

# EXTRACTIVES INDUSTRIES AND POLITICAL CAPTURE

EFFECTS ON INSTITUTIONS,  
EQUALITY, AND THE ENVIRONMENT

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Francisco Durand



OXFAM

**EXTRACTIVES INDUSTRIES AND POLITICAL CAPTURE:  
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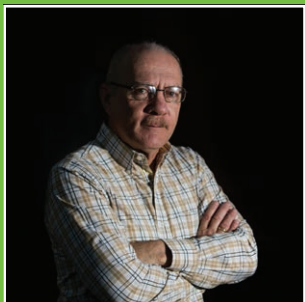
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## ABBREVIATION LIST

- ADEX: Exporters Association
- AFP: Pension Fund Association
- BCP: Peru Credit Bank
- BCRP: Peruvian Central Reserve Bank
- CCL: Lima Chamber of Commerce
- CGTP: General Workers Union of Peru
- Confiep: Confederation of Private Business Institutions
- EESI: Specialist Team for Investment Monitoring, Ministry of Economy and Finance
- EIA: Environmental Impact Assessment
- EPG: Economic Power Groups
- IPE: Peruvian Institute of Economics
- JNE: National Jury of Elections
- MCs: Multinational Companies
- MEF: Ministry of Economy and Finance
- Minam: Ministry of the Environment
- Minem: Ministry of Energy and Mines
- NGO: Non-Governmental Organization
- OEFA: Organization for Environmental Assessment and Oversight
- SNMPE: National Society for Mining, Oil, and Energy, member of the Confiep
- Sunat: National Tax Administration Superintendence



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# INTRODUCTION

*"The ones who lose the elections end up winning the government."* This common saying suggests that people can sense an injustice. Although governments are elected by a majority of voters, the economic elite, with fewer votes but greater resources, receive favor from these elected bodies. This study explores the phenomenon of "political capture" to which this saying alludes.

We attempt to explain what factors determine political capture within a government, and which concrete mechanisms combine in a given moment to allow corporations, especially extractive companies, to exert undue influence on specific branches of the bureaucratic apparatus, to the point of producing laws that benefit their own interests and at the same time weakens public institutions and affects the poor.

There is growing international interest in researching state capture, as this action reinforces the power of the elites, concentrates material resources, tends to favor abuse of power, diminishes the legitimacy of authorities, and generates negative consequences for those that are excluded from the decision-making process. While the forms and expressions of state capture vary by country and stages of economic development, the problem is one of universal concern.<sup>1</sup>

Most of the research done on political capture (a broader view), or state capture (focused on the bureaucratic apparatus) in its different formats focuses on discussing capture in the abstract as a systemic phenomenon, without including sufficient case studies to help explain when, how, and in what institutions the capture processes occur. The research presented in this report is an effort to close the evidence gap that currently persists in publications around this issue.

This report looks at corporate capture in a specific context and rooted in an illustrative case; given the opacity of this phenomenon, it can be best observed and studied through specific moments and government administrations.

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1 Oxfam America, "Expert Event on Political Capture and Inequality", Oxfam America, Washington D.C. , January 27-28, 2016.

Proper case selection is therefore fundamentally important to advance in these studies. We consider, given that political capture can be best described through qualitative data and power relationships, that an appropriate methodology must allow us to monitor actors and specify their interrelation over a sequence of events on a timeline.<sup>2</sup>

The Ollanta Humala administration in Peru (2011-2016) came to power with a social change agenda and a strong critique of the economic elite, only to later join forces precisely with these elite and abandon the supporters it had promised to represent. This pivot launched a national debate on political capture. Once again, the saying cited at the start of the report would apply here. We will study the case of Law 30230, passed to eliminate bureaucratic obstacles to large-scale extractive investments in order to "stimulate investment". More than many other cases, this example will allow us to clearly illustrate how corporate capture operates by identifying the context and mechanisms in play for the economic elite to exert excessive influence to sway certain decisions in their favor.

This report is divided into six sections. The first section provides a brief summary of the literature on state capture, to the extent that it refers to economic actors in Latin American countries. Section two discusses the structural factors that configure a capture system: concentration of economic powers among an extractivist economic elite, the political use of executive decrees, and weakness in civil society. The third section describes the capture mechanisms used to influence governments: campaign finance, lobbying, and the "revolving door". Section four studies the case of Peru during the Humala administration (2011-2016), and how a sequence of events was sparked that eventually led to the passage of Law 30230. Section five analyzes the reactions among civil society and estimates the different impacts of the law. The study concludes with reflections on the phenomenon of political capture based on the evidence found in the case study. Annexes are also included to describe the methodology to study corporate capture that applies to the Peruvian case.

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2 This methodology is known as a process tracing analysis. See: David Collier, "Understanding Process Tracing", *PS: Political Science*, vol. 44, No. 4 (2011): 823-30.





