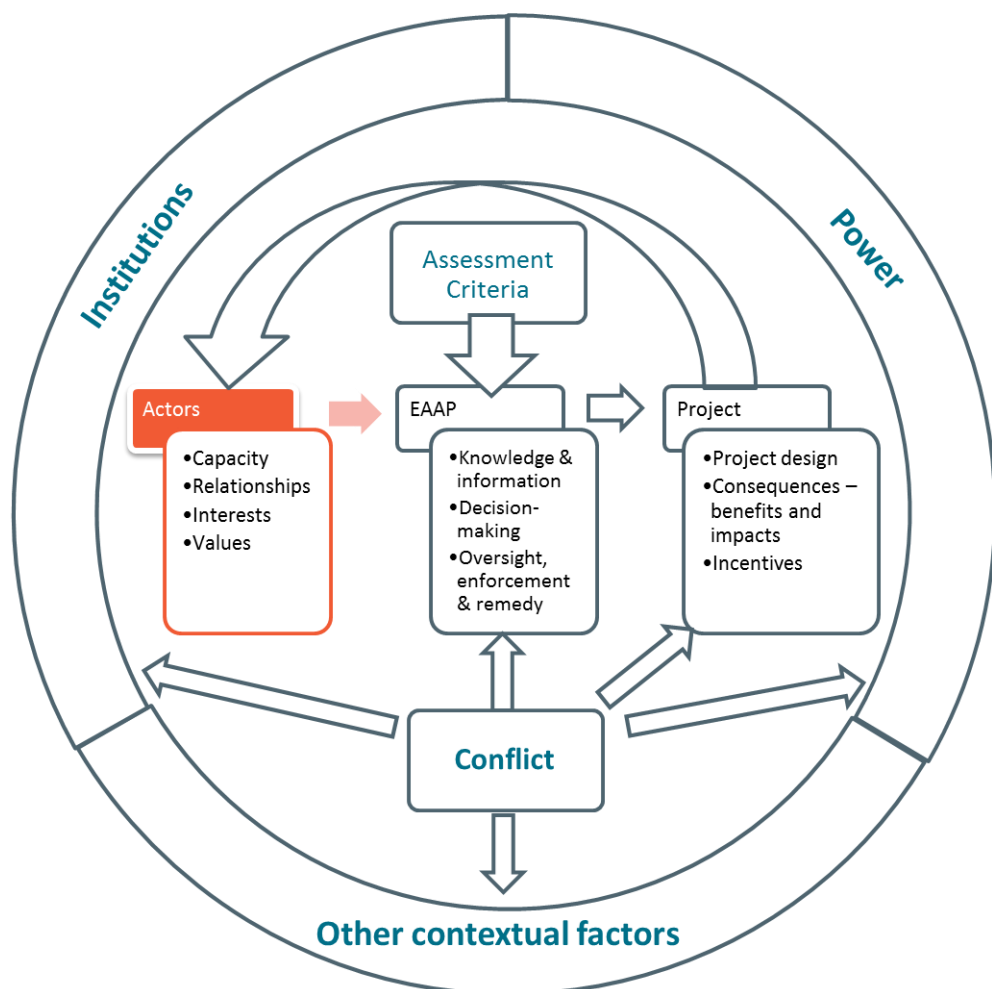


Minera Yanacocha is the proponent of the Conga project. Minera Yanacocha is 51.35% owned by Denver based Newmont Mining, 43.65% by Minas Buenaventura and 5% by the International Finance Corporation. Conga is as continuation of Yanacocha’s mining activities in the Cajamarca region. A copper and gold project that would bring production to 2.5 million equivalent oz of Au by 2017 and is expected to create approximately 5,000 -7,000 jobs during construction, Conga is planned to be the largest mining investment in Peru’s history. The project area covers the provinces of Celendin and Cajamarca in the Cajamarca region. The proponent estimates “royalties greater than US\$680 million and income tax greater than US\$2 billion at metal prices (\$1,500/gold oz; \$3.5/copper lb)” (Elizalde and Sabater, 2009).

Conga, as originally approved by President Allan Garcia’s administration, would dry four alpine lagoons and create four reservoirs, three of which would be destined solely to supply agricultural activity. These reservoirs would require ongoing management. This has raised community concerns over impacts on agriculture and livelihoods, calling the viability of the project into question at the regional level. Concerns over water have been at the centre of significant community opposition including blockades and a major strike that brought the province of Cajamarca to a halt during late 2011, and resulted in the fatal shootings of 5 protestors by police. The project is currently under suspension, with only water infrastructure (i.e. artificial reservoirs) being constructed.

Actors

Figure 7. Conceptual framework – Actors.



The actors of this case include the proponent, Minera Yanacocha, and its owners Newmont Mining Corporation and Minera Buenaventura; the National Government and its Ministries; the Regional Government; a number of regional civil society organisations and the residents and businesses of

various towns and settlements in the Cajamarca region who perceive the project will affect them; and the mediators tasked by the National Government with facilitating a resolution to the conflict. The background chapter describes actors at the National level. We briefly describe some the other actors below and will provide more commentary on relationships dynamics once we have presented a chronology of events for the case.

Regional Government

At the time of this study, Gregorio Santos was at the helm of the Cajamarca Regional Government. A member of communist party *Patria Roja*, Santos backed Ollanta Humala's presidential campaign that prioritised water resources over mining developments in the region. Since Humala's policy shift, Santos withdrew his support and campaigned against the implementation of the Conga project. Santos is a school teacher and has the support of Peru's teachers' union, one of Peru's most powerful, with significant geographic coverage.

Proponent

Minera Yanacocha is largely owned by Newmont and Minas Buenaventura. Incorporated in 1921, Newmont is listed in the New York Stock Exchange (NYSE). Newmont is a global miner, focusing on copper and gold production in seven countries (United States, Australia, Peru, Indonesia, Ghana, New Zealand and Mexico). It has approximately 43,000 employees and contractors. Its South American operations, namely Yanacocha and La Zanja are both in Cajamarca, Peru. It also has projects in Guyana (Merlan and Sabajo).

A founding member of the International Council on Mining and Metals, Newmont has public policies on social responsibility, environment, mercury management, health and safety and carbon management, and reports that it has 'discipline specific' standards used to guide the management of its social and environmental impacts. The company reports publicly on its social and environmental performance through Global Reporting Initiative-based sustainability reports. The Dow Jones Sustainability Index has included Newmont in the list of sector-leading companies six consecutive times including the most recent index, published in September 2012 (Newmont Mining Corporation, 2012).

In 2007, following a shareholder resolution (97% support), Newmont's Board of Directors commissioned a review of the company's relationships with communities. An independent working group conducted the review under the oversight of an advisory panel. The process, known as the CRR, concluded that Newmont needed to: "Improve its engagement with local communities; build its capacity to resolve conflict and address grievances; and develop global policies, standards and programs that better guide its behaviours" (Newmont Mining Corporation, 2009). The CRR covered the Yanacocha operations, located in the same area as the proposed Conga project. The CRR observed a number of significant legacy issues that remained unresolved and identified gaps in community relations practices needing improvement action (see Elizalde and Sabater, 2009, History of company community relations).

The other key partner in Minera Yanacocha, with a significant but not controlling interest, is Compania de Minas Buenaventura. The largest publicly listed Peruvian mining company, with significant mining holdings and a number of wholly owned and controlled mines, its main shareholder is the local Benavides family, its CEO Roque Benavides belongs to this family.

Civil society organisations

Patria Roja

Founded in 1928 as the Socialist Party of Peru, *Patria Roja* is nowadays Peru's Communist Party (*Patria Roja*, 2012). It holds Cajamarca's Regional Presidency through its representative Gregorio Santos, and supports Santos' campaign against Conga.

Group of Education and Intervention for Sustainable Development (GRUFIDES for its Spanish acronym - *Grupo de Formación e Intervención para el Desarrollo Sostenible*)

GRUFIDES is a non-governmental organization that focuses on sustainable development and environmental issues in Cajamarca. The group has a long standing history of objection to mining activities at Yanacocha mine and more recently and has raised concerns over the impact of the Conga mine development on the region's water supply. GRUFIDES recently supported a US based consultant to review the approved Conga Environmental Impact Assessment. The findings of this review have deemed the EIS inadequate, biased and lacking in transparency (Robert E. Moran, 2012).

Organisation for the Defence of the Interests of the People's of the Cajamarca Region (*Frente de Defensa de los Intereses de los Pueblos de la Región de Cajamarca*)

This organisation is part of a national network of *Frentes de Defensa* or 'Defense Fronts' with the stated intent of: advancing interests of the majority, working class and of "progressive, nationalist, left wing, democratic political organisations"⁶. The Regional President of Cajamarca supports this organisation, which is led by Idelso Llamo, a member of the *Rondas Campesinas* (see below) and of *Patria Roja* (El Comercio, 2011b).

Rondas Campesinas

The *Rondas Campesinas* (Peasant Vigilance) groups represent examples of local organisations that work in the departments of Cajamarca and in Piura. These groups were initially created to guard against cattle rustling, but have grown to assume a wider range of governance, anti-subversion and even judicial roles against the activities of the extractive industry (Bebbington and et al., 2007).

Environmental Defence Front of Cajamarca (*Frente de Defensa Ambiental de Cajamarca*)

Led by campaigner Wilfredo Saavedra, a member of *Patria Roja*, this civil society organisation is one of the main organisers of large scale protests against Conga in Cajamarca. Saavedra is not an elected representative of the people, which has excluded his organisation from participating in negotiations with the National Government. This organisation has invariably opposed Conga and advocates alternative development pathways for the region such as tourism and agriculture.

Relationship History

The history of relationships between Andean *campesino* communities and successive governments informs the terms of engagement for this case, and so does the previous interaction between Yanacocha and local and regional stakeholders, and with the National Government. Overall central

⁶ <http://frentes-regionales.blogspot.com.au/> (our translation)

governments have been perceived as colluding with industry due to their reliance on mining royalties (this perception has been documented in other cases such as Tambogrande – see Castillo and Avila, 2008). In the case of Minera Yanacocha, allegations of bribery of senior government official Vladimiro Montesinos by Newmont executives in the late 90s, have added to this perception.

Below we discuss key aspects of Minera Yanacocha's relationship history in the local/regional arena.

Proponent - Community Relations

The Conga project inherits the legacy of Minera Yanacocha's Yanacocha mine. Yanacocha has a number of programs to contribute to the Cajamarca region, including a Solidarity Fund – *Fondo de Solidaridad*, and its Foundation Los Andes de Cajamarca, which implements development projects for the region. However, significant social and environmental incidents mark the history of the mine, and continue to affect its relationships with the local and regional communities.

The history of Yanacocha's community relations is best described in the review of community relationships (CRR) conducted by external parties and published in 2009 (Newmont Mining Corporation, 2009). The CRR concluded that despite its contribution to economic growth there was negative sentiment over environmental and social impacts and incidents, and resentment because of a perception of arrogance and lack of responsibility on behalf of the company. Below are some of the key findings (Elizalde and Sabater, 2009):

The CRR found that while the mine had brought significant economic growth to the region and made other contributions through the mining Cannon and Solidarity Fund, the region was not prepared for the transformations it underwent, expectations on employment were very high, and there were a number of outstanding commitments that had not been fulfilled by the company.

At the time the CRR report was published, there was community resentment due to previous serious environmental and social conflicts, including the death of a protester at Combayo, a mercury spill at Choropampa, and an attempt by Yanacocha to mine Cerro Quilish, a mountain of environmental and cultural significance. There was a perception that Minera Yanacocha was not assuming full responsibility for incidents or ensuring their complete resolution.

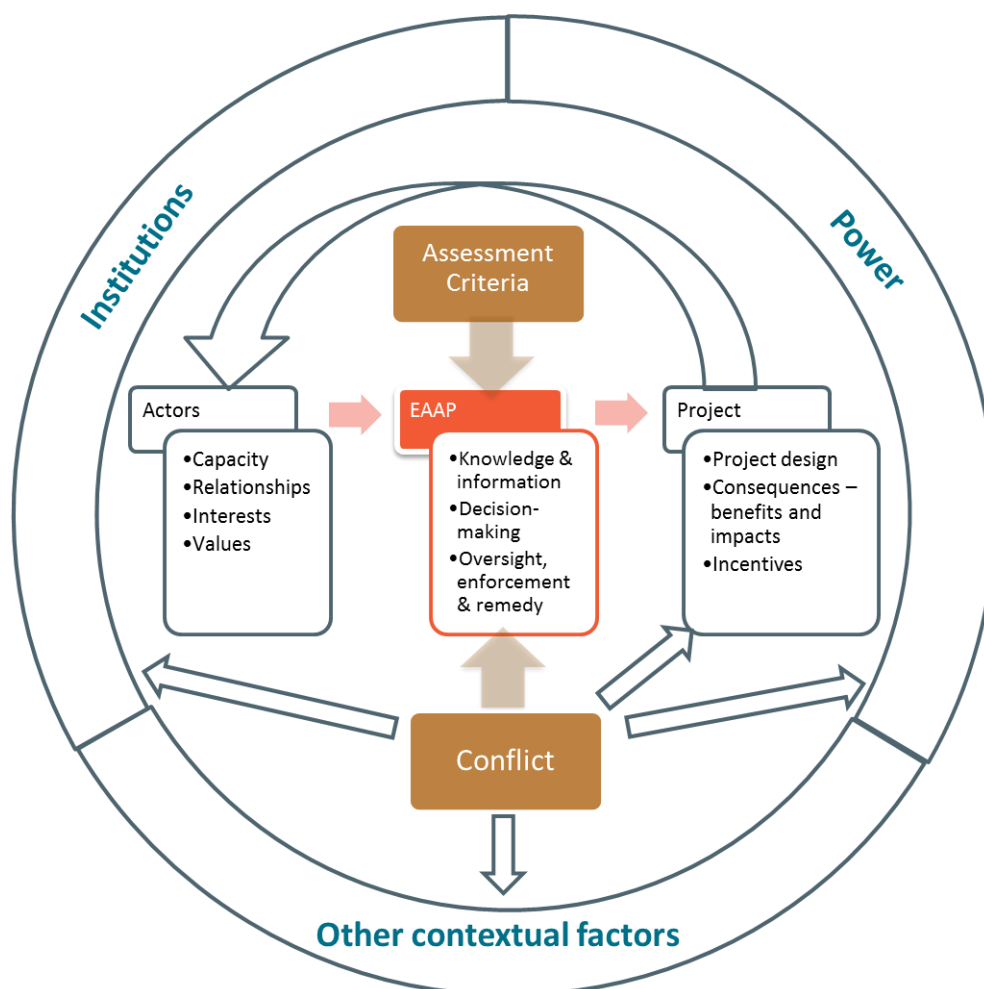
A key issue of concern for communities was water quality and supply. However, communities perceived that their concerns met defensive company responses. The CRR recommended that the company establish programs to address the lack of trust and the credibility gaps through transparency and dialogue around water impacts and monitoring.

Other community relations issues included: a division between mine workers and non-mine workers (due to incomes); community perceptions of arrogant management and employee attitudes towards community members; and concerns over human rights standards when involving security forces – mainly related to the death of a protester at Combayo and allegations of surveillance of activist groups.

The CRR stated that efforts to engage with communities were limited, as was knowledge of local communities and culture, and that a facts approach prevented the company from acknowledging the importance of community perceptions. However, it also noted that Minera Yanacocha had developed a 'New Focus' strategy that was leading to positive behavioural shifts amongst Yanacocha personnel.

Conga's Environmental Assessment and Approval Process (EAAP)

Figure 8. Conceptual framework – EAAP.



Conga's EIA and its overall licensing and approval have been protracted, with multiple parties seeking to influence results. A proposed project of significant interest for the Peruvian government and regional and local stakeholders, it has profiled prominently in the national and regional media in recent years.

Below we present a summary chronology of events. It does not aim to be exhaustive but to highlight the key events that illustrate the strategies and positions of various actors as well as the evolution of Conga's EAAP.

Chronology of key events

Table 1. Timeline for Minas Conga mining project.

