



## ELLA SPOTLIGHT ON KNOWLEDGE

August, 2012

# 1 Spotlight on Publications: Extractive Industries and Conflict Management

The publications presented in this Spotlight represent some of the key resources dealing with a variety of issues related to extractive industries and conflict management in Latin America. In particular, they focus on: Consultation and Free, Prior and Informed Consent; Rent Distribution; Gender; Indigenous Issues; and Social Movements. Country Case Studies addressing these themes in a cross-cutting way, as well as Practical Implementation Guides are also included.

## CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT (FPIC)

### **The Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development**

Recently, Latin American countries have seen a rise in the use of community referendums to assess support or opposition to mining projects as a way to mediate extractive industry conflict. According to the author, community referendums provide a democratic way to ensure that the principles of free, prior and informed consent (FPIC) are applied to extractive projects. This publication provides useful information about the legal foundations of FPIC and the current use of the community referendum as a strategy for achieving FPIC in Latin American mining countries, including through a case study from Guatemala.

Full Citation: McGee, B. 2009. The Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development. *Berkeley Journal of International Law* 27(2) 570-635.

### **Democratizing Resource Governance through Prior Consultations? Lessons from Bolivia's Hydrocarbon Sector**

This case study focuses on how free, prior and informed consent has played a key role in the democratisation of natural resource governance in the Bolivian hydrocarbon sector. The author draws attention to the importance of building negotiation capacities of local stakeholders to participate in decision making processes and of the impartiality of the institution in charge of the design and implementation of the consultation processes. While including in-depth treatment of the contextual factors specific to Bolivia, the study also identifies lessons that might be useful for other resource-rich countries, where similar

inequalities in negotiations between the state, private corporations and local communities are likely to exist.

Full Citation: Schilling-Vacaflor, A. 2012. *Democratizing Resource Governance through Prior Consultations? Lessons from Bolivia's Hydrocarbon Sector*. GIGA Working Paper No. 184. German Institute of Global and Area Studies (GIGA), Hamburg.

### **Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector**

Drawing on four case studies from Peru, the authors present the case for using community consent mechanisms to reduce extractive industry conflict. The authors contend that opposition to extractive projects not only stems from individual concerns over land rights, property and environmental protection, but also from communities' overall desire for control over their natural resources and for the freedom to manage the overall course of their lives. The authors argue that obtaining FPIC is a competitive advantage for companies as well as for communities, and that FPIC offers a more effective conflict prevention strategy than companies' usual corporate social responsibility instruments. Details of the situation in Peru and the strategies presented in the paper will be useful for policymakers involved in developing FPIC processes in resource-rich countries and for companies seeking to improve their social engagement.

Full Citation: Laplante, L., Spears, S. 2008. Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector. *Yale Human Rights and Development Law Journal* 11 69-116.

### **The Politics of a Strange Right: Consultation, Mining and Indigenous Mobilization in Latin America**

This paper presents an analysis of the use of the right to consultation by assessing three case studies of controversial mining projects in Peru and Guatemala, chosen to illustrate different facets of consultation in Latin America. The author argues that the international legal and human rights frameworks which uphold the right to consultation have played a more important role in indigenous mobilisation as a symbolic instrument to legitimise certain political actions and discourses, than they have as an enforcement tool to guarantee consultation rights. This publication will be useful for actors wanting to understand the dynamics of consultation processes in Latin America, and in particular how they relate to international legal frameworks.

Full Citation: Fulmer, A. 2011. *The Politics of a Strange Right: Consultation, Mining and Indigenous Mobilization in Latin America*. 2011 Annual Meeting Paper, American Political Science Association (APSA), Seattle.

### **Prior Consultation: A Fundamental Right for Indigenous Peoples**

This report examines how indigenous peoples' right to prior consultation over natural resource extraction is being carried out in Latin American countries. It includes a review of legal frameworks as well as indigenous community initiatives such as community-led consultations and judicial processes, and assesses management of conflicts relating to

territorial and natural resource rights. The case studies it includes come from Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Guatemala, Mexico and Peru. Overall, the cases and analysis from Latin America illustrate how prior consultation can help avoid conflicts in resource-rich countries.

Full Citation: Latin American Press/Comunicaciones Aliadas. June 2011. *Prior Consultation: A Fundamental Right for Indigenous Peoples*. Comunicaciones Aliadas, Lima.