# 1. CORPORATE STATE CAPTURE AND ITS VARIATIONS

There is growing interest in the field of study on political capture related to corporate power in a globalized world. This field deals with issues of abuse of power, material inequity, and human rights, seen through the lens of the influence of economic and political elites over state affairs. This web of relationships is particularly evident in extractive industries. The impact of corporate political capture is even more evident given the power asymmetry between these industries and vulnerable social groups, to the point that it often triggers intense conflict.

This field of study offers great analytical wealth, with broad and growing contributions on the topic of political capture (and more broadly, political domination or control) on different continents, both in the North as well as the global South. In this study we limit ourselves to a brief literature review on capture by corporate actors.<sup>3</sup> The review emphasizes the countries of Latin America and other countries at similar stages of development, with relatively well-developed states and markets.

<sup>3</sup> Janine R. Wedel, in her studies on the power elite in the modern world, refers to influential elites that are not held accountable, and explores the negative consequences generated by the actions of these elites. See: *Unaccountable: Power Brokers, Corruption Finances, Freedom and Security* (New York and London: Pegasus Book, 2014).

A look at the literature on this topic allows us to identify certain areas of common concern. Political capture is understood as a form of extreme influence over the state (conceived, in certain cases, as undue or excessive influence), which biases public policy decisions in favor of a privileged few; these few may be economic or political elites, or even families or political parties.<sup>4</sup> Political capture produces multiple effects, which generate or intensify inequalities.<sup>5</sup> To clarify this field of study, we identified the captor actors to examine what makes them so influential, what they influence, what mechanisms or tools they use for this purpose, and what consequences they generate.

The modern economic elite in control of corporations have become widespread in the global economy. Various studies argue that the size alone of these profit-driven economic units is behind the phenomenon of capture. This argument, which points to correlations and establishes reciprocal causation between size and influence, is described in the early studies on "regulatory capture" that refer to large sector-based economic interests regulated by the state.<sup>6</sup> The argument is built on cases in which the size of the company conditions decision-making, as big businesses and corporations have greater resources, better networks, and more administrative capacity

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4 These privileged actors that take advantage of the state may be political agents (parties, dictators) or economic actors (corporations, upper class). In the case of political agents of capture, there is abundant literature on patrimonialism or clientelism, practices that are also associated with institutional corruption.

5 Del Solar asserts that "opaqueness... leads to a concentration of economic and political power, negatively affects social and economic development, and increases inequality." See: Felipe Del Solar, "Transparencia, corrupción y acceso a la información pública en Chile". In Vito Tanzi, et al, *Las termitas del Estado: ensayos sobre la corrupción, transparencia y desarrollo* (México: Fondo de Cultura Económica, 2008), p. 89. On political capture and inequality, see: Kelsi, R. Stine, "A State of Inequality: Confronting State Capture in Post-Conflict Guatemala", MA Thesis, Tufts University, 2011. On the relationship between inequality and capture, see Gerardo Esquivel Hernández, "Desigualdad extrema en México. Concentración del poder económico y político", Mexico City, OXFAM (June, 2015). Thomas Piketty, in an interview conducted in Chile in 2014 by the Center for Investigative Journalism (CIPER): "Inequality can lead to the capture of political institutions". <http://ciperchile.cl/2015/01/14/piketty-la-desigualdad-puede-llevar-a-la-captura-de-las-instituciones-politicas/> (Accessed December 29, 2015).

6 According to Stigler, the pressure from special interests and producers is more persuasive, making them winners in the power game. Regulations are approved only for the benefit of large companies. George Stigler, "The Theory of Economic Regulation", *Bell Journal of Economics and Management Science*, No. 2 (Spring 1971): 3-21. See also: Sam Peltzman, "Toward a More General Theory of Regulation", *Journal of Law and Economics*, 19, No. 2 (1976): 211-240.

and organizational support.<sup>7</sup> This is an important point in our discussion, as it identifies the actors and explains their objectives.

It is worth noting that the discussion on regulatory capture becomes particularly relevant in Latin America with spread of the free market since 1990, and the corresponding elimination of a series of state protections and subsidies, privatization of the economy, and growth in corporate power, especially among extractive companies. At the same time, new activities emerged and needed to be regulated (telecommunications, pension funds, purchasing, and procurement).<sup>8</sup> Studies on regulatory capture thus have the advantage of focusing on a specific area of public policy supervised by an external body, which aids in identifying the main economic actors, their political allies and the costs they generate, and in assessing the operation and functioning of the political system and public administration around the economic model.

Certain studies on organized crime also discuss "mafia capture", identifying cartels (with the most notable case of Pablo Escobar and the Medellín Cartel in Colombia) that are capable of influencing branches of the state. In this scenario, unlike the case of corporations, the objective is not economic, as the captor actors operate a highly profitable black market business, rather they seek to protect their business by neutralizing the bodies of the state charged with pursuing and combating them. These cases are important on a national scale, but they also come out strongly on a sub-national level as organized crime takes control of specific territories. With the growth of global organized crime, there are now numerous studies that highlight the

7 Schattschneider argues that the relationship between business and politics is not always mediated by interest groups, in this case business guilds or associations; rather these relations may move through other more private and informal channels organized individually by large companies. Eric E. Schattschneider, *The Semi Sovereign People: Public Sector Growth and Reform* (New York: Holt, Rineer and Winston, 1956), 40. Lindbolm considers that one of the advantages for business is that it has immediately ready to be used organizations and resources. Charles Lindblom, *Politics and Markets: The World's Political Economic Systems* (New York: Basic Books, 1977), p. 77.