Date	Event
1992	A consortium is formed to exploit the Yanacocha mine. Peru releases key mining regulation laws.
1998	Water quality reports fuel local concerns over pollution from Yanacocha.
2000	Choropampa mercury spill –mercury (by product) leaks from poorly sealed containers transported in a Yanacocha contractor truck. The spillage is not promptly reported. It affects Magdalena, San Juan and Choropampa. Villagers in Choropampa collect the mercury thinking it is valuable. This is reinforced by Yanacocha’s offer to pay those who return mercury. A number of residents suffer mercury poisoning.
2000	Cajamarca municipality makes Cerro Quilish a restricted area (i.e. not apt for exploration). Cerro Quilish is a mountain of environmental and cultural significance where Yanacocha was to conduct exploration.
2001-2003	Community rallies in support of Cerro Quilish restriction.
2004	The Central Government declares the exploration permit for Cerro Quilish invalid.
2005	Environmental baseline for Conga.
2006	A farmer from the town of Combayo is shot and killed in a community protest.
28 July 2006	Alan Garcia is elected President of the Republic for a period of 5 years.

Date	Event
2007	Grufides alleges that the FORZA security company, a Yanacocha contractor, has been spying on their leader Father Marco Arana.
2009	35 workshops conducted in <i>caserios</i> (villages) in the area of influence.
Mar 2010	Conga EIA public hearing (4,000 in attendance).
3 Oct 2010	Gregorio Santos elected Regional President of Cajamarca.
27 Oct 2010	Conga's EIA is approved by the Ministry of Energy and Mines (after responding to more than 300 requests for additional information). Favourable opinion of the National Water Authority and the Ministry of Agriculture.
2011	Law N° 29785 – Prior consultation law (Indigenous peoples) based on ILO resolution 169. Changes to royalties and tax regime for the mining sector.
5 June 2011	Ollanta Humala's presidential victory at the helm of Gana Peru party.
28 July 2011	Ollanta Humala is elected President of the Republic. Since then, President Humala has had three Presidents of the Ministerial Council: Salomon Lerner (28 th July 2011 - 10 th December 2011) Oscar Valdes (11 th December – 23 rd July 2012) Juan Jimenez (23 July 2012 – to date)
12 Sep 2011	Cerro Quilish commemoration involving activists from Grufides (Marco Arana) and Frente de Defensa Ambiental de Cajamarca (Wilfredo Saavedra).

Date	Event
21 Sep 2011	Protests against Conga involving Gregorio Santos, teachers' union and Defence fronts.
6 Oct 2011	Gregorio Santos states mining is not part of the regional development strategy.
25 Oct 2011	Yanacocha issues a media statement saying that "there is no environmental conflict", "there is no water conflict" and "there is no social conflict" around Conga. It states the project has environmental approvals and will uphold the highest environmental standards and that the protests are orchestrated as the people in the direct area of influence support the project.
2 Nov 2011	Dialogue table between La Encanada (District) residents and Yanacocha regarding commitments made by Yanacocha takes place in Cajamarca.
3 Nov 2011	The Ministers of Energy and Mines, Agriculture and Environment visit the lagoons in the Conga project area. Ricardo Giesecke, Minister of Environment promises a review of Conga's EIA. Yanacocha issues a media statement saying that it has the support of the 32 settlements in the area of influence of the project and that it has approximately 8,000 as proof.
8 Nov 2011	A delegation of 50 residents of the Conga area of influence arrives in Lima to provide support to the Conga project and in an attempt to prevent the strike scheduled for 9 November. Authorities from 32 settlements in the area of influence meet the Mines and Energy ministry in Lima to provide support for the Conga project.
9 Nov 2011	Opponents of the Conga Project block the roads between Cajamarca and Bambamarca and the access roads to Cajamarca.
10 Nov 2011	Cajamarca Mayor Ramiro Bardales states his support for the strike and asks president Humala to deliver on his pre-election promise to preserve water resources.

Date	Event
16 Nov 2011	<p>President Humala states that:</p> <ul style="list-style-type: none"> • Conga is important for Peru because the moneys it will generate will be used to finance social inclusion policies. • The EIA has approval but can be improved. • He will not listen to ultimatums.
18 Nov 2011	Peruvian Ombudsman calls for a technical dialogue of all interested parties around the Conga EIA.
Nov 2011	Prime Minister and Interior Minister attempt to bring regional authorities to dialogue as an alternative to the strike.
24 Nov 2011	Indefinite regional strike commences and approximately 1,500 protestors meet at Perol lagoon.
24 Nov 2011	Minister of Environment Ricardo Giesecke hands over an 11 page report with the comments of his Ministry on the EIA of the Conga Project to Prime Minister Salomón Lerner. The report is said to highlight gaps in the EIA.
28 Nov 2011	Environmental Management Vice-minister resigns and denounces that plans to establish an EIA oversight organism within the Ministers' council signals lack of will to consolidate stronger environmental regulatory authorities.
29 Nov 2011	5 civilians and 3 policemen wounded in confrontations between the Police and protestors in Celendin.
29 Nov 2011	Yanacocha suspends operations following a request from the National Government.
4 Dec 2011	Prime Minister Salomón Lerner travels to Cajamarca to meet regional authorities. Round table discussions aimed to end the strike. Following unsuccessful talks, president Humala announces State of Emergency in four provinces for 60 days.
5 Dec 2011	The Regional Council of Cajamarca passes a regional ordinance to protect head basins and to declare Conga unviable.
10 Dec 2011	Prime minister Lerner and most of the cabinet resign. 10 out of 18 Ministries change hands. Lerner is replaced by previous Ministry of the Interior, Oscar Valdez, who has a military background.

Date	Event
14 Dec 2011	Gregorio Santos sends a letter to Prime Minister Valdés stating that the protests ended on 4 December and requesting that the state of emergency be removed. Santos invites the Minister to sustain dialogue on 19 December.
14 Dec 2011	Prime Minister Carlos Valdés acknowledges the end of the protests, and agrees to an external evaluation of the Conga EIA.
14 Dec 2011	The Ministers of Transport, Development and Social Inclusion, and Housing visit Cajamarca and meet mayors to discuss government investment in the region. Wilfredo Saavedra and Gregorio Santos are not invited.
15 Dec 2011	The National Government lifts the state of emergency.
27 Dec 2011	Prime Minister Valdes announces that the independent, international review of the EIS will be conducted within 40 days. Valdes states that a Dialogue Table on regional development is making progress and that the National Government will act as a facilitator for the Regional and local governments to be able to use Canon moneys.
28 Dec 2011	The Cajamarca Regional Council issues a legal statement (<i>ordenanza</i>) declaring the Conga project unviable. The <i>Ordenanza</i> is published in Peru's legal journal. Authorities state they are resorting to their political, administrative and economic autonomy and making the decision based on the technical and legal inconsistencies of Conga's approval process.
29 Dec 2011	The National Government seeks to declare the regional <i>ordenanza</i> unconstitutional through action in the Constitutional Tribunal.
29 Dec 2011	Working meeting between representatives of the National Government and representatives of Cajamarca about the international peer review of Conga's EIA. No attendance from the Regional Government.
2012	Regulations for Peru's law of prior consultation (ILO 169) published.

Date	Event
Jan – Feb 2012	Peaceful rallies related to water take place in Cajamarca and Lima.
Feb 2012	Yanacocha implements a mass media campaign on the benefits of mining.
Feb 2012	International expert review of Conga’s EIA commences, to be concluded within 40 days.
Mar 2012	Dr Rober Moran publishes a parallel independent report of the Conga EIA and criticises its robustness. Newmont publishes a response.
Mar 2012	Grufides and the Regional Government continue to release statements opposing the Conga project.
14 Mar 2012	Kidnapping of NGO workers from Foncreagro – a Yanacocha funded NGO.
28 Mar 2012	Two community members are attacked in Pampa Verde (Celendin) after receiving books from one of Yanacocha’s foundations – the perpetrators of the attack see receiving the books as a sign of support for Conga.
11 April 2012	Peaceful regional strike in Cajamarca.
17 April 2012	The international expert review of the hydric component the EIA is published. It concludes that the EIA was technically sound but recommends improvements including increasing reservoir capacity and avoiding the use of lagoons Azul and Chica as waste dumps.
29 May 2012	Rally for peace and development in Cajamarca organised by the Chamber of Commerce.
31 May 2012	Indefinite strike in Cajamarca begins.
Jun 2012	President Humala states his conditions for Conga. Reservoir capacity needs to be at least 4 times bigger. The benefits should be in particular for Sorochuco, Huasmín, La Encañada and Bambamarca but should cover the 13 provinces of Cajamarca. Social Fund to be used in consultation with local authorities to develop social, productive and irrigation

Date	Event
	infrastructure to favour the poorest sectors of the population. Conga should guarantee at least 10,000 new jobs and follow the recommendations of the external review by studying alternatives to avoid using lagoons Azul and Chica as waste dumps.
5 Jun 2012	Santos asks for national and regional elections and for a new constitution.
18 Jun 2012	Regional Government and mayors request meeting with Humala government. Re-state Conga is not viable.
22 Jun 2012	Newmont's Regional Vice President for South America, Carlos Santa Cruz states "We ratify our decision to implement the international audit recommendations on the Environmental Impact Assessment (EIA) for the Conga Project and the government's social proposals in relation to its implementation".
Jun 2012	Losses to the tourism and transport sector are reported in the media.
23 Jun 2012	President Humala announces a multi-sectorial committee that will deliberate for 30 days and propose a way to engage in mining while ensuring sustainable development. It will include a Technical Commission chaired by the Ministry of Environment.
3-5 Jul 2012	5 civilians die as a result of confrontations between the Police and protesters in Celendi and Bambamarca.
3 Jul 2012	State of emergency declared in 3 Cajamarca provinces - Celendín, Hualgayoc and Cajamarca.
4 Jul 2012	Yanacocha states it laments Celendin deaths.
4 Jul 2012	Marco Arana, from GRUFIDES is detained in Cajamarca over claims that he did not observe the State of Emergency.
6 Jul 2012	President Humala proposes new mediators for conflict: the priests Gaston Garatea and Luis Cabrejos.
18 Jul 2012	Garatea and Cabrejos met 16 representatives of Cajamarca government, in Lima.

Date	Event
23 Jul 2012	Prime Minister Valdes resigns.
28 Jul 2012	<p data-bbox="450 359 1368 386">Presidential speech on Peruvian independence day refers to mining conflicts:</p> <ul data-bbox="495 418 1886 847" style="list-style-type: none"> <li data-bbox="495 418 1832 518">• Peru's wealth of natural and mineral resources demands a new way of engagement between extractive industries and the environment, sound natural resource management, balanced territorial organisation, and rational management of water resources. <li data-bbox="495 526 1832 587">• Environmental regulation for extractive industries to be revamped, based on the work of the 'Multi-sectoral Commission for the improvement of extractive industries'. <li data-bbox="495 595 1886 735">• The incidence of conflict results from structural causes and from the political system's inability to respond democratically to social demands. In some cases, the bad reaction of surrounding communities, the lack of social and environmental responsibility that some 'economic agents'/parties have displayed in the past, are at the core of the conflicts that preoccupy the Peruvian people today. <li data-bbox="495 743 1816 804">• Water is a priority within the regulatory and legal reform agenda. The Government proposes constitutional reform to recognise water access as a fundamental right. <li data-bbox="495 812 1509 847">• The Government will establish a national system to prevent and manage conflict.
3 Aug 2012	State of emergency period extended.
18 Aug 2012	Gregorio Santos states that extending the state of emergency measure effectively puts an end to the mediation process and does not attend further talks.
21-22 Aug 2012	Regional strike in Cajamarca.
21 Aug 2012	Newmont CEO's Richard O'Brien states the conditions are not right to go ahead with Conga, following the construction of reservoirs the project development could commence by 2014 but only under the right conditions.
22 Aug 2012	The Peruvian Prime Minister stated the Government would give Yanacocha two years to find a solution to water issues

Date	Event
	and calls for a stronger focus on development from regional actors given that the project had entered a new phase of suspension.
15 Sep 2012	Gregorio Santos starts collecting signatures to register a new political party.
19 Sep 2012	Gregorio Santos appears in Congress to justify his negative to meet with the mediators, and to report on the reasons for his negative to Conga and on the costs of the protests.
Mid Sep 2012	Gregorio Santos under suspicion for irregular allocation of contracts to private companies
8 Oct 2012	Despite efforts by mediators protests recommence in Cajamarca.
10 Oct 2012	Newmont announces that his regional VP for South America, Carlos Santa Cruz will be Regional VP Australia and New Zealand from February 2013, Todd White VP Corporate Excellence to assume the South America VP. Javier Velarde will be responsible for Corporate Affairs.
Mid Oct 2012	Protesters congregate around the threatened lagoons.
11 Nov 2012	<p>Humala's Government to resume dialogue in Cajamarca. The Ministr of Environment, Mr. Manuel Pulgar, highlighted the importance of engaging with the President of the Cajamarca Region, Mr. Gregorio Santos.</p> <p>In spite of being part of the position to the project, the engagement process cannot take place without Mr. Santos.</p> <p>Two priest from the Catholic Church are acting as the mediators and peace builders in the region. they are facilitating the dialogue among the stakeholders in a series of roundtables sponsored by the central government.</p>

National significance

Conga's EAAP became of national significance during the presidential elections of 2011 and after. The project became a test case for opposing views on the role of mining in Peru's development and social inclusion aspirations. Views on the role of mining in Peru's development are varied, often polarised, and Conga's EAAP is no exception. The Humala Government sought to reconcile the interest of the mining industry with those of regional communities, stating that mining moneys will allow Peru to deliver the social inclusion Peru's poor need. However, a number of mining projects, including Conga, face significant rural or regional opposition based on concerns over environmental degradation and a poor track record of mining contributions to development and social inclusion.

President Humala's position on mining and environment shifted during his government, leaving some of his election supporters feeling that he is not fulfilling his commitments. Humala's election platform, The Great Transformation, proposed to change the existing neoliberal model for a more socially inclusive one. Humala's presidential campaign in 2011 and his previous campaign for the 2006 election, called for water resources to be given priority over mining investments (La Republica, 2012b, La Republica, 2012a, Peru 21, 2012, La Republica, 2011b, La Republica, 2011a, BBC Mundo, 2011). However, Humala later moderated his discourse, advocating that Peru can continue to develop its mining sector while preserving the quality of essential water resources, and that pursuing social inclusion should not come at the expense of economic growth. In a televised speech about the Conga project, Humala stated that his government opposed 'extremist' positions that call for Peru to make a choice between water and gold. Instead he proposed the country can have both water and gold. This shift in the public discourse distanced Humala from civil society organisations that oppose mining.

The EIA of the Conga project received approval from the Government of Alan Garcia, in 2010, but was called into question shortly after his successor, Ollanta Humala, came into office. Once President Humala entered office, protest around the Conga project grew in the Cajamarca region, calling into question the soundness of Conga's EIA and licensing process. The size of the regional protests (occurring also in Cusco against Xstrata) put to the test Humala's mining and development formula for Peru.

Humala's government appeared divided on Conga's EIS and licensing. There have been two cabinet renewals associated with the conflicts around the Conga project. One of the most evident divergences within the government came with the leaking of an Environment Ministry document highlighting weaknesses in Conga's EIS. At the same time President Humala continued to state that the EIA had already been approved by a previous government. The contradictions ended with Environment Minister Ricardo Giescke resigning his post.

Humala's responses to significant mining conflicts caused division in his cabinet and distanced him from some of his political supporters. Following the crises that the Cajamarca protests caused, Humala declared a state of emergency in the region. This seems to have created further division in his cabinet, which led to the replacement of 10 of Ministers. Humala's management of mining conflicts also met negative responses from *Gana Peru* (the political party that supported him through the presidential election) supporters. In Cusco, *Gana Peru* members resigned their posts in protest over Humala's declaration of a state of emergency after community protests against mining company Xstrata.