## **The U'wa Case and Prior Consultation: The Role of States, Extractive Industries and Indigenous Communities in Natural Resources Development**

This case study demonstrates how reaching a definitive decision in consultation processes is not necessarily the most important goal; what is more important is that consultation processes are not just treated as a formality, but rather that indigenous peoples' rights, views and opinions are respected. In this sense, the author argues that rather than establishing community powers to veto any given extractive industry project, it would be better to strengthen government procedures related to resource exploitation to serve the common good. These procedures should ensure that extractive industries not only comply with domestic laws, but that they embrace a more comprehensive approach toward indigenous peoples' rights. The recommendations derived from this Colombian case study will be useful to policymakers, private companies and indigenous people facing challenges in implementing meaningful consultation processes.

Full Citation: Gutierrez, E. 2011. *The U'wa Case and Prior Consultation: The Role of States, Extractive Industries and Indigenous Communities in Natural Resources Development*. The Centre for Energy, Petroleum and Mineral Law and Policy Gateway (CEPMLP) Annual Review, Dundee.

## **REVENUES AND RENT DISTRIBUTION**

### **Extractive Industries Revenues Distribution at the Sub-National Level: The Experience in Seven Resource-Rich Countries**

This study was prepared for the Revenue Watch Institute, a leading non-profit organisation specialising in issues of accountability and effectiveness in spending natural resource revenues. It provides a comparative analysis of legislation governing distribution of extractive industry income from seven resource-rich countries, including three in Latin America (Brazil, Bolivia and Mexico) and two from sub-Saharan Africa (Nigeria and Ghana). In particular, it explores differences between centralised and decentralised systems, concluding that in most cases decentralised revenues are inefficient due to weak institutions. Given the strong connection between revenue generation and conflict, this study will provide useful background to distribution issues in the Latin American countries studied.

Full Citation: Morgandi, M. 2008. *Extractive Industries Revenues Distribution at the Sub-National Level: The Experience in Seven Resource-rich Countries*. Revenue Watch Institute, New York.

## **People, Power, and Pipelines: Lessons from Peru in the Governance of Gas**

## **Production Revenues**

This case study of Peru's Camisea natural gas project highlights the role of support from public international financial institutions (IFIs), such as the World Bank, to ensure an efficient allocation of resources that come from extractive industry revenues. Given that Peru is economically dependent on its natural resources, the publication provides suggestions about how to best enhance the role of subnational governments via financial and technical support given by the IFIs, thereby promoting revenue distribution schemes that benefit communities while also helping to reduce extractive industry conflict. An important contribution of the publication is its presentation of lessons learned and challenges faced the specific case of Peru.

Full Citation: Munilla, I. 2010. *People, Power, and Pipelines: Lessons from Peru in the Governance of Gas Production Revenues*. Oxfam America Inc, Washington, DC.

## **Sharing Mining Benefits in Developing Countries: The Experience with Foundations, Trusts, and Funds**

This document presents a set of case studies from developing countries - using Peru as an example from Latin America - that have started to use foundations, trusts, and funds (FTFs) as a vehicle for sharing the benefits of mining activities with communities, in countries like Brazil, Peru, Colombia, Chile, India and South Africa. FTFs are financial and institutional instruments designed to channel revenues generated by mining companies to communities. The publication provides some criteria under which FTFs should be evaluated, and emphasises the importance of adapting FTFs to the specific context in which they are implemented. Overall, the publication offers an innovative instrument - FTFs - to help maintain the 'social licence' needed to avoid conflicts. The publication is orientated to governments and private companies looking for ideas about how to use FTFs to manage wealth distribution and mediate conflict.

Full Citation: Wall, E., Pelon, R. 2011. *Sharing Mining Benefits in Developing Countries: The Experience with Foundations, Trusts, and Funds*. Extractive Industries for Development Series No. 21. World Bank, Washington, DC.

## **GENDER**

### **Gender Dimensions of the Extractive Industries: Mining for Equity**

This publication addresses issues related to extractive industries and conflict from a new perspective: its differential impacts on men and women. Though the publication does not solely focus on Latin America, it does draw on examples from countries in the region. It emphasises that the increase in employment stemming from extractive activities is a benefit mostly enjoyed by men, while women more often face the negative effects of extractives, such as harmful social and environmental impacts. Citing evidence that seems to indicate more sustainable outcomes where women are empowered in the consultation process, the document provides a set of possible solutions and indicators so that the benefits to women are taken into consideration when considering extractive projects.

Full Citation: Eftimi, A., Heller, K., Strongman, J. 2009. *Gender Dimensions of the Extractive Industries: Mining for Equity*.