8 For the case of Peru see: Távara, José I., "La regulación del poder de mercado y la transición a la democracia", in John Crabtree, ed. *Construir instituciones*, pp. 211-236 (Lima: CIUP, IEP and PUCP, 2006). See also: Távara, José I., "Captura del Estado, persistencia de la corrupción y desafíos a la democracia", Presented at the International Seminar on Corruption and Public Vice, Casa Sur, Lima, September, 2004. For Chile, see: Romero, Juan José, "¿Capturados por nuestra suspicacia? Algunas aproximaciones acerca del origen, desarrollo y extinción de las regulaciones", *Revista Chilena de Derecho*, 35, No. 1, (2008): 9-35.

illegal actors, especially cartels and mafias, in countries that are part of the trafficking chains for drugs and other illicit products (gold, timber).<sup>9</sup>

Other authors take a broader view and focus more on the large economic actors, considering their influence on major decisions. In these cases we refer to "corporate capture of the state". This topic has been discussed in sociology studies interested in explaining the domination or co-optive power of the owner classes. It is worth mentioning Domhoff, who analyzed how U.S. corporations as a central component of the "power elite". In his vision, corporations hold strong social and ownership ties (interlocking directorates), have social and economic networks, and support entities such as large law firms, generating a scale of power that small and medium businesses or workers cannot obtain. Domhoff sustains that "the great economic power of the corporate community easily can influence the government through corporate leaders" thanks to interpersonal relationships and shadow contacts at the highest level.<sup>10</sup>

Other studies on corporate power, while they do not explicitly refer to capture, are important in the sense that they help us to clarify the uses of corporate resources in the political scenario in the era of economic globalization. Fuchs studies corporations in the global market as one of the key actors in the process of economic globalization. She asserts that corporate or business power operates in three dimensions: economic, political, and discursive.<sup>11</sup> This three-dimensional focus is important in studying economies in emerging markets where multinational corporations carry significant weight, and where domestic conglomerates, so-called economically power groups, tend to organize following the corporate model.

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9 See the comparative study produced by the global NGO IDEA: *Illicit Networks and Politics in Latin America*, which describes the capture of local and regional governments by criminal networks (mafias): <http://www.idea.int/publications/illicit-networks-and-politics-in-latin-america/index.cfm> (acceso, diciembre 18, 2015).

10 William G. Domhoff, *Who Rules America?: Power, Politics and Social Change* (Boston: McGraw Hill, 2006), 47. Other authors such as Lindblom in his book *Politics and Markets* (1977), without discussing the issue of company size or considering arguments such as those posed by Domhoff, asserted that pluralistic theories did not take into account the "uneven playing field" slanted in favor of private businesses. His argument was that the role of businesses in general, and corporate executives in particular, "carved out a privileged position in government... one without parallel among any other actor, save government officials themselves" (p. 172). This is due to politicians' concerns with regard to company performance. There is not necessarily a bribe, or preferential treatment for companies, rather there is simply an understanding that in a market economy both parties must collaborate. Business people end up developing a privileged relationship, and have the advantage of ready-to-use materials and organizations.

11 Doris Fuchs, *Business Power and Global Governance* (New York: Lynne Rienner, 2007).

In a similar line of analysis applied to Latin America, Fairfield argues that we must consider the influence of corporations on the mass media and in public opinion. Like Fuchs, Fairfield distinguishes between the material power of corporations and the political or instrumental power that they wield. Fairfield argues that in Latin America in the 21st century, there are countries such as Bolivia under Evo Morales in which corporations maintain their structural power, but lose their instrumental power when opposing groups take control of public affairs. In Peru, as illustrated by this study as well, multinational corporations and economically power groups, the main economic elite, conserve material and instrumental power. As we will see in a moment, this situation leads to a capture scenario. The case of Peru is therefore different from Bolivia in the sense that in the latter, as Fairfield argues, social mobilizing counter-balances the power of the corporate elite.

Lastly, we find studies that refer explicitly to corporate capture of the state, and focus on companies as the main captor actor. These studies can be classified along two lines.<sup>12</sup> The conventional line of thinking underscores how different sized firms that pay bribes to "buy laws", thus exercise "undue influence" by generating corruption. A more critical line considers that corporations are the main economic agents, and are thus able to "capture the state", (or the key state decision-making bodies) to "dictate laws". This situation is seen as "excessive influence" in the public policy-making cycle, going beyond corruption alone.

The line of analysis that views capture as corruption has