Following a third party external review of the EIA and ongoing protests, Humala requested improvements to Conga's social and environmental design and invited local and regional actors to engage in constructive dialogue on development for the region. The Humala government invited the third party review of the Conga EIA to respond to ongoing social conflict and lack of credibility. The President utilised the results of the external expert review as a platform to impose additional environmental management measures and require increased social investment in Cajamarca from Minera Yanacocha.

As protest continue, both National Government and company representatives have publicly stated that aside from construction of reservoirs the project is suspended until conditions improve.

Regional dynamics

The regional context for Conga is highly complex. Around it, converge the regional expression of wider national debates on mining and development, community concerns over mining impacts, in particular over water, and powerful civil society organisations. These have resulted in significant civil society protest in opposition to the project and its EAAP. These complex tensions remain unresolved to date.

Despite being one of Peru's main mining regions, Cajamarca is still amongst the poorest, making Humala's pre-election discourse on mining appealing for the rural population of the region. Some commentators state that successive Peruvian Presidents have been elected based on promises made to the working class but that once in office these governments have served the interests of industry. Regional community organisations with strong links to the Regional President, Gregorio Santos, are disappointed by the shift in Humala's position on mining and strongly oppose the development of Conga.

Concern over water quality and availability has been a key long-standing issue for Yanacocha and Conga. Previous studies in the Yanacocha area of influence had already identified water as significant issue for rural and urban water users. These studies not only called for a more open and participative approach to the management of water impacts and to their monitoring, but also found that local communities did not trust the company.

Powerful regional organisations have joined forces to campaign against Conga on environmental grounds. The Regional President appears to have sound relationships with the *Rondas Campesinas* of the area, as well as with mayors of key localities. Regional organisations including the Environmental Defence Front of Cajamarca, GRUFIDES, and the Regional Defence Front of Cajamarca, are capable of rapidly mobilising grass roots support in significant numbers. Together, the Regional Government and these organisations have campaigned against Conga voicing fears that water quality and availability impacts, during and after mining, will become a constraint to the region's sustainable development and agricultural activities. A history of poor company-community relations and of limited regional investment, has provided a shared discourse for a number of organisations that oppose mining. Limited trust in the central government apparatus has positioned these organisations as a viable alternative for people to voice their concerns, giving leaders the power to mobilise the peoples of the region.

Some of the leaders of community organisations and the president of the Regional Government of Cajamarca are members of Peru's Communist Party, Patria Roja. Commentators have argued that

community fears, poor community relations history of Yanacocha, and apparent contradiction in Humala's pre and post-election discourse, provided fertile ground for left leaning groups to leverage community support and raise their public profile to advance their political aspirations in the national arena.

Following Humala's public statements on the EIA's external review outcomes and implications, there has been more dialogue between the National Government and some mayors. Protests around the lagoons that the project will alter/dry continue, however with less significant numbers in attendance. In parallel, the National Government has raised concerns over Regional Government management and has requested the Regional President to report on the costs of the protests and the rationale for his opposition to Conga.

Conga's EAAP – Legal compliance, stakeholder consent and dialogue on sustainable development

It is clear that in this case legal compliance in EAAP did not suffice to create stakeholder consent for the project or to articulate a message that effectively addressed sustainable development concerns. Despite complying with national regulations, Conga's EIS and its approval have lacked community support and trust and much of the opposition was explicitly based on concerns around sustainable development. The external review of Conga's EIA concluded that it complied with national regulations. However, large scale protests demonstrate lack of community trust in the formal EAAP and dissatisfaction with its outcomes.

Some of the issues that might have prevented trust building and an effective dialogue on sustainable development relate to:

- gaps in transparency, information, communication and participation
- gaps in actor capacity
- power unbalances within the process
- a predominance of conceptual 'environmental boundaries' over those emerging from social processes
- limited spaces, tools and incentives for effective dialogue on sustainable development

These affected assessment and analysis, information and knowledge creation, decision-making, and the coverage of enforcement and remedy. Another key limiting factor was a lack of effective links between EAAP and other governance and planning processes which compromised the chances of leveraging political will for a resolution to the conflict.

Assessment criteria

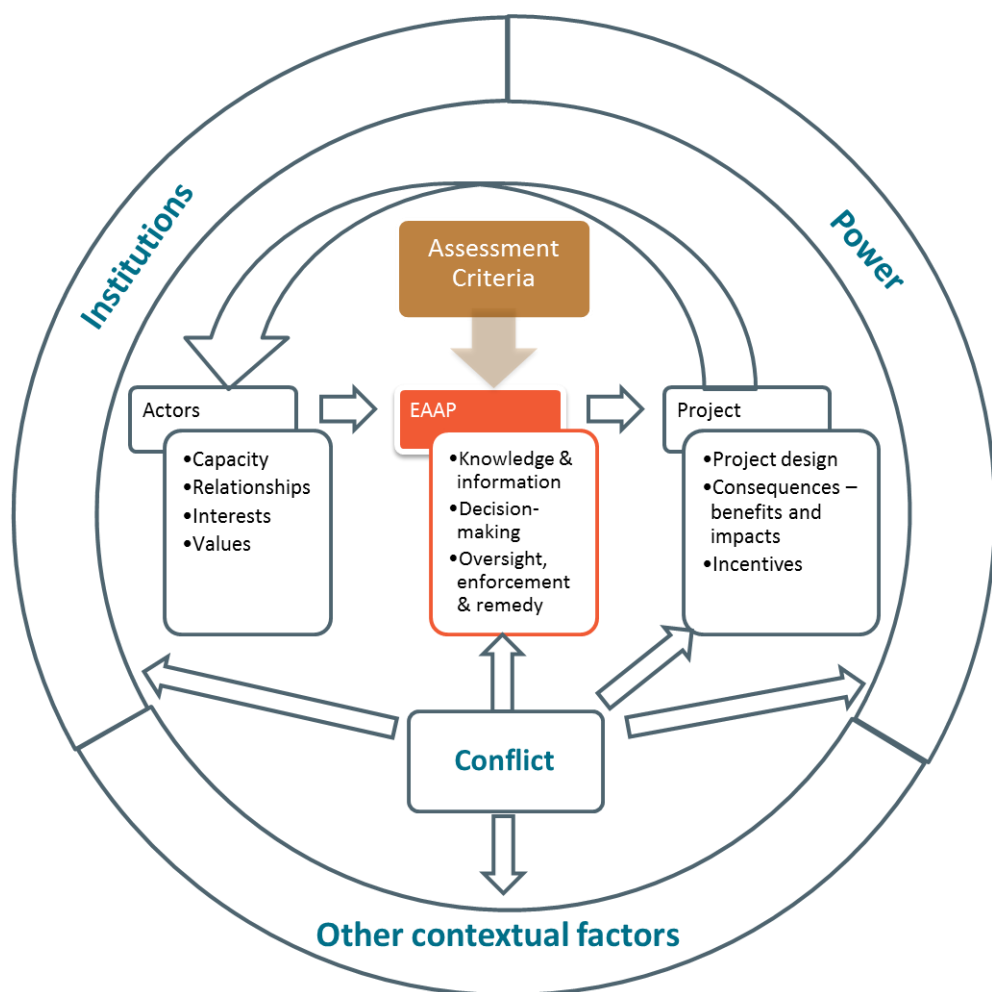
The formal EIS assessment process appears to have been circumscribed to legal requirements pertinent to environmental impact assessment. These requirements include participation and communication. However, this was limited to the 'direct' area of influence. Furthermore, the technical nature of environmental assessment seems to have limited scope for broader dialogue between the scientific approach and community knowledge on sustainable development and livelihoods. Proponent and National Government statements over a period of time emphasised the

legally compliant status of the EIA and downplayed local or regional concerns on livelihoods and long-term development.

There is limited evidence that the process led by regulatory bodies and the proponent was fully informed by social science expertise. Consultation occurred but it is unclear whether effective participation or deliberation took place. The EIA includes components of social analysis, however it is not clear whether the proponents' strategy for the EAAP was informed by social science or if it was circumscribed to other scientific disciplines.

Figure 9 indicates the part of the conceptual framework that this section addresses.

Figure 9. Conceptual framework – EAAP, Assessment Criteria.



Knowledge and information

Publicly available information on the EIA is highly technical and extensive, its format is not fully accessible to people with limited literacy or technical training⁷. Regional and local actors might

⁷ See: <http://www.newmont.com/sites/default/files/u87/Conga%20EIA%20Executive%20Summary.pdf>

require information on concrete regional transformations, benefits and impacts to be felt overtime as the project becomes a reality, this kind of information is not always evident in public disclosure.

The proponent's public disclosure and statements indicate that consultation efforts around the EIA concentrated on the 'direct' area of influence. Hence the scope of information flow, communication and participation within the assessment and analysis process might have been limited to this area. Protest leaders advocated the interest and involvement of a wider area of influence than the 'direct' area of influence contemplated by the company. Regional and local complexities are difficult to address if proponents circumscribe their engagement and research activity within the boundaries of conceptual environmental impact areas. In this process, it appears that the regional standing of civil society organisations was underestimated or overlooked by both the proponent and the regulatory authorities that granted approval.

Decision-making

The process exposed a number of capacity issues and power unbalances that affected decision-making processes. The proponent and National Government displayed an incomplete understanding of the motivations and interconnections of regional and local actors, but had significantly more power to direct the progress of formal EAAP components. On the other hand, the Regional Government and civil society organisations had limited scope to influence formal components of the EAAP, but had significant capacity to affect later stages of the process beyond formal regulatory approval.

Oversight, Enforcement and Remedy – Checks and Balances

It appears that formal processes were enforced, for example the proponent had to attend to numerous observations on the EIA. However, perceived oversight gaps did not receive satisfactory remedy in the eyes of some sectors of the regional community. Through opposition and mass protest, the community forced more extensive regulatory oversight, in the form of an international expert review of the EIA. This led to more significant enforcement, with subsequent National Government requests to the proponent, including a slower phase of progress in project development and guarantees for a number of development benefits for the region.

Conflict

Historic and systemic factors contributed to conflict emerging in this case and so did a number of igniting/immediate factors. Historical factors (see chapter 3) converge on communities that have endured centuries-long social conflict in which economic basis and political incentives are entrenched in a vicious circle.

Igniting factors for the conflict around Conga's EAAP include:

- The proponent made assertive announcements of its decision to go ahead to alter the system of water reservoirs that has sustained local agriculture and households for centuries, despite confrontations between protestors and the police

- Parallel development of mining and artificial water supply – as initially proposed by the company and approved by the government – was not a satisfactory solution for regional and local actors
- Communities did not trust the proponent because of its previous social and environmental performance
- Political confrontation between the National and Regional Governments
- Swinging National Government positions on Conga’s EIS
- Actors perceived the conflict as a ‘zero sum’ game (a situation where the gains of one party become/are perceived as the losses of the other party).

The perception of the conflict as a zero sum game comes partly from the life-or-death framing/perception of water availability for the communities settled in the area of the Conga project and from the swings in Yanacocha’s communication strategy which fluctuated from opacity to confrontational style. Water is seen as the life-support of rural livelihoods and loss of water understood as a threat not only to livelihoods but to life. It may be difficult for the community members to come up with a tangible picture of how their livelihood systems would survive with artificial reservoirs and water works replacing the natural lagoons and surface creeks that have provided water and environmental services for a long time.

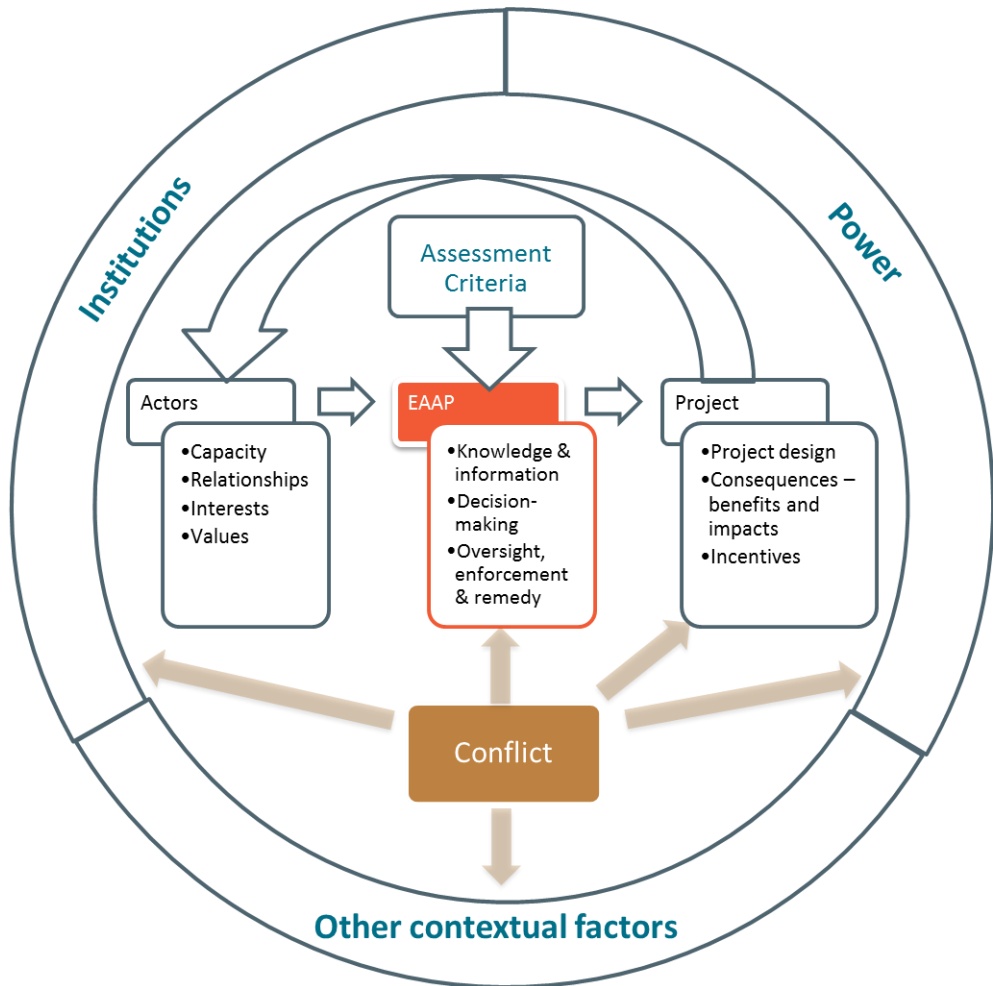
The proponent’s media and communications strategy did not address these community concerns. Community difficulty in understanding proposed changes and its lack of trust on the proponent should have motivated the proponent to change designs and communication to gain community confidence. Signals of this type were not sent; instead, the company insisted on going ahead. This was acknowledged by President Humala in a 27 June 2012 speech: *“We will convoke all leaders to dialogue, I think it is important that the company honour its promises and win people’s trust; the company must address the lack of trust factor by fulfilling its commitments with less haughtiness and more modesty. If that demands changes in company’s personnel, they are welcome.”*⁸

Needless to say, formal EAAP did not offer effective channels to harness conflict towards positive and constructive outcomes from its early stages. There were a number of attempts by the National Government to initiate dialogue, but these seem to have come late in the process when negative sentiment had already escalated. The strong political confrontation between National and Regional Governments worked against attempts at constructive dialogue. Poor understanding of regional power dynamics on behalf of the proponent and the National Government seem to have prevented them from appreciating the need to engage in constructive dialogue with local and regional actors.

Figure 10 indicates the part of the conceptual framework that this section addresses.

⁸ See <http://peru21.pe/2012/06/27/actualidad/humala-yanacocha-cumplir-promesas-menos-soberbia-y-mas-humildad-2030629>

Figure 10. Conceptual framework – EAAP, Conflict.



Extent of application of design principles

Table 2 provides high-level comments on the extent to which the *design principles* (Chapter 2) appear to have been applied as part of Conga’s EAAP.

Table 2. Extent of application of design principles - Conga.