## **Gender-sensitive Approaches for the Extractive Industry in Peru: Improving the Impact on Women in Poverty and Their Families**

Publications related to extractive industries and ways to enhance distribution of benefits for indigenous people have taken a particular approach: focusing on how the impact differs by gender. This document focuses on Peru's efforts to take more fully into consideration the differential impacts of extractive industries on women. It highlights, for example, that prior consultation where women are empowered has more positive outcomes for achieving sustainability. The authors also include lessons learned from the Peruvian context and the appendix includes a practical guide for improving practice. This case study and the hands-on guidelines can be of use for anyone interested in implementing new policies that seek to benefit enterprises as much as women and communities, thereby avoiding social and environmental conflict.

Full Citation: Ward, B., Strongman, J. 2011. *Gender-sensitive Approaches for the Extractive Industry in Peru: Improving the Impact on Women in Poverty and Their Families*. World Bank, Washington, DC.

## **INDIGENOUS ISSUES**

### **Indigenous Peoples and the World Bank: Experiences with Participation**

In this paper, the author assess and critiques the limitations of World Bank policies, projects and programmes across Latin America, Africa and Asia with regards to indigenous peoples' participation and upholding their right to FPIC, including in extractive industries projects. It includes a review of specific cases, and makes recommendations for how the World Bank can implement improvements. It provides a useful tool to for addressing how to improve participation in extractive industries to mediate conflicts, which can be applied even to non-World Bank initiatives.

Full Citation: Griffiths, T. 2005. *Indigenous Peoples and the World Bank: Experiences with Participation*. Forest Peoples Programme, Oxfordshire.

### **Indigenous Rights, Resistance and the Law: Lessons from a Guatemalan Mine**

This article analyses the dynamics of development and regulation of large-scale extractive industry projects in the developing world using a case study of the conflict over the controversial Marlin mine project in an indigenous area of Guatemala. Specifically, it analyses the legal process surrounding the conflict, examining the roles played by the legal regimes involved in the dispute, including national and international law and key actors such as international financial institutions. The authors conclude that these legal frameworks did protect human rights but failed to address structural issues related to democratic governance. This publication sets out a useful approach to assessing the limitations and structural challenges related to regulating extractive industry activities that are often major impediments to resolving conflict.

Full Citation: Fulmer, A., Snodgrass, A., Neff, P. 2008. Indigenous Rights, Resistance and the Law: Lessons From a Guatemalan Mine. *Latin American Politics and Society* 50(4) 91-121.

## **Natural Gas, Indigenous Mobilization and the Bolivian State**

This research paper provides a case study of indigenous mobilisation against extractive activities in Bolivia, focusing on one Guarani indigenous community's organising efforts related to the negative impacts of gas exploitation. The authors also discuss the broader implications for sustainable development and conflict management in extractive industries. Highlighting the lack of communication in the Guarani case, the author emphasises the importance of prior consultation in extractive projects as a mechanism for avoiding social conflicts.

Full Citation: Perreault, T. 2008. *Natural Gas, Indigenous Mobilization and the Bolivian State*. United Nations Research Institute for Social Development, Geneva.

## **Transnational Governmentality and Resource Extraction: Indigenous Peoples, Multinational Corporations, Multinational Institutions and the State**

This document exposes a lack of consultation in extraction projects around the world, emphasising that legal action for regulation of extractive industries has failed to protect for communities' sustainable livelihoods, causing discrimination, exploitation and dispossession at the hands of multinational corporations. The eight case studies presented include some from Latin America, including conflicts arising from gas production in Peru and Bolivia, while other cases cover petroleum and mineral extraction projects. The importance of this document is that it identifies what has failed and what improvements need to be made to enhance the wellbeing of indigenous communities, including the need for a consultation platform to prevent and manage conflicts.

Full Citation: Sawyer, S., Gomez, E. 2008. *Transnational Governmentality and Resource Extraction: Indigenous Peoples, Multinational Corporations, Multinational Institutions and the State*. United Nations Research Institute for Social Development, Geneva.

## **SOCIAL MOVEMENTS AND COMMUNITY MOBILISATION**

### **Environmental Justice in Latin America: Problems, Promise, and Practice**

When analysing social conflicts sparked by extractive activities in Latin America, it is important to look at broader social movements such as groups calling for environmental justice. From this perspective, the book offers a panoramic and conceptual discussion of environmental justice and social movements in Latin America. The authors demonstrate how the environmental justice movement that emerged in the United States has been adopted, revised and modified in particular Latin American struggles. Though not all of the social movements include an extractive industries focus, overall this publication helps to contextualise extractives-based conflict within broader global environmental movements.