Principle	Relevance to case
Enable early, broad-based dialogue on the project's contribution to sustainable development	<ul style="list-style-type: none"> • While the proponent seems to have undertaken dialogue over a number of years in a number of settlements, it appears it engagement was not as broad as the complexity of the project's impacts required • A history of poor community relations and polarised national debates on the relationship between mining and development seem to have hindered the potential for constructive dialogue
Seek commitment from elected decision-makers	<ul style="list-style-type: none"> • The proponent obtained support from the National Government but not from the incumbent Regional Government, which turned out to be a very powerful agent in mobilising the community protests that halted the project • The swinging support at the National Government level contributed to fuelling negative regional sentiment • Opposition to the project became a pivotal aspect in the agenda of regional political forces
Integrate dialogue, negotiation, consent, impact assessment and approval processes	<ul style="list-style-type: none"> • Conga's EAAP saw the evolution of formal legal and regulatory frameworks on impact assessment and on consultation, participation and consent • There is limited Peruvian experience on negotiation frameworks such as agreements • Consent and participation mechanisms are currently the responsibility of different actors. The former is in the hands of the Government while the latter is the responsibility of the proponent. Both occur at disconnected points in time. In particular this limits ability for informed consent as the results of impact assessment become available much later than the proposed prior consultation. • At one stage, the proponent made assertive announcements of its decision to go ahead with the alteration of the system of water reservoirs that have sustained local agriculture and households for centuries, amid violent confrontations of protestors with the police. This demonstrates that the door did not remain open for dialogue and negotiation after formal legal approval was obtained.
Fully integrate social science into all stages of the process	<ul style="list-style-type: none"> • As above, while social scientist contributed to components of the EIA it is unclear whether it informed the actions of the proponent and the National Government at key turning points in the broader EAAP
Introduce checks and balances to compensate	<ul style="list-style-type: none"> • There are explicit conflicts of interests in the functions of MEM • The perception of State-private sector collusion contributed to conflict escalation

Principle	Relevance to case
for perverse incentives	<ul style="list-style-type: none"> • The conflict led to an international expert review, an innovation that might serve as a check and balance in other cases
Support capacity building and address capacity unbalances	<ul style="list-style-type: none"> • Mechanisms to address capacity unbalances, for example, to provide independent technical review that local actors might not be able to afford, came only after significant violent conflict • It is unclear whether the proponent had sufficient capacity to understand local and regional social dynamics
Implement flexible and inclusive public participation mechanisms with decision-making and trust building in mind	<ul style="list-style-type: none"> • Decision-making on approval rests in the hands of MEM • It is not clear how citizen participation outcomes informed decision-making
Design institutional arrangements to allow dialogue across different knowledge systems	<ul style="list-style-type: none"> • Peru has a Dialogue Table on mining with representation of various sectors of society which offers a mechanism for dialogue between different knowledge systems but its role in the specific case of Conga is unclear • The proponents' public statements denote an incomplete understanding of local livelihood-based knowledge systems
Integrate EAAP with natural resource management strategies and initiatives at regional and national levels	<ul style="list-style-type: none"> • The proponent and national and regional authorities did not fully link the EAAP with other regional or local planning and governance initiatives around development and natural resource management. The Regional Government's desire to declare the lagoons a no mining zone exemplifies this clearly. This lack of connection between project level planning and approval and broader processes, results in limited political will, affecting the capacity of the project to reach local and regional consent.

b.2 Tia Maria Mining Project

Executive Summary

Regional Context

- The Arequipa region, located in the south-western part of Peru, has a number of active industries including manufacturing, mining and farming. In 2010, the percentage of the population living below the poverty line was 21% (below the Nation's 34.8% - data 2009) (INEI, 2012).
- Mining, mainly of copper, represents 10.3% of GDP and 10.1% of the national mining production (INEI, 2010). The main players in the region are Cerro Verde Mining Company, followed by Buenaventura, Orcopampa, Ocona and Arcata. Arequipa receives 14.75% of the national mining investment or US \$53,229 million (MINEM, 2012). This includes 48 projects at different stages ranging from exploration to expansion.
- Mining unions, and local communities opposing Tia Maria share concerns over rising costs of living resulting from mining-related inflation.

Proposed Project

- Property of Southern Peru Copper Corporation (SCC), Tia Maria is located in the Tambo valley, Cocachacra District, Islay province. Tia Maria would be the second biggest copper mine in the world and would pay approximately US\$270 million in taxes on an annual basis, with US\$134 million in Mining Canon payments (Peru 21, 2009) and generate 3,000 jobs, down to 650 during mining.
- The project has met opposition mainly based on concerns that its water usage and impacts will affect surrounding communities and in particular agricultural activity (Peru 21, 2009).

Actors

- The actors of this case include the proponent Southern Copper Corporation, the National Government and its Ministries, the Regional Government, a number of district and regional civil society organisations, and the residents – in particular from Cocachacra, Mollendo, Matarani, Dean Valdivia, Mejía and Punta de Bombón – and businesses of the region, as well as multilateral agencies such as the United Nations.
- There is a general perception that central governments historically have colluded with industry due to their reliance on mining royalties (see chapter 3). On the other hand SCC has been in Peru for a number of years and its current production expansion focus has ignited opposition. Southern Copper expects to implement four expansion projects to ramp up its Peruvian production capacity in the near future (Cruz and Mello, 2012).
- A number of strong civil society organisations are present in Islay some of which have been vocal opponents of the proposed project. SCC has faced, or is facing, opposition to some of its expansion projects with some of this opposition resulting in violent conflict.

EAAP

Tia Maria's EAAP evolved over time into a confrontational process and one characterised by asynchrony. Proponent timelines were poorly aligned with the requirements of community engagement and information processes, which contributed to depleting trust. Key events include:

- Southern Copper Corporation commences work in Peru since 1954 and from then into the 70s develops and exploits its Toquepala and Cuajone mines. In the 90s it acquires the Ilo copper refinery. In 1997 Toquepala, Cuajone and Ilo are required to implement environmental improvements as part of the Peruvian Government's Adaptation to Environmental Management Programme.
- In 2007, plans to invest in the development of Tia Maria are announced. The Global Financial Crisis of 2008 delays the project and President Garcia urges SCC to go ahead with investment.
- By April 2009, Tia Maria is at the detailed engineering phase, SCC has invested USD M\$115.8 and is conducting the feasibility study and preparing the EIS which it presents to Peruvian authorities in July 2009.
- In September 2009, 6,400 local Islay people take part in public consultations about Tia Maria and the outcome is an overwhelming NO to the project.
- In October 2009, The National Government asks SCC to clarify and address community concerns about ground water use and management plans.
- In November 2009, SCC defers Tia Maria by 6 months.
- In March 2010, MEM announces a Public Audience on the EIS for 19 April 2010. The Minister of Energy and Mines, speaks of the Canon benefits to be generated by Tia Maria and states that the EIS provides three different alternatives for water management.
- On 14 April 2010, regional civil society organisations lead a strike to boycott the Public Audience. During the succeeding days the National Government makes statements that disregard regional concerns, including a statement by the National President that the protest organisers are trying to intimidate him through terrorist methods.
- In late April 2010, MEM resolves to put the project on hold and appoints a Technical Roundtable to review and analyse the many observations made by community members on the EIS. The roundtable comprises 11 members: a representative from the Environment Ministry, five representatives from civil society and five from Southern Peru. It will have 90 days to provide observations.
- In July 2011, SCC provides a response to the observations of the Technical Roundtable but community concerns and protests continue into November 2010, when MEM engages the United Nations Office for Project Services (UNOPS) in providing an assessment of the EIS. SCC responds with a number of media releases on its environmental management practices.
- In March 2012, UNOPS–UNEP present the outcomes of the review. They find that the EIS in compliance with minimal requirements but it needs to address a number of significant gaps. The

review finds the study at fault 138 times and judges it reactive because of the advanced stage of engineering investment.

- In March 2012, there are ongoing protests against Tia Maria, with ~ 1,500 people from Cocachacra blocking the highway that connects Tacna and Moquegua with the rest of the country. At its climax, a total of 5,000 people take part in the protest. Confrontations between police and protestors leave 18 policemen and 16 local people injured.
- In early April 2012, the President of the Regional Government calls for the National Government to enforce the exit of SCC from Islay, stating that the company has failed to take the initiative. He asks the Police to reduce the excessive use of force, fire arms and tear gas.
- After this the National Government cancels the project and states that the EIS is inadmissible. However, SCC continues to ascertain that it is confident that its EIS will grant approval.

Findings

In this EAAP, serious gaps in regulatory enforcement, limited rigour in proponent-commissioned impact assessment and poor community engagement left little room for consent-building. An antagonistic process emerged that escalated to violent conflict. Ultimately, the EAAP evolved into a 'war of attrition' scenario, with each party betting at exhausting its counterpart while exhausting itself based on the assumption that she would be more enduring.

Some of the main issues that led to a confrontational process include:

- Limitations in MEM's assessment capacity/resourcing
- Limited or no enforcement of environmental requirements, with the proponent having made significant engineering investment well before gaining approval
- The National Government was perceived as siding with the proponent
- Technical weakness in the EIS, corroborated by a credible, independent third party
- The proponent sought to impose an unrealistic phase, based on commercial pressures, so failing to read community signals.

Regional Context

The Arequipa region is located in the south-western part of Peru. Its capital, Arequipa city, is the second largest in the country. The region has eight provinces⁹: Arequipa, Camana, Caraveli, Caylloma, Condesuyos, La Union and Islay – host to the Tia Maria project and the smallest of Arequipa's provinces (Regional Government of Arequipa, 2012).

Arequipa has a number of active industries including manufacturing, mining and farming. In terms of regional GDP, manufacturing is the main industry (18.5%). The region products include dairy, beer and soft drinks, wool and alpaca fibre (BCRP, 2012). Farming accounts for 12.7% and mining for

⁹ Peruvian administration of its territory is structured in Regions (*Regiones*) subsequently divided in Provinces (*Provincias*), Districts (*Distritos*) and Municipalities (*Municipios*)

10.3% of the regional GDP (BCRP, 2012). Regional farming generates 8.8% of the national farming production and uses 2,041,093 hectares, 117,344 of which are for agriculture (BCRP, 2012). Arequipa's crops include rice, onion, garlic, maize, vine, pear, olive and potato. Aside from dairy, it also produces beef and poultry.

Mining, mainly of copper, represents 10.3% of GDP and 10.1% of the national mining production (INEI, 2010). The main players in the region are Cerro Verde Mining Company, followed by Buenaventura, Orcopampa, Ocona and Arcata. Arequipa receives 14.75% of the national mining investment or US \$53,229 million (MINEM, 2012). This includes 48 projects at different stages ranging from exploration to expansion (see Table 3).

Table 3. Mining investment in Arequipa Region (updated May 2012).

Company	Type of project	Name of the project	Mineral	Investment MM	US\$
Sociedad Minera Cerro Verde (U.S.A)	Expansion	Expansion of Cerro Verde Mining Project	Cu	3,573	
Jinzhao Mining Peru (China)	Exploration	Pampa de Pongo	Fe	3,280	
Jinzhao Mining Peru (China)	Exploration	Cercana	Cu	TBD	
Southern Peru Copper Corporation (Mexico)	Exploration	Tia Maria	Cu	1,000	
Total				7,853	

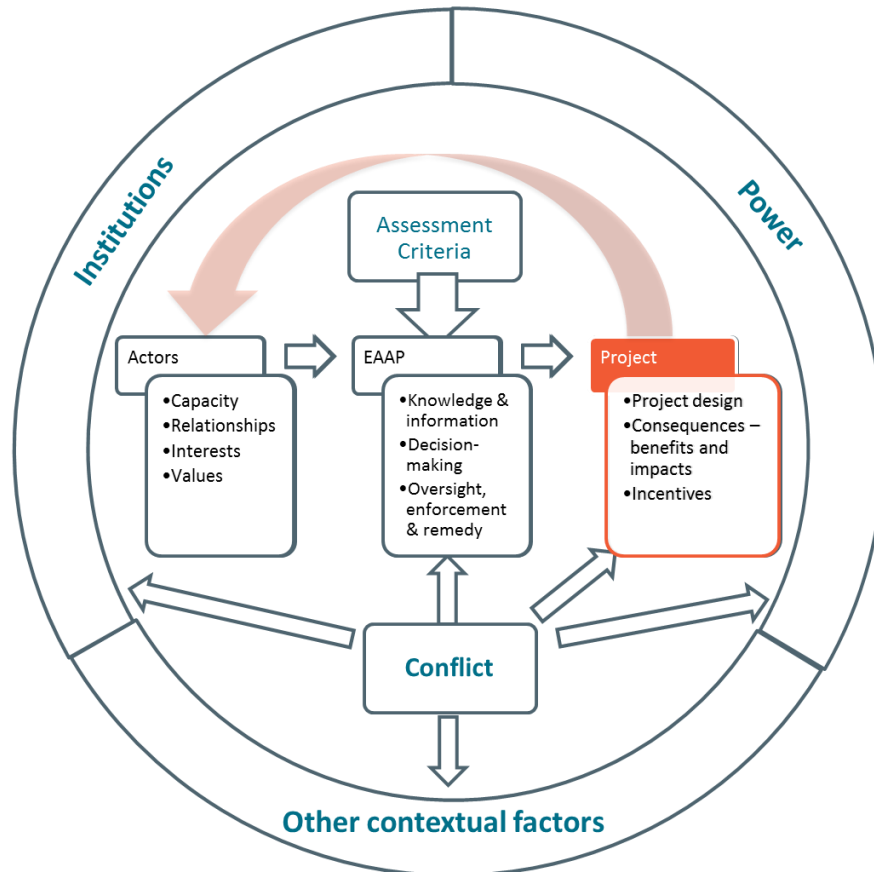
Adapted from 'Cartera Estimada de Inversion' (MINEM, 2012)

Arequipa's total population is 1,152,303, 90.6% of which live in urban centres, including 75% in Arequipa city. 56.1% of the total population is economically active and out of this a 94.7% is employed. In 2010, child mortality rates stood at 17.3% (below the Nation's 18.5%), life expectancy at 76.3 (National 74.1) and the percentage of the population living below the poverty line was 21% (below the Nation's 34.8% - based on 2009 data) (INEI, 2012).

Industrial Disputes and Mining Conflict

Mining unions, and local communities opposing Tia Maria share concerns over rising costs of living resulting from mining-related inflation. The Cerro Verde Mining Company, an open-pit copper and molybdenum mining complex located 30 Km Southwest of Arequipa City, has been the subject of ongoing industrial disputes since 2010. The disputes centre on wages which, unions argue, have not increased on par with the inflationary effect caused by mining operations. The workers have taken the protest to Arequipa as well as to Lima, raising concerns that inflationary effects fall on the broader population regardless of participation in mining. Cerro Verde workers on strike and communities protesting against the Tia Maria project have expressed mutual solidarity.

Figure 11. Conceptual framework – Project.

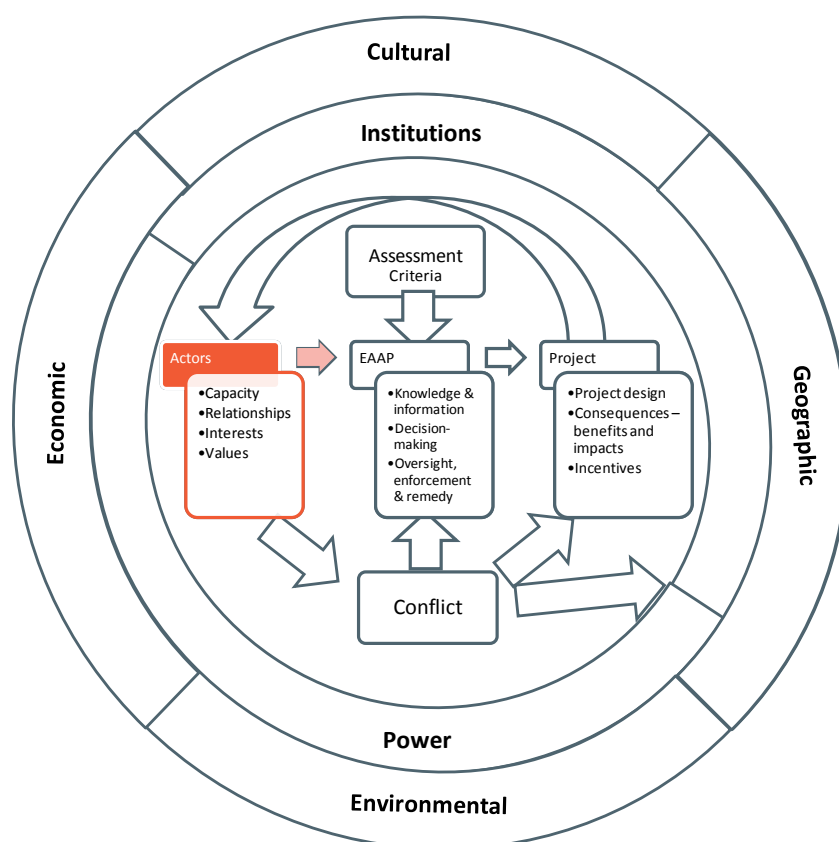


Property of Southern Peru Copper Corporation (SCC), Tia Maria is located in the Tambo valley, Cocachacra District, Islay province. The closest urban area is Arequipa city. If implemented, Tia Maria would be the second biggest copper mine in the world and would pay approximately US\$270 million in taxes on an annual basis, with US\$134 million in Mining Canon payments (Peru 21, 2009). An open cut mine with a projected production of 120 ktpa of copper and an estimated capital expenditure of US\$934 M, during construction Tia Maria would generate 3,000 jobs, down to 650 during mining. Production was expected to commence in 2012 and to continue for 18 years (Business News Americas, 2012b).

The project has met opposition because of concerns that its water usage and impacts will affect surrounding communities and in particular agricultural activity (Peru 21, 2009). SCC presented three alternatives for water supply in its EIS: building a dam with a capacity of 40 million m³, draining water to the Pacific Ocean; using underground water harvested through wells; or desalinating seawater (Grupo Mexico, 2010). The construction of wells to harvest ground water could affect the flow of the lower part of Tambo River and this has been a highly controversial issue as the area is semi-arid (Water Management Consultants, 2010).

Actors

Figure 12. Conceptual framework – Actors.



The actors of this case include the proponent Southern Copper Corporation, the National Government and its Ministries, the Regional Government, a number of district and regional civil society organisations, and the residents – in particular from Cocachacra, Mollendo, Matarani, Dean Valdivia, Mejía and Punta de Bombón – and businesses of the region, as well as multilateral agencies such as the United Nations.

The background chapter describes actors at the National level, including the National Government. We briefly describe some of the other key actors below and will provide more commentary on relationships dynamics once we have presented a chronology of events for the case.

Proponent

The project is owned by Southern Copper Corporation (SCC) through its affiliated company Southern Peru Copper Corporation (SCC). Both are subsidiaries of Grupo Mexico S.A.B de CV¹⁰. These companies are listed in the following stock exchanges:

- Southern Copper Corporation: SCCO is listed in the New York Stock Exchange
- Grupo Mexico: GMEXICOB is listed in the Mexican Stock Exchange (BMV)

¹⁰ Operational details can be found at <http://www.southernperu.com/ENG/about/Pages/PGStructure.aspx>

In December 2011, Grupo Mexico and its subsidiaries were included in the new IPC Sustainability Index launched by BMV (Grupo Mexico, 2011). The criteria examined to be part of this index included corporate governance, environmental issues and corporate social responsibility practices.

Southern Copper Corporation has operations and projects in Peru, Mexico and Chile. In addition to the Tia Maria project, the company has three operational sites in Peru, including two mines, Cujone (Moquegua) and Toquepala (Tacna), and the Ilo refinery (Moquegua). SCC also has 2 exploration projects in central and northern Peru¹¹.

Southern Copper expects to implement four expansion projects to ramp up its Peruvian production capacity (Cruz and Mello, 2012):

- Expansion of the Toquepala concentrator
- Water infrastructure to service the demands of the expanded Toquepala concentrator
- Expansion of the Cujone mine
- Increasing the capacity of the Ilo refinery.

SCC is under significant pressure to succeed in a number of environmental licensing processes, simultaneously, in order to increase its production capacity as planned. The company's shareholders are likely following developments around these multiple EAAPs.

SCC's states it focuses on strengthening human capital in the communities surrounding its operations; developing infrastructure and providing basic services; and generating opportunities for social wellbeing (Southern Copper Grupo Mexico, 2011). It has a Community Solidarity Mining Program of community investment (Southern Copper Grupo Mexico, 2009). Its "social investment" in 2011 was mainly on infrastructure (24%), schools (19%) and donations (15%) (Southern Copper Grupo Mexico, 2011).

Arequipa Regional Government

Juan Guillen has been President of the Arequipa Region since 2007. Guillen had a low profile during the conflict. At the peak of the protests (March-April 2011), he asked the government to call the project off and urged SCC to withdraw from Islay province. In an official statement, he lamented the loss of life and stated that only the cancellation of the project could stop the ongoing violence.

Arequipa Regional Ombudsman (*Defensoría Regional*)

The Ombudsman is a government body, responsible for ensuring the protection of human and civil rights within the region. Although it receives public funds, Peruvian law ensures its independence. Significantly, the Ombudsmen produced data, such as detailed reports on the incidents of conflict, is used to inform policy and planning.

Civil society organisations

The National Confederation of Communities Affected by Mining (CONACAMI)

This is a Peruvian community rights organization with a focus on defending the rights of peasants living in communities that are close to (future) large scale mining projects. The group emerged in the

¹¹ Los Chancas and Tantahuatay respectively

late 1990s and begun its work with Andean communities. Today CONACAMI is a national organization, connecting 19 regional organizations across the country¹². CONACAMI has established affiliations with other indigenous organisations in Bolivia and Ecuador as well as translational groups including Oxfam and Friends of the Earth.

CONACAMI contributed to a public consultation undertaken about the Tia Maria project in 2009.

The Provincial Organism for Combating Mining Agression (*Coordinadora Provincial de Lucha Contra la Agresión Minera- CPLCAM*)

Led by Cocachacra District Mayor, Juan Guillen Lopez, CPLCAM groups a number of regional organisations opposing Tia Maria. It organised popular consultations about Tia Maria and was one of the main organisers of protests against the project.

New Left Movement of Islay (*Movimiento Nueva Izquierda, Comité Provincial de Islay – MNI*)

MNI is part of CPLCAM. While not a political party, MNI is close to Peru's Communist party. According to its statutes, the movement aims to build a new Republic, independent and democratic, based on the principles of solidarity, social inclusion, sustainable development and social justice. (Movimiento Nueva Izquierda, 2008). The Movement has been vocal in campaigning against Tia Maria based on perceived lack of transparency and potential social and environmental for Islay Province inhabitants.

Multilateral Agencies

UNEP-UNOPS

In November 2010, a technical panel of experts from UNEP and UNOPS was appointed by the MINEM to review Tia Maria's EIA.

The United Nations Environment Programme (UNEP) aims at promoting the sustainable use of natural assets through advocacy and educational activities. The mission of the organisation is "to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations" (UNEP). The programme also acts as facilitator of environmental disputes and gathers and disseminates environmental information in order to raise environmental awareness (UNEP).

The United Nations Office for Project Services (UNOPS) is the UN office dedicated to implementing projects, offering management services for peace-building, humanitarian and development operations. UNOPS provides project management, procurement, human resources and financial management and UN common services (UNOPS, 2012).

Relationship Dynamics

As with Conga, previous interactions between regional communities and successive governments (see background chapter) frame the evolution of the Tia Maria case. The history and current

¹² <http://www.conacami.pe/p/conacami.html>

dynamics of proponent community relations around Southern Copper's Peruvian sites provides useful precedents to understand the forces behind the Tia Maria conflict. So do the previous interactions between SCC and local and regional stakeholders, and with the National Government. There is a general perception that central governments historically have colluded with industry due to their reliance on mining royalties (see chapter 3). On the other hand SCC has been in Peru for a number of years and its current production expansion focus has ignited opposition on a number of fronts.

Proponent - Community Relations

SCC has faced, or is facing, opposition to some of its expansion projects with some of this opposition has leading to violent conflict. Southern Copper is going through a sensitive period with regard to community relations, as the benefits and impacts of expanding operations are negotiated.

In the Tacna Region, Southern Copper is seeking to expand production capacity at its Toquepala site and faces community resistance based on water availability concerns. Water effluent from the Toquepala and Cuajone concentrators flows into the artificial creek Honda, built in 1960 despite community opposition. At present, the decanted water flows into the ocean and wetlands and is also used by farmers. Southern proposes to expand the capacity of the Honda creek and to pump the decanted water back to Toquepala to supply the water that an expanded concentrator will require. Significant protests leading to injuries to civilians occurred in September 2012, paralysing the formal EIS review. There was a dialogue process and, within the context of a National Government-led dialogue table, Southern Copper offered a number of environmental and social investments, but its proposal was not accepted (Turpo, 2012). The conflict remains unresolved.

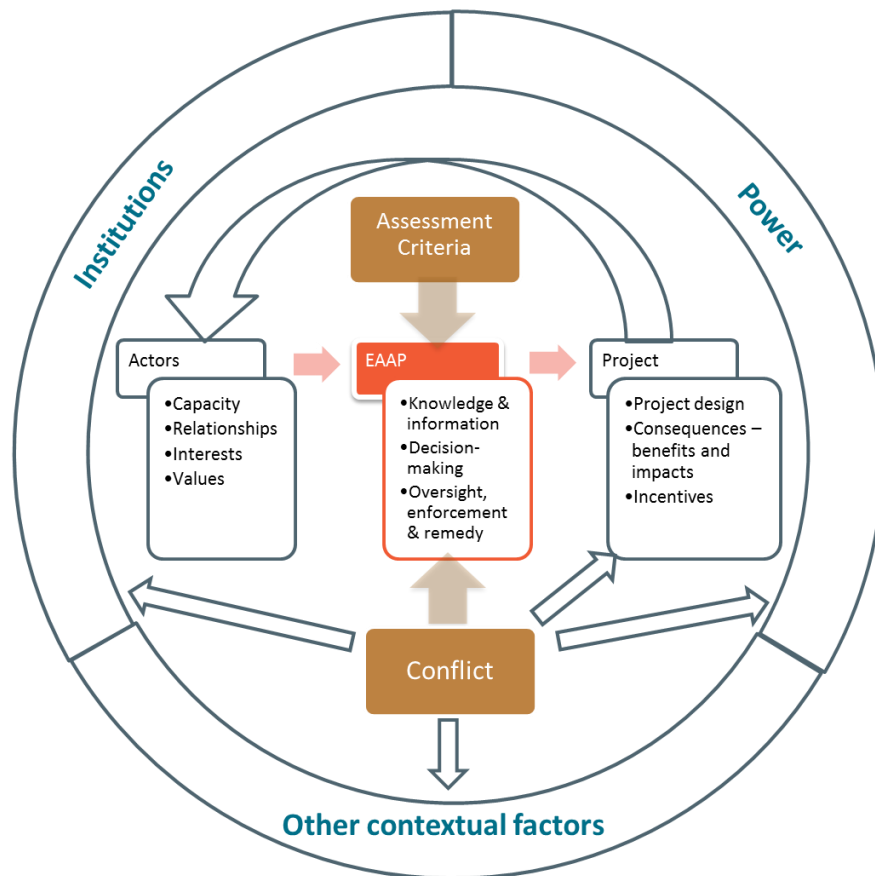
In the Moquegua Region, sectors of the community as well as the Regional Government have expressed concerns over SCC's proposed expansion of its Cuajone mine. The mine has operated for 40 years, and in the opinion of the current Regional President, while there is willingness to support the expansion, the company needs to change its approach as current relationships are not based on mutual respect with the company being "*completely indifferent, and turning a blind eye to the development needs of the region*" (Coordinadora Nacional de Radio, 2012). Some sectors of the community have voiced similar issues as well as concerns over management of environmental impacts in the past (OCMAL, 2010). However, a dialogue table is being established that includes participation of the National and Regional Governments as well as the Mayor of the Ilo province (the location of the refinery that would undergo expansion) and relevant districts. The dialogue will focus on water, environment and regional development (Motta, 2012).

Tia Maria's Environmental Assessment and Approval Process (EAAP)

Tia Maria's EAAP evolved over time into a confrontational process and one characterised by asynchrony. Proponent timelines were poorly aligned with the requirements of community engagement and information processes, contributing to depleting trust. Below we present a summary chronology of events, which does not aim to be exhaustive but to highlight the most important events that illustrate the strategies and positions of various actors as well as the evolution of the EAAP.

Figure 13 indicates the part of the conceptual framework that this section addresses.

Figure 13. Conceptual framework – EAAP.



Chronology of key events

Table 4. Tia Maria EAAP - Chronology of events.

Date	Event
1954 – 1976	Southern Copper Corporation opens a branch in Peru. This was part of a bilateral agreement with the Peruvian Government in order to exploit Toquepala Mine. The mine started operations in 1960 with a production capacity of 64,000 ton/day. In 1976, the mining complex of Cuajone starts operation, with a production capacity of 58,000 ton/day. In 1999, the mine expands its capacity to 87,000 ton/day.
1991 - 1995	Facilities and production expansion amounting to M\$445; acquisition of the Ilo copper refinery; expansion of Ilo's production capacity to 280,000 ton/year.
1996 - 2006	Following implementation of the Peruvian Government' Adaptation to Environmental Management Programme in 1997, Toquepala and Cuajone are required to implement environmental improvement programs within 5 years, and Ilo within 10 years.
28-Jul-2006	Alan Garcia is elected President of the Republic for a period of 5 years.
2007	SCC announces an investment plan of M\$2,108 to exploit the Tia Maria copper deposit.
21-Nov-2008	Amid tightening economic conditions Tia Maria is delayed, but President Alan Garcia encourages SCC to go ahead with the project.
24-Apr-09	Tia Maria is at the detailed engineering phase, SCC has invested USD M\$115.8 and is conducting the feasibility study and preparing the EIS.
7-Jul-09	SCC presents the EIS for Tia Maria Mining to Peruvian authorities.
August 2009	The first attempt at a public meeting between the proponent and local communities and authorities fails.
15-Sep-09	SCC is schedules meetings with local authorities and communities to discuss the project. Concerns over water impacts are widespread within the local communities.

Date	Event
28-Sep-09	6,400 local Islay people take part in District authority-run public consultations about Tia Maria (Peru 21, 2009). The consultation dealt with two issues: the implementation of the project in the province and opinion over local water usage of mining operations. 80% of the voters opposed the project (Peru 21, 2009). One consultation was organised by the Municipalities of Cocachacra, Dean Valdivia, Punta de Bombom and Mejia. The second took place in Mollendo and Matarani.
29-Oct-09	The National Government asks SCC to clarify and address community concerns about their ground water use and management plans.
20-Nov-09	SCC decides to defer the start of Tia Maria Project by 6 months and do more engagement with communities. The engineering work is expected to be completed in February 2010 and the Executive President of SCC stated that by then it is planned to finish the negotiations with community representatives so the EIA will be approved and the construction phase will start.
10-Feb-10	Additional EIS information provided including a new executive summary and amendments to the public engagement plan. MEM postpones the second Public Audience because the information does not satisfy community expectations, in particular regarding water management.
8-Mar-10	MEM announces a second Public Audience for 19 April 2010 to take place in Molino San Vicente in Cocachacra, Islay.
13-Mar-10	Minister of Energy and Mines, Pedro Sanchez, speaks of the Canon benefits to be generated by Tia Maria in particular for Cocachacra, and of the upcoming information workshops about the EIS (to include the National Water Authority). States Tia Maria's EIS provided three alternatives for water management.
23 Mar 2010	The Provincial Organism for Combating Mining Aggression (<i>Coordinadora Provincial de Lucha Contra la Agresión Minera- CPLCAM</i>) holds an assembly with 2,500 in attendance. Representatives of a number of district Defense Fronts (<i>Frentes de Defensa</i>); district branches of the General Confederation of Workers of Peru (<i>Confederacion Genderal de Trabajadores del Peru – CGTP</i>); as well as some District Mayors, attend the gathering and public demonstration. Cocachacra District Mayor Jose Luis Guillen Lopez asks that the CPLCAM assembly consider implementing a regional strike for 14 April 2010 and the assembly accepts unanimously. CPLCAM calls for broad support from various sectors and demands that Regional President Juan Manuel Guillén Benavides abide to the commitments he made to Islay authorities in relation to Tia Maria. The aim of the strike is to reject the Public Audience (EIS-related) called for 19 April and to insist that Southern Copper and other mining companies leave Islay.