Full Citation: Carruthers, D. (ed). 2008. *Environmental Justice in Latin America: Problems, Promise, and Practice*. Cambridge, MIT Press, Boston.

## **Federating and Defending: Water, Territory and Extraction in the Andes**

This publication discusses the issues arising from the increase in extractive industry activities in the Andean sub-region and its interaction with civil society organisations, alliances and social conflict in Latin America, focusing in particular on water resources. It analyses recent patterns in the extractive economy, discusses implications of extractive activities for water resources and indigenous development, and examines communities' responses to extractive activities, focusing on mobilisations and civil society action. It also includes a brief case study about a mining conflict in northern Peru. Overall, the article explores in detail conflicts over natural resources and the challenges of guaranteeing rights and avoiding violence in a context of high extractive activities.

Full Citation: Bebbington, A. et al. 2010. Federating and Defending: Water, Territory and Extraction in the Andes. In: Boelens, R., Getches, D., Guevara Gil, A. (eds.) *Out of the Mainstream: The Politics of Water Rights and Identity in the Andes*. Earthscan, London.

## **Mining and Social Movements: Struggles Over Livelihood and Rural Territorial Development in the Andes**

This paper explores the role of rural social movements in mediating the impacts of large-scale mining investments on rural livelihoods and land. The authors argue that social movements have a significant influence both on the implementation of extractive industries and on those activities' impacts on rural livelihoods, illustrating their argument through case studies from Peru and Ecuador. The paper concludes that the institutions, structures and discourses that govern asset distribution and productivity are not pre-established, but are in fact the product of an intense struggle between a range of actors including private companies, governments and civil society. This study provides important analytical tools for examining social movements involved in conflicts related to extractive industries.

Full Citation: Bebbington, A. et al. 2008. Mining and Social Movements: Struggles Over Livelihood and Rural Territorial Development in the Andes. *World Development* 12(36) 2888-2905.

## **Social Conflict, Economic Development and Extractive Industries: Evidence from South America**

In the face of the current extractive industry boom in some Latin American countries, societies are grappling with the extractive-led development paradigm: while boosting economic development on the one hand, extractive industries have also triggered social conflict and caused significant environmental degradation on the other. In this context, this book provides detailed information on national and local experiences of social, economic, and environmental transformation related to extractive industries and pays particular attention to the role of social conflict. The various authors contributing to this edited volume assess issues such as whether social conflict and community mobilisation can catalyse political and institutional change and the extent to which left-of-centre governments are more successful in

modifying the relationship between extractive industry and development. The case studies and points of view presented in this book can provide useful insights for researchers and policymakers dealing with social conflicts and extractive activities in other regions.

Full Citation: Bebbington, A. (ed). 2012. *Social Conflict, Economic Development and Extractive Industries: Evidence from South America*. Routledge, London.

## **COUNTRY FOCUS AND CASE STUDIES**

### **Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso**

This case study documents a successful consultation process over a proposed hydrocarbon exploration project on the Guaraní indigenous peoples' territory in Bolivia. The consultation process resulted in an agreement between the indigenous community and the Bolivian government to allow the Argentinean company Pluspetrol to begin exploration activities. The author argues that the respect demonstrated by the Ministry of Hydrocarbons and Energy - the institution in charge of coordinating the consultation process - towards the traditional Guaraní institutions and systems was a major enabling factor that contributed to this positive outcome. Key lessons from this successful experience could prove useful when analysing and promoting consultation process in other contexts.

Full Citation: Bascopé, I. 2010 *Case Study: Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso*. OXFAM and CEJIS, La Paz.

### **Extractives and Equity: An Introductory Overview and Case Studies from Peru, Angola and Nigeria**

This publication sets out a conceptual framework for conflict management related to extractive industries, then presents case studies from Peru, Angola and Nigeria. In addition to discussing the impacts of poorly managed extractive industry activities and the link with conflict, this publication describes effective conflict management responses taken by the NGO Catholic Relief Services, the Catholic Church and other partners to alleviate these negative impacts. The most interesting contribution is the inclusion of lessons learned from each case study, explaining the context in which conflicts with indigenous peoples emerged. In Peru, the study pays specific attention to the emblematic case of La Oroya, a mining community suffering from burdensome environmental and health impacts of extractive activities. It explains how the social movement demanding solutions to this conflict emerged, including its achievements, shortfalls and lessons learned.

Full Citation: Bamat, T., Chassy, A., Warne, R. (eds). 2011. *Extractives and Equity: An Introductory Overview and Case Studies from Peru, Angola and Nigeria*. Catholic Relief Services, Baltimore.