Date	Event
12-Apr-10	MEM Deputy, Fernando Gala, asks the people of Islay not to listen to local authorities who have stated that Tia Maria will cause significant environmental damage. He stressed that the project has not been approved and therefore there is still time to submit observations to the EIS.
14-Apr-10	<p>People from Islay are on strike against Tia Maria. They have completed a week of massive protests that have included highway blockade (Panamericana Sur Highway). The highway is the only route that connects Islay with Arequipa City, and it connects Peru with Ecuador and Chile. Therefore the blockade is impacting on trade.</p> <p>The Minister for Justice Mr. Victor Garcia Toma asked the people to protest but keep the public order and peace during their strike.</p> <p>The representative of the Environmental Defence Front, Jose Gutierrez stated that the blockade will continue until Tia Maria stops.</p>
15-Apr-10	MEM claims that Tia Maria's EIS addresses community concerns satisfactorily and that community uprising is unnecessary as the National Government has offered dialogue avenues.
16-Apr-10	President Alan Garcia states the protests are organised by a minority that pretend to blackmail the National Government through terrorist methods.
22-Apr-10	After negotiations between the company and National Government representatives, MEM resolves to put the project on hold and appoint a technical independent commission to review the EIS. Community members have raised over 3,000 technical observations that need to be addressed.
4-May-10	The National Government announces the appointment of a Technical Roundtable to review and analyse the observations made to the EIS. The roundtable comprises 11 members: a representative from the Environment Ministry, five representatives from civil society and five from Southern Peru. It will have 90 days to provide observations.
1-Jul-10	Southern Peru responds to the observations made by the Technical Roundtable and presents a new EIS.
Ago – Nov 2010	Ongoing protests against Tia Maria as communities do not trust the EIS and believe that Tia Maria could harm important water resources, affecting livelihoods.
23 Nov 2010	MEM enters into a covenant with UNOPS to evaluate 100 significant Mining EIS. The covenant will see MEM receive technical assistance with UNOPS providing review and recommendations on 100 significant mining EIS. UNOPS will establish a system with procedures, modules and manuals amongst others.

Date	Event
30 Nov 2010	MEM requests UNOPS –UNEP to review Tia Maria’s EIS.
15-Mar-11	<p>SCC makes a number of separate media releases on social and environmental preventive measures including:</p> <ul style="list-style-type: none"> • Dust emissions monitoring • Acid rain • Prevention of leaks • Compliance with environmental regulations • Impacts on productive land: seeks to correct statements by civic society groups that claimed the company had ‘invaded’ land. States that although a vas portion of land is under concession, this does not mean that all of it will be mined • The project will only use desalinated seawater: The project will 97equire 850m3/h, which will be desalinated seawater. This will ensure a healthy water supply to the Tambo Valley • Social and economic benefits: 3,000 jobs during construction; 650 direct jobs and 3,250 indirect jobs during operation. Procurement has already begun with 71 purchase orders that account for US\$63.2 million
Mar-2011	<p>UNOPS –UNEP present the outcomes of the review. They find the report in compliance with minimal requirements but needing to be addressed a number of significant gaps. The review finds the study at fault 138 times and judges it reactive because of the advanced stage of engineering investment. The most common issues in the study are omission of environmental aspects, provision of insufficient or out-dated data and underdevelopment of the topics addressed (UNOPS, 2011). Key gaps include the absence of a robust hydro-geologic model and insufficient social baseline data.</p>
20-30-Mar-11	<p>Ongoing protests against Tia Maria, with ~ 1,500 people from Cocachacra blocking the highway that connects Tacna and Moquegua with the rest of the country. At its climax, a total of 5,000 people take part in the protest. Confrontations between police and protestors leave 18 policemen and 16 local people injured.</p>
24 Mar 2011	<p>PCM’s Conflict Management Unit invites the leader of the Defence Front of the Tambo Valley (Frente de Defensa Unico del Valle el Tambo) to a working table about social conflicts related to Tia Maria to be held on 28 March 2011.</p>

Date	Event
23 March – 7 April 2011	<p>16 days of violent protests leave 3 people killed. During 2 weeks of violent encounters between community members and the Police 52 people are injured and 3 die.</p> <p><u>4th April</u>: Violent confrontations between locals and the Police as protestors block the highway that connects Mollendo with the port of Mararani. A local <i>campesino</i> dies as a result of a gunshot.</p> <p><u>7th April</u>: 2 people killed in a confrontation between local peasants and the Police as 3,000 local people block the highway that connects Mollendo with Matarani.</p>
25-Mar-11	MINEM has provided SCC with 90 days to address the observation raised by UNOPS to Tia Maria's EIA.
7 Apr 2011	Regional President Juan Manuel Guillen publishes an assertive statement calling for the National Government to enforce the exit of Southern Copper from Islay where the company has failed to take the initiative. He ask the Police Force to reduce the excessive use of force, fire arms and tear gas.
8-Apr-11	<p>The National Government cancels the project.</p> <p>MEM declares the EIS presented by SCCO as 'inadmissible' and demands that the company refrain from any mining-related activity in the area.. In Islay, the MINEM Minister announced the cooperation of UNOPS in evaluating Tia Maria's viability. .</p> <p>Southern Copper's chief executive, Oscar Gonzalez says that the project will be delayed maybe until 2013 if the new board considers going ahead with the investment.</p>
28-Jul-11	<p>Ollanta Humala is elected President of the Republic.</p> <p>Since then, President Humala has had three Presidents of the Ministerial Council:</p> <p>Salomon Lerner (28th July 2011 - 10th December 2011)</p> <p>Oscar Valdes (11th December – 23rd July 2012)</p> <p>Juan Jimenez (23 July 2012 – to date)</p>
2-Aug-11	SCC states it is confident that it will obtain approval by late 2011 and it could be producing by the first half of 2013. SCC stated it trusts the new government lead by President Humala will approve the EIA already presented or a new one by the end of the year.

Date	Event
2-Feb-12	<p>SCC announces a new EIS will be presented in three months with public audiences taking place during the lead up.</p> <p>The company has changed the design to rely on desalinated water.</p>
31-May-12	<p>SCC states it considering the construction of a hydroelectric plant to mitigate the impacts that the energy crisis may have on its operations.</p>
20-Jun-12	<p>SCC plans to present a new EIS within the next five months. SCC's chief executive, Oscar Gonzalez, says the company is undertaking dialogue with local communities that might be affected by the project.</p>
28 Jul 2012	<p>Presidential speech on Peruvian independence day refers to mining conflicts:</p> <p>Peru's wealth of natural and mineral resources demands a new way of engagement between extractive industries and the environment, sound natural resource management, balanced territorial organisation, and rational management of water resources.</p> <p>Environmental regulation for extractive industries to be revamped, based on the work of the 'Multi-sectoral Commission for the improvement of extractive industries'.</p> <p>The incidence of conflict results from structural causes and from the political system's inability to respond democratically to social demands. In some cases, the bad reaction of surrounding communities, the lack of social and environmental responsibility that some 'economic agents'/parties have displayed in the past, are at the core of the conflicts that preoccupy the Peruvian people today.</p> <p>Water is a priority within the regulatory and legal reform agenda. The government proposes constitutional reform to recognise water access as a fundamental right.</p> <p>The Government will establish a national system to prevent and manage conflict.</p>
5-Sep-12	<p>SCC states it will present a new EIA for Tia Maria in October and it is confident that it will obtain approval and expects to be operating by the first quarter of 2015.</p>

National Significance

Like Conga, Tia Maria began with the support of the National Government led by President Alan Garcia. At the APEC (Asia-Pacific Economic Cooperation Forum) Summit 2008, President Alan Garcia encouraged Southern Copper not to delay Tia Maria, amidst the Global Financial Crisis, arguing that the project was important to Peru's economy.

Tia Maria was allowed to continue to undertake significant engineering investment despite not having an approved EIS. Amidst communication activities around the EIS, in March 2010, Minister of Energy and Mines Pedro Sanchez, advocated the canon benefits that Arequipa would receive from Tia Maria and argued that water impacts were not as significant as commonly thought.

Furthermore, as protests grew in Islay, President Garcia was quoted stating that the protestors were a minority using terrorist tactics to blackmail the Government. This unavoidably sent signals to the public that there was collusion between the National Government and the company - resistance to the project being seen as an act against the National Government.

Tia Maria is another EAAP inherited by the Humala government and might also put to test its ability to balance community concerns, industry pressure and royalty incentives. The experience in other regions seems to have led Humala's government to instigate dialogue tables as a first measure to appease conflicts. During his presidential campaign Humala criticised his predecessor in the Presidency for a lack of dialogue with communities at Islay in relation to Tia Maria (Partido Nacionalista Peruano, 2011). However, pressures from Southern Copper are ongoing – the company has made press releases stating it is confident that Humala's government will grant the awaited environmental approval.

Regional dynamics

Contrary to Conga, for the larger part of the process in the Tia Maria case the Regional Government did not profile prominently in support or opposition to the project, possibly because Arequipa has a longer history of co-existence with modern mining operations than Cajamarca (for example SCC has been in the region since the mid 50s). Significant opposition came from District-level organisations in the direct area of influence, concerned over water impacts on other economic activity. However, the violence and loss of life that ensued finally resulted in Regional President calling for a suspension to the project.

District-level authorities and civil society organisations campaigned strongly against the project on environmental grounds. Negative perceptions of environmental performance at Southern Copper and other mining operations together with concerns on water impacts over regional agricultural activity fuelled the protests. Municipal authorities invited citizens to vote for or against the mining project, using municipal laws that enable this type of public participation mechanism. The result was an overwhelming 'NO' to the project.

Resistance strengthened over time – not the least with the release of a UNOPS report that backed regional concerns– and violent confrontations between protestors and government forces followed, resulting in loss of life. Regional civil society organisations continued to protest against Southern Copper. The company had carried on with engineering investment despite its lack of environmental approval and the community's NO. Led by the Provincial Organism for Combating Mining Aggression (*Coordinadora Provincial de Lucha Contra la Agresión Minera- CPLCAM*), Defence Fronts and CGTP

branches joined forces in a strike. Its scale was such that it brought the project to a 90 day suspension called by the National Government. The report by UNOPS exposed significant gaps in the EIS, adding to regional concerns and confirming the 'reactive' nature of an EIS undertaken after significant engineering investment. More protests followed, resulting in loss of life and dozens of people wounded.

Once the protests escalated to significant levels of violence, with three people dead and over 50 wounded, the Regional President Juan Manuel Guillen published an assertive statement calling for the National Government to enforce the exit of SCC from Islay where the company had failed to take the initiative. Regional President Guillen demanded that human life be prioritised over potential economic gain and made explicit his awareness that calling for SCC's exit could cost him being labelled anti-industry/anti-investment (El Comercio, 2011a).

EAAP – Regulatory enforcement, rigour in impact assessment and stakeholder consent

In this EAAP, serious gaps in regulatory enforcement, limited rigour in proponent-commissioned impact assessment and poor community engagement left little room for consent-building. An antagonistic process emerged that escalated to violent conflict. Ultimately, the EAAP evolved into a 'war of attrition' scenario, with each party betting at exhausting its counterpart while exhausting itself based on the assumption that she would be more enduring.

Some of the main issues that led to a confrontational process include:

- Limitations in MEM's assessment capacity/resourcing
- Limited or no enforcement of environmental requirements, with the proponent having made significant engineering investment well before gaining approval
- The National Government was perceived as siding with the proponent
- Technical weakness in the EIS, corroborated by a credible, independent third party
- The proponent sought to impose an unrealistic phase, based on commercial pressures, so failing to read community signals.

These issues are reflected in shortcomings in assessment, knowledge creation, decision-making, and oversight, enforcement and remedy mechanisms, and contributed to an escalation of conflict that left little choice than to suspend the project.

Assessment criteria

The gap between assessment criteria was pronounced in this case as the proponent failed to address aspects that were important for regional actors. Gaps in rigour were widespread, also affecting the social baseline and assessment (UNOPS, 2011), which suggests limited scope for robust social science to have informed the design of the proponent's EAAP strategy.

The proponent's assessment process was limited to legal requirements, and only fulfilled the mandatory minimal (UNOPS, 2011). It failed to address key technical issues of concern to regional actors, core amongst which was its hydrologic impact. Judged a reactive assessment, based on an

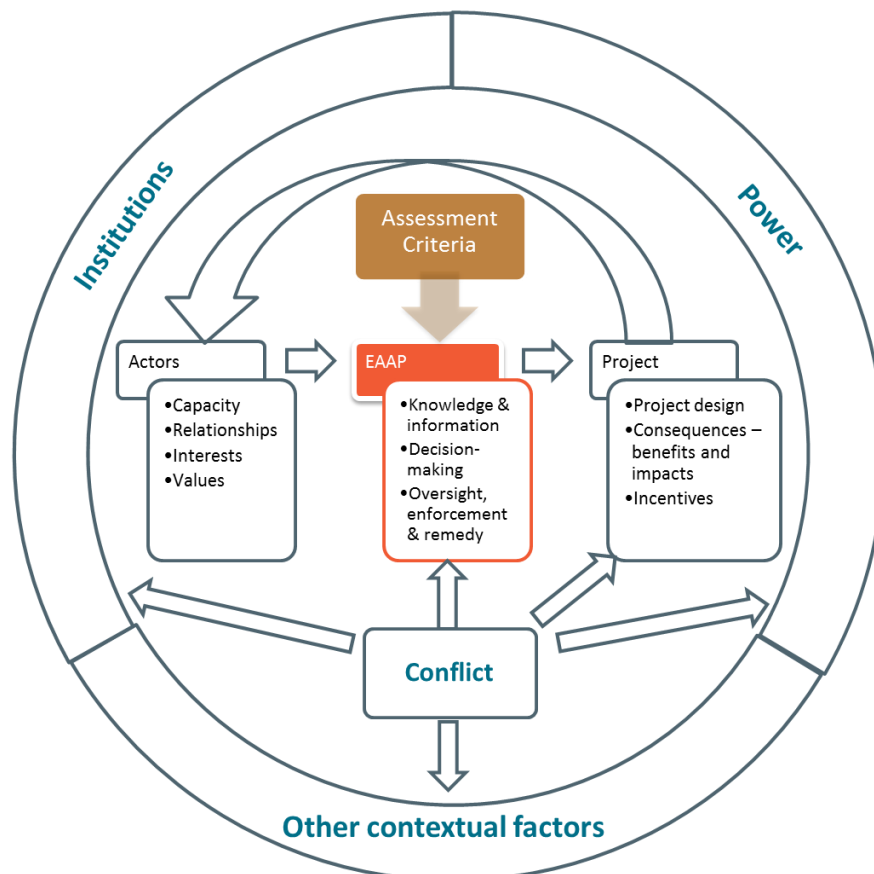
advanced investment, it is not surprising that the EIS was found wanting in the consideration of sufficient design alternatives and in articulating uncertainty as part of results and analyses (UNOPS, 2011).

As for the role of social science in the process: the social baseline was assessed as poor and so was the presentation of outcomes from participatory exercises, which in UNOPS' (2011) opinion indicated that the social aspect was undervalued in particular given the highly sensitive social context.

The evidence suggests that, subject to production pressures implicit in current expansion plans, SCC attempted to parallelise its approval and implementation processes for Tia Maria, in this way compromising its capacity to undertake rigorous impact assessment and engagement.

Figure 14 indicates the part of the conceptual framework that this section addresses.

Figure 14. Conceptual framework – EAAP, Assessment Criteria.



Knowledge and information

While the proponent's EIS did not provide robust information, UNOPS filed information gaps by raising concerns over quality and identifying shortcomings to address. Based on comments by UNOPS, requests by MEM, and the concerns expressed by local actors, the EIS material provided to the general public was not sufficiently accessible, clear or complete, and the proponent's engagement and information activities around the process were insufficient (UNOPS, 2011). As above, regional actors did not receive satisfactory information on one of their core concerns: water impacts, but this was found to be the case even for a technical audience. The EIS was found at fault a total of 138 times. Its most common gaps being omission of environmental aspects, provision of insufficient or out-dated data and underdevelopment of the topics addressed (UNOPS, 2011). UNOPS (2011) stated that:

“it would be necessary to provide more detailed information on the environmental management and mitigation measures for all significant impacts, evaluating these measures from both economic and technical perspectives and allocating implementation responsibilities”

The role of the independent external assessor is even more prominent in this case than in Conga's. If the proponent fell short of providing appropriate information, UNOPS provided governments and community members with information to make decisions on their support for the project as it was designed.

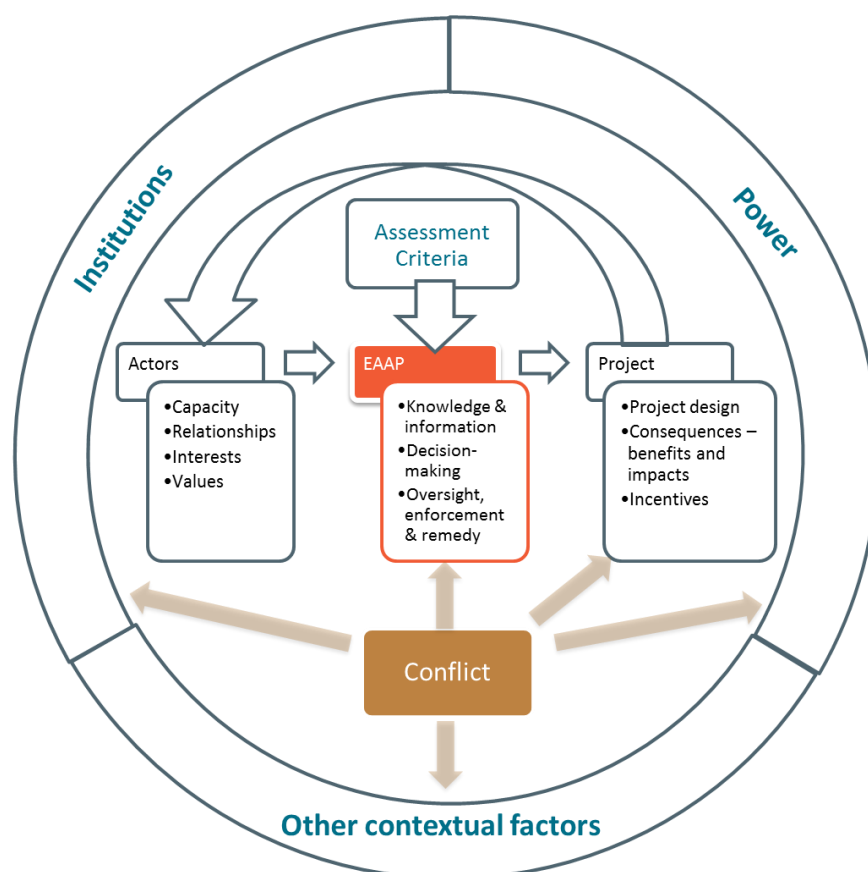
Decision-making

Capacity issues constrained decision-making at the national level, a gap that was addressed at the local level. District level authorities resorted to legally implementing parallel decision-making mechanisms. As MEM delays in Tia Maria's EIS assessment mounted while the proponent progressed with implementation, municipal authorities took decision-making in their hands, appealing to the legal avenues for citizen participation at their disposal. Popular consultations brought communities into the decision-making process, where national authorities had been somewhat paralysed due to capacity issues. These capacity issues were latent in a significant backlog of mining EIS pending assessment (Páez, 2011). On the National and Regional Government part, decision-making on project viability was reactive, with calls for project suspension arriving only after significant protest or loss of life.

Oversight, enforcement and remedy – checks and balances

The absence of enforcement for the larger part of the EAAP depleted community trust in the regulatory process. This gap was arguably one of the main factors igniting district level protests. The protests served to trigger third-party involvement with UNOPS' ad-hoc report playing the role of an oversight mechanism. However, it was the community and not the State that took to fulfil enforcement roles. Protests effectively brought the project to a halt and National Government requests were somewhat redundant given the level of escalation and violence that the process reached.

Figure 15. Conceptual framework – EAAP, Conflict.



A combination of historic and igniting factors contributed to conflict in the EAAP and a lack of appropriate procedural or relational responses allowed its escalation. However, conflict opened room for implementing useful institutional mechanisms.

Some possible factors igniting and escalating the conflict include:

- Water availability issues in the Arequipa region
- Poor proponent communication and limited transparency on the EIS
- Weak formal licensing process
- Ongoing pre-emptive attitude on behalf of the proponent
- Local communities did not trust the proponent
- Actors perceived the conflict as resembling a ‘war of attrition’ game.

The strategies implemented mainly by the proponent led to the conflict being perceived as a ‘war of attrition’ game – a game of mutual attrition where the winner is that with most endurance. The

interests of the proponent were seen as incompatible with local interests and the proponent put itself in a vulnerable position as it attempted significant production expansion and undertook premature engineering investment in the project. There were also shortcomings in the proponent communication, negotiation and general EAAP strategies which became exposed as they occurred during a National election year.

Once the population had massively expressed its rejection to the project in 2009, the licensing process should have been conducted with the utmost technical care and cautious communication. A less hastily prepared EIS (and a better timing to negotiate and consult it) should have had higher probability of being approved. Given the perceived neutrality and capacity of UNOPS and the general elections to be held in Peru on April 10, it is no surprise that the EIA was declared inadmissible three days before election day. Despite this, SCC's recent media releases indicate that the proponent's strategy has not changed substantially and is likely to continue to fuel 'war of attrition' type behaviour. Southern Copper is back stating that a new EIS would be completed in 2012, and that operations would start in 2015.

In the course of what we have observed of this ongoing EAAP, there were no effective avenues for conflict prevention or resolution. While there were attempts by the central government to establish dialogue tables, these were poorly timed (late), and the Government, lacked the legitimacy to host a dialogue process where all parties, including those opposing the project, felt their interests were protected.

While the process was not effective in harnessing conflict and building on the willingness of the public to invest significant time and resources on the question of whether the project should go ahead, conflict still motivated the use of a number of alternative institutional avenues that served to support decision-making and knowledge creation: popular consultations, independent third party technical review, and more recently dialogue tables.

Extent of application of design principles

Table 5 provides high-level comments on the extent to which the *design principles* (Chapter 2) appear to have been applied as part of Tia Maria's EAAP.

Table 5. Table5 Extent of application of design principles - Tia Maria.

Principle	Relevance to case
Enable early, broad-based dialogue on the project's contribution to sustainable development	<ul style="list-style-type: none"> • The reactive nature of the EIS and the proponent's time/production pressures compromised opportunities for early dialogue. • Statements by the National Government in support of the project, prior to environmental assessment, paired with limited regulatory enforcement, depleted trust.
Seek commitment from elected decision-makers	<ul style="list-style-type: none"> • A complicating factor was the EIS's assessment in a general election year. • The proponent obtained support from the National Government but not district level elected authorities.
Integrate dialogue, negotiation, consent, impact assessment and approval processes	<ul style="list-style-type: none"> • As in Conga, Tia Maria's EAAP occurred as formal legal and regulatory frameworks on impact assessment were being reformed. • There is limited evidence that the proponent sought consent from local actors, on the contrary it seems to have concentrated on meeting minimal requirements for legal licensing from the National Government. • Going forward: <ul style="list-style-type: none"> ○ There is limited Peruvian experience on negotiation frameworks such as community-developer agreements. ○ Formal consent and participation mechanisms in Peru are currently the responsibility of different actors. The former is in the hands of the Government while the latter is the responsibility of the proponent. Both occur at disconnected points in time. In particular, this limits ability for informed consent as the results of impact assessment become available much later than the proposed prior consultation.
Fully integrate social science into all stages of the process	<ul style="list-style-type: none"> • While social impact assessment is a required component of the EIS it was found to be weakly developed and the social aspects of the project undervalued.
Introduce checks and balances to compensate for perverse	<ul style="list-style-type: none"> • There are explicit conflicts of interests in the functions of MEM. • The perception of State-private sector collusion contributed to conflict escalation.

Principle	Relevance to case
incentives	<ul style="list-style-type: none"> The conflict led to an expert review, while construed as an ad-hoc report, this served as an oversight mechanism and ultimately contributed to the National Government's request for the project to be suspended.
Support capacity building and address capacity unbalances	<ul style="list-style-type: none"> Mechanisms to address capacity unbalances, for example, to provide independent technical review that local actors might not be able to commission, came only after significant violent conflict. The proponent displayed insufficient capacity or willingness to understand local and regional social dynamics There were clear capacity issues at MEM which compromised enforcement and timely assessment of the EIS.
Implement flexible and inclusive public participation mechanisms with decision-making and trust building in mind	<ul style="list-style-type: none"> Decision-making on approval rests in the hands of MEM. However, a district level initiative provided a community-driven decision making mechanism that was influential in the process. There are no clear links between citizen participation outcomes and formal regulatory decision-making.
Design institutional arrangements to allow dialogue across different knowledge systems	<ul style="list-style-type: none"> It is not clear how effective these mechanisms have been, however: <ul style="list-style-type: none"> A Technical Roundtable made up of regional and proponent representatives reviewed the EIS. There is now a dialogue table specifically aimed at addressing concern around Tia Maria. Peru has a Dialogue Table on mining with representation of various sectors of society which might offer a mechanism for dialogue between different knowledge systems but its role in Tia Maria is unclear.
Integrate EAAP with natural resource management strategies and initiatives at regional and national levels	<ul style="list-style-type: none"> The level of District authority and local resident opposition suggests that the proponent and the regulators did not effectively link other regional or local planning and governance initiatives around development and natural resource management with the EIS and EAAP. There is perhaps a disconnection between regional and district level authorities.

4. Conclusion

We undertook to analyse the political and institutional factors influencing the EAAP of two Peruvian mining projects, based on the premise that often these factors are poorly understood, leading to poor regulatory design or implementation. To do so we proposed a conceptual framework that integrates:

- the context including institutions and power dynamics, as well as other dynamic contextual factors (of socio-economic, cultural, environmental or physical nature)
- actors involved in the process, their relationships, capacity, values and interest
- EAAP – including assessment criteria and conflict management as key aspects
- project design and consequences.

Based on other studies on EAAP, we proposed a set of design principles or criteria that might assist in making EAAP more conducive to dialogue on sustainable development. These principles relate to relationship building, an early start to dialogue, elected decision-maker commitment, integration of processes within and outside EAAP, integrating social science input, managing incentives, balancing capacity gaps, designing adaptable processes, and allowing for a dialogue between different knowledge systems.

By applying the conceptual framework in analysing the case studies of Minas Conga and Tia Maria we drew conclusions centred on each element of the conceptual framework. Our analysis of the context indicated that a number of historic and contemporary (igniting) factors have fuelled the emergence of polarised, and at times violent, conflict as part of these mining projects' EAAP. These factors include:

- weak institutions including those in charge of mining regulation
- lack of credibility of the State apparatus and a perception that it colludes with industry
- social hierarchy and power dynamics that have historically been discriminatory
- the traumatic legacy of the violence of the late 20th century in Peru (poverty, human rights violations, moral damage and distrust)
- increasing civil society awareness and dissatisfaction due to negative social and environmental legacies from mining
- limited evidence of extractive industry contribution to sustainable development despite this contribution being a core element of industry and National Government discourses on mining
- capacity, transparency, accessibility and scope issues affecting in citizen access to participation, information and remedy on environmental issues
- a conflict management infrastructure that is not yet effective
- competition for canon moneys at the local and regional levels
- the effects of a decentralisation process, aggravated by capacity issues amongst government, industry and civil society actors (discussed below).

Our analysis of the actors involved in the process highlighted challenges emerging from their relationship history and differing capacity levels, values and interest. Both proponents had previously been involved in different types of conflicts with regional and local communities, and in both cases a lack of community trust in the National Government was apparent. There were issues of capacity and power unbalances, with proponents and the National Government displaying limited understanding of local and regional dynamics (capacity issue) but having larger control over EAAP than regional and local actors (power unbalance). In both cases, there was, at least in perception, incompatibility of interests and values between regional and local actors and the National Government and proponent, in fact publicly available material indicates that regional actors perceived National Governments and proponents as colluding.

In terms of the EAAP itself, we found that most of the *design principles* were at most weakly implemented or were apparently absent in the two cases we analysed:

- It became evident that there were at different times and to various degrees, issues of willingness or capacity to engage in constructive dialogue and to understand the positions of others. Financial imperatives and timelines governed proponent actions and the National Government backed proponents' positions for the larger part. The position of regional actors was given weight after they engaged in significant protest efforts and conflict had severely escalated. Excessive weight attributed to legal compliance or National Government backing was evident amongst proponents.
- There were perverse incentives in the formal frameworks that regulated the social and environmental impacts of mining in Peru at the time of the case studies. The regulatory framework had been found wanting, afflicted by conflict of interests and capacity issues.
- There was limited integration between key processes related to EAAP. Important aspects of the EAAP including assessment of impact, approval of the project by regulators and government, and consent building amongst civil society, are fundamentally divorced in the regulatory framework (existing and proposed). However, they are mutually dependent, the disconnection resulting in shortcomings to the process that deplete opportunities for informed, constructive dialogue to take place.
- In both cases sectors of the local and regional actors had limited scope to participate in the formal aspects of EAAP.
- The influence of robust social science on proponent and National Government strategies was not clear. In one case the EIS's social component was found deficient, while in the other appears to have focussed on a limited geographic scope. Common to both proponents was a limited ability to accurately read local and regional social dynamics, as made evident by the contribution of proponent public statements to fuelling existing conflict, a situation that in Tia Maria's case continues to occur.
- There was apparent disconnection between the assessment criteria of the National Government and the proponent with those of regional actors and an absence of mechanisms to bridge these differences in understanding as part of formal EAAP.
- Significant aggravating factors were implicit in the project designs. Both projects were perceived at the regional/local levels as affecting the quantity and quality of already scarce water supplies.

Therefore they were seen as threats to human settlements in some cases, to industry in others, or to the already meagre livelihoods of some Andean communities.

All of the above issues, the mix of actors, the way the EAAP were designed and implemented, and the project design and its resulting incentives, contributed to an escalation of conflict which led to significant human and material loss, but also to transformations, at least temporary, in the regulatory processes for each project, most likely contributing to the regulatory reform underway. These transformations may have helped and may help in the future, at least to a degree, to restore some credibility in formal EAAP. The conflict led to changes in EAAP in both cases including new dialogue spaces, extended timelines and involvement of independent third parties who released public assessments of the proponent-commissioned EIS. Third party experts assessed both EISs. In Conga's case the assessment centred on the hydrologic component and recommended a number of improvements. UNOPS reviewed Tia Maria's EIS, bringing to the light shortcomings in the study that, together with regional protests, underpinned the National Government's decision to suspend the project. Dialogue tables have been established in both cases, with external mediators participating in the negotiation process for the Conga project.

While we cannot conclude that implementing the *design principles* in the two EAAP we studied would have changed the outcomes, we can conclude that conflict escalation did occur in absence of strong evidence of implementation. We have seen in these case studies that, in line with what a number of other studies have highlighted, the technical/rationalist approach to understanding the changes a project is likely to introduce is insufficient. The highly political social transformations that mining projects introduce require a more holistic perspective. A comprehensive understanding of contextual institutional and political factors is necessary for sensitive designs and processes to emerge that are more conducive to dialogue on sustainable development.