### **Extractive Industries and Stunted States: Conflict, Responsibility and Institutional Change in the Andes**

This article discusses corporate social responsibility (CSR) programmes in the extractive

industry sector in terms of their role in mediating conflict, through an analysis focused on the Andean region and Peru in particular. The author argues that CSR programmes should be assessed in terms of their general role in development processes. Analysed in this way, the author concludes that CSR programmes tend to dissipate social pressures which can include demands to the government for structural changes needed to avert the 'resource curse', and thus, in the long-run, structural solutions to conflict. This interesting perspective is useful for re-thinking the impacts and objectives of CSR programmes in reducing social conflict in other contexts.

Full Citation: Bebbington, A. 2010. Extractive Industries and Stunted States: Conflict, Responsibility and Institutional Change in the Andes. In: Raman, R. (ed.) *Corporate Social Responsibility: Discourses, Practices and Perspectives*. Palgrave MacMillan, London.

### **Gold and Land: Democratic Development at Stake**

The very first community referendum in Latin America was held in 2002 in Tambogrande, a rural community in northern Peru. The Tambogrande municipality invited Rights & Democracy, the organisation which drafted this report, to observe the public consultation process that it implemented as a strategy to manage the intense social conflict over a mining project by the Canadian Manhattan Sechura Company. The authors first provide a background on the mining industry in contemporary Peru, including Manhattan Sechura's role and activities in the community since the exploration stage began. The report then describes and analyses this consultation experience, presenting a variety of viewpoints about the process and its results. As the first ever consultation in Latin America, Tambogrande represents a milestone in terms of dealing with extractive industries conflict. This publication offers a concise introduction to the case, and will be useful for those working in other regions to see how consultation first emerged in the Latin American context.

Full Citation: Rousseau, S., Meloche, F. 2002. *Gold and Land: Democratic Development at Stake*. Published online, Rights and Democracy website.

### **Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru**

This publication focuses on the negative repercussions of mining activities in Peru that may be root causes for future conflicts. It offers a comprehensive study of the legal and social structure of the mining sector in Peru, from its benefits to its limitations and needed improvements, emphasising the negative social and environmental effects identified. Valuable insights are given in terms of possible solutions to the diversity of problems that have arisen due to pollution involved with mining in Peru. Note that the Executive Summary is also available in Spanish.

Full Citation: World Bank. 2006. *Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru*. World Bank, Washington, DC.

## **PRACTICAL ADVICE AND IMPLEMENTATION GUIDES**

## **Extractive Industries and Conflict: Guidance Note for Practitioners**

This Guidance Note is aimed at United Nations (UN) and European Union (EU) development practitioners working to prevent and address conflict related to extractive industries. It provides an analysis of the main drivers of extractive industry-related conflicts, as well as a series of strategies to prevent them, drawing on specific case studies, including Latin American countries. Although the publication is not exclusively focused on Latin America, rather offering an overview of the relationship between conflict and extractive industries, we consider it a useful publication as it specifically targets practitioners, providing a practical tool rather than a more academic and critical analysis of conflict and extractive industries.

Full Citation: UN Interagency Framework Team for Preventive Action. 2010. *Extractive Industries and Conflict: Guidance Note for Practitioners*. UNDP - Bureau for Crisis Prevention and Recovery, New York.

## **Guide To Free Prior and Informed Consent**

Designed for local organisations that support communities affected by large-scale development projects, including extractive industries initiatives, this guide offers general information about the right to FPIC and the different steps taken to implement it. The authors argue that FPIC, if defended as an essential collective right, can ensure the participation of project-affected peoples in decision making processes about extractive project development, thereby contributing to the sustainability of the project and the management, while also reducing and managing conflict related to its development.

Full Citation: Hill, C., Lillywhite, S., Simon, M. 2010. *Guide To Free Prior and Informed Consent*. Oxfam Australia, Victoria.

## **Resource Kit on Indigenous Peoples' Issues**

This Resource Kit was designed for the United Nations' Country Teams to provide useful guidance for establishing partnerships with indigenous peoples. The kit highlights the importance of genuine involvement of indigenous communities in decision making processes so that the impacts of development projects on indigenous peoples are taken into consideration. It also deals with issues related to extractive industry conflict such as land use and consent. Though including a focus on Latin America, the kit also shares good practices and lessons learned from different experiences around the world.

Full Citation: Secretariat of the United Nations Permanent Forum on Indigenous Issues/DSPD/DESA. 2008. *Resource Kit on Indigenous Peoples' Issues*. United Nations Publications, New York.

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