We have highlighted the importance of including sound conflict management processes as part of EAAP, but this is not to say that it would be realistic to expect EAAP to resolve conflicts that result from long-standing, deeply entrenched social dynamics. In such cases, as we have argued through the conceptual framework, EAAP might not be able to deal with conflicts that go beyond the specifics of a project. In this sense, EAAP are highly reliant on the strength of institutions and civil society at large, improving EAAP requires multi-stakeholder efforts. We discuss some recommendations for various actors in the next chapter.

5. Recommendations

The recommendations in this document are provided at the identification level; they are an invitation to debate key development issues in all their complexity, more than expert advice to actors. These recommendations are presented in two ways. Firstly, we indicate which actors could consider contributing to implementing specific *design principles*. Secondly, we discuss high level recommendations for governments, regulators, proponents, communities and civil society organisations. The recommendations relate to institutional change, transparency and capacity; conflict management; links between development planning, natural resource management and mining plans; integrating social science as a key source of insight; and ensuring the design of processes and timelines is realistic and cognisant of complex social forces.

In general, various actors involved in EAAP can consider whether the *design principles* presented in Chapter 2 are suitable for implementation to individual cases. Scope for implementing these principles is not limited to regulators or governments, various actors can contribute to implementing many of these principles (see Table 6 below). However, whether a principle is applicable or whether its application is realistic is highly context dependent.

Table 6. Applicability of the design principles to various EAAP actors.

Principle	Scope for application				
	Regulator	Government	Proponent	Civil society organisation	Local residents and businesses
Enable early, broad-based dialogue on the project's contribution to sustainable development					
Seek commitment from elected decision-makers					
Integrate dialogue, negotiation, consent, impact assessment and approval processes					
Fully integrate social science into all stages of the process					
Introduce checks and balances to compensate for perverse incentives					
Support capacity building and address capacity unbalances					
Implement flexible and inclusive public participation mechanisms with decision-making and trust building in mind					
Design institutional arrangements to allow dialogue across different knowledge systems					
Integrate EAAP with natural resource management strategies and initiatives at regional and national levels					

Below we provide additional, high level recommendations to invite reflection from various actors.

Governments

Governments can undertake efforts to:

- improve the effects of royalties, including mitigating their adverse effects
- support positive institutional change
- link proposed mining projects to national, regional and local development strategies
- build capacity for actors to engage in EAAP effectively – this is closely linked to the effective expenditure of royalties on items such as education
- articulate national strategies for conflict management

Royalties may not create prosperity unless tied to proactive measures pushed forward by the governments. Casual evidence suggests that the impact of royalty spending may not be positive (Toledo, 2011; Flury, 2008). This outcome would be in line with the “voracity effect” of unearned income in resource-boom, fragmented countries, akin to what has been documented at sub-national levels in rentier countries (Desai et al, 2003). Unearned income plus weak institutions promote building “white elephants”, that is, investments which perpetuate political power with costs that are higher than the benefits (Robinson and Torvik, 2005; Robinson et al, 2006; Mehlum et al, 2006).

The government might need to lead a change towards more inclusive institutions. Acemoglu and Robinson (2012: 430-431), the champions of the quality of institutions thesis – which according to Diamond (2012), perhaps explains 50 percent of the national differences in prosperity – state that:

“(...) extractive economic institutions are synergistically linked to extractive political institutions, which concentrate power in the hands of a few, who will then have incentives to maintain and develop extractive economic institutions for their benefit and use the resources they obtain to cement their hold on political power. (...) The synergies between extractive economic and political institutions create a vicious circle, where extractive institutions, once in place, tend to persist.”

According to these authors, major institutional change is the requisite for major economic change. Major institutional change results of the interaction of institutions and substantial external shocks that arrive in the right moment (“critical junctures”). Acemoglu and Robinson (2012) conclude that well-intentioned reforms in sensitive issues may fail to deliver sustained results if the society does not ‘break the mould’ and transition toward inclusive institutions. It should be no surprise that cross-country studies on the relationship between mining countries and local development in Latin America find that industry and government efforts to foster community development show results which are modest at best (IRDC, 2003: 7).

Linking mining to development (meant to be growth based on innovation, inclusion and sustainability) is a refractory problem that has no universal solution across countries. What institutional changes could help break the weight of history? For example, investing royalties in health and education; providing generalized access to credit and internet; creating regional innovation systems supporting the generation of local and regional businesses; and matching royalties to local tax efforts when financing public goods. This should be part of an integrated effort

to minimize the negative aspects of royalties: they reduce fiscal efforts and fuel inefficient redistribution. Bell and Faria (2007) discuss how to allocate royalties in that regard.

However, such reform needs to respond to local needs and to a considered local and regional development agenda that has the support of the population. This means that integrating mining in the development agenda requires participatory processes that are appropriate to the context.

Finally, given the extent of conflict escalation, the losses to Peruvian society, and the evident willingness of different sectors of civil society to invest significant effort and resources on issues related to mining, it is necessary to have a strong national system that responds to mining related conflict and harnesses its energy into constructive dialogue processes. In this regard, it is important that governments develop strong social science capacity to appropriately read conflict situations and to be able to articulate an appropriate response that does not escalate conflict.

Regulators

The usual recommendation regarding environmental licensing applies – to strengthen the technical capacities, the independence and the transparency of the process. This is more easily said than done. In the Peruvian case there is a need for the National Government to signal its commitment to reduce the traditional prevalence of the MEM in final decisions on project approval. This has been done to some extent through the legislative changes brought about with the creation of SENACE. Other possible reforms include:

- transferring OEFA's functions and staff to MINAM
- requiring the joint approval of EISs by both MINAM and ANA under arrangements where the licensing/certification bodies are independent from the productive sectors (which is not the case in SENACE due to the election mechanisms for the Chief role)
- removing the possibility for productive sectors to exempt projects from environmental licensing/certification.

An important institutional innovation regarding capacity and transparency, in both case studies, was the involvement of third party experts. It supported decision-making processes and likely increased public trust in the regulatory process. This warrants consideration for other significant mining EAAP.

However, the administrative/institutional changes discussed above shall have no real effects if the issue of legitimacy of decisions is not dealt with simultaneously. Consultation with communities needs to be linked to a regional planning exercise in which mining, agriculture, water use, public goods provision and business creation and support are considered in an integrated manner. It will make no good to present a mining project overnight. This would reinforce the perception of projects as unexpected acts, difficult to assess, with the communities forced to react in short notice and without a larger development frame to facilitate choice and negotiations.

Finally, in order to ensure that EAAP are cognisant of, and responsive to, social dynamics it is important that regulators, not only proponents, integrate social science into various stages of the process.

Proponents

Proponents can support improvement in EAAP if they allow sufficient time to build trust and respond to local and regional dynamics and timelines in a flexible manner, in particular in the pre-approval stage where less investment has been executed. The time factor was critical in both cases, with proponents 'pushing' timelines that did not appear at all realistic when observed in the context of local and regional sentiment and politics. Considering the human and economic losses resulting from the conflict, it is critical that proponents work to realistic timelines.

Trust building requires a candid approach from proponents, probably more generous and sensitive to communities' needs than before in the history of mining in Peru. This, in some cases, requires that proponent engagement efforts be broadened beyond the National Government to include Regional and Local Governments, recognising the role of these levels of government as development promoters and the need for the proponent (as a development agent) to work in collaboration with governments. Other things equal, communities will respond to the call of rejecting projects whenever they perceive that the National Government does not represent their interests, so proponents need to ensure that local and regional communities have guarantees that the proponent is not colluding with National Governments at the expense of engaging with the regional and local development agenda.

Communities and civil society organisations

Civil society organisations will continue to contribute to EAAP by building partnerships that address capacity gaps and contribute to awareness raising on aspects such as citizens' rights to information, participation and remedy. It is important that these organisations work in partnership with other actors to improve existing institutions, equalise uneven relationships or interactions, and propose institutional or development innovations in a constructive fashion.

Given the existing capacity gaps, the community sector would benefit from partnering with civil society organisations, proponents, aid agencies and governments to participate in capacity building processes tailored to local and regional dynamics and needs.

6. Teaching Adaptation Strategy

Based on the assumption that the material here presented would be used with a Peruvian audience, this study could be adapted to be taught in 4 sessions and one take-home activity. Over the four sessions, trainers can present the conceptual component of the study and based on this facilitate discussions on the context for mining in Peru and on each of the case studies. This can be followed by a strategy game and individual written piece to practice the concepts learned. The proposed components are as follows:

- Session 1: Conceptual framework and theoretical perspectives.
- Session 2: Facilitated discussion on context for mining in Peru.
- Session 3: Group case study sessions and plenary case study discussion.
- Session 4: Group strategy game and discussion.
- Take-home activity: individual analysis paper.

Depending on the depth of training required, trainers could implement:

- all four sessions
- only three sessions, choosing between sessions 3 and 4
- only two sessions: combining 1 with either 3 or 4
- if the training course does not allow for a take home activity, the activity can be replaced with a discussion in session 4.

All materials would need to be produced in Spanish. New materials can be produced directly in Spanish, while others would be translations of sections of this report. Where translation is involved, it would require an initial round by a technical translator, followed by careful review and editorial work by the authors.

Session 1. Conceptual framework and theoretical perspectives

Content

The session can be organised in two parts. The first would cover the key aspects in the literature regarding the political and institutional frameworks of licensing processes. The second would present and discuss the proposed conceptual framework.

Training Activities

The first part of the session would be a presentation of key perspectives in the literature based on the Conceptual Framework section of this document (chapter 2).

Discussion can be then facilitated around the following questions:

1. Why are political and institutional factors relevant to extractive projects' EAAP?
2. In your experience, what are the key factors determining how mining EAAP evolve?

In the second part, trainers can propose the conceptual framework as a tool for analysis and explain each of its components. We propose that trainers then 'visit' each of the framework components using a hypothetical case study to illustrate how they come together. This should prepare the students for using the framework on their own in later sessions.

The second part of the session could use the following questions to stimulate discussion:

- What other elements should be considered?
- Are there any components that are of more relative importance than others?
- What are the strengths of this framework (i.e. how can it be helpful)?
- What are the weaknesses of this framework (i.e. how can it be improved)?

Training materials

IM4DC could consider producing:

- a brief paper outlining answers to questions 1 and 2 above, based on the Conceptual Framework (chapter 2) of this report
- a 1-2 page document that summarises the conceptual framework, based on the material in section 2.2.7
- an animation/presentation that brings the two together – it would be useful to present the conceptual framework in an animation format that builds it gradually with example boxes that illustrate each of the components. These example boxes can be based on a hypothetical, simplified case.

Session 2. Facilitated discussion on context for mining in Peru

This session can address the following questions:

- What has been the historic role or significance of mining activity in Peru?
- Why has there been conflict around mining developments?
- What are the main strengths and weaknesses of Peru's environmental licensing framework for mining projects?
- Has mining contributed to Peru's sustainable development?

The trainers/facilitators can encourage discussion around these questions and present a summary of the students' views, complementing it with the material in section 3.a of this study (Analysis of the Context for Mining in Peru).

Session 3. Group case study sessions and plenary case study discussions

Content

The students could be split into small groups to discuss and analyse the case studies. Below we outline the training materials required and some guiding questions.

Training materials

We suggest three types of training materials including case summary papers, multimedia case chronologies and a two page paper on game theory concepts useful to regulatory analysis:

- The multimedia chronology of each case can mark the key moments in the story, stopping at key teachable points to formulate questions for analysis and discussion.
- The multimedia chronology would include a coherent compilation of material on each case, selected to illustrate the positions of different actors over time. This could include extracts of televised presidential speeches, excerpts of company media releases or civil society organisation statements, segments of televised declarations and of existing documentaries such as *The Devil Operation*, *Choropampa – the price of gold* and others.
- Case summary papers can be produced based on the executive summary section of the each case studies.
- A two page concept paper that outlines game theory scenarios relevant to regulatory dynamics such as ‘zero sum game’ and ‘war of attrition’, amongst others, would assist students’ general analysis of regulatory processes as part of the training.

Teaching activities

Becoming familiar with the case:

In groups, students can review the case summary papers and discuss their recollection of the cases, should they be familiar with them. Some questions that can be used include:

- What were the most important moments in the story based on your recollection?
- Describe the main expected benefits and impacts of the project for each actor.

Analysis of case chronology

In their groups, students can look at the multimedia chronology of events, which would have built in time for reflecting on key questions at turning points in the timeline. Students can discuss their reflections based on the questions before continuing to watch the rest of the chronology.

Students can also discuss the following questions, in preparation for a plenary discussion. Each group can prepare one of the actors and one of the themes proposed below.

Actors

- Describe the **one** of the following actors:
 - Proponent
 - Regional Government
 - National Government
 - Environmental NGOs
 - Producers/industry association
 - Local residents (a very diverse group)

According to their values, interests, power, capacity and capacity gaps. Also identify the main strategies they used in the EAAP and provide a brief rationale for these strategies.

Theme 1 - Conflict

- Were large scale protest against the project preventable?
- If so, who could have prevented them and at what stage of the process?
- Is there one action or strategy by a single actor that could have made a dramatic difference to the turn of events?
- Why did conflict escalate into a 'zero sum'/'war of attrition' game (former for Conga, latter for Tia Maria)?

Theme 2 – Process (the questions in this section can be split between two groups of students)

- Suggest one recommendation for the proponent and the National Government under each of the following themes:
 - Assessment criteria
 - Dialogue on sustainable development
 - Decision-making processes
 - Oversight, remedy and enforcement (only government)
- Suggest one incentive adjustment that could help the process be more supportive of dialogue around sustainable development.
- What strategies should the following actors implement going forward?
 - the National Government
 - the Regional Government
 - key civil society organisations
 - the proponent.

Case plenary discussion

Students to present the results of their discussions, and trainers can facilitate plenary discussion on the questions above.

Session 4. Group strategy game

Content

IM4DC could consider a group strategy game activity modelled around a hypothetical case with the entire class 'playing' an EAAP. The purpose of simulating an EAAP would be to allow the players to appreciate the interconnectedness of the decisions of multiple actors and the role of contextual factors.

After playing the game the group can debrief on the reasons the EAAP took a particular trajectory.

Training Activity

The game can be modelled on the hypothetical scenario that would be used to illustrate the Conceptual Framework (see Session 1). This is not a role play, but a game where the strategic decisions of each player and their implications are simulated.

Each of the players would be allowed a set number of strategic decisions, all players would be given the opportunity to make one decision at the time, find out what decisions others made and make their next decision based on that, in an iterative process.

The game can be played over a number of days, assuming that this module would be thought concurrently with other content. Each day students would hand in their decision and a one paragraph rationale for it. The next day at lunch time the trainers can give the students an updated context description/additional information and give students until the end of the day to hand in a new decision and rationale. On the last day of the exercise students can present the rationale for the sequence of their decisions.

Training Materials

The strategy game requires the design of:

1. A simplified economic, social, cultural and political context
2. A physical geographic setting
3. The character and history of a hypothetical proponent
4. A proposed project
5. One or more human settlements
6. The character and history of National, Regional and Local Governments
7. A few hypothetical civil society organisations and economic groups

8. A few socio-environmental dilemmas/trade offs
9. A range of available strategies to each player and the permutations of consequences of alternative strategy arrangements. It is strongly recommended that an expert on regulation or game theory be engaged in designing and facilitating the game to prevent stalling.

A panel of facilitators would be required to support the game so that:

- Once players have made their decisions the panel decides on the outcomes of the round and communicates back to the players
- The range of strategic choices for each round and player is adjusted based on the results of previous rounds
- The debrief is handled effectively if there is a large number of players.

Take Home Analysis Paper

Based on the presentations following the EAAP strategy game, each student could prepare a two page paper answering one of the following sets of questions:

- What aspects of institutional design could the National Government change in order to enhance EAAP contribution to sustainable development? What difficulties might the government encounter in implementing these changes?
- How could a proponent contribute to preventing conflict escalation and building constructive EAAP? What do they need to be able to do this?
- How could a civil society organisation contribute to preventing conflict escalation and building constructive EAAP? What do they need to be able to do this?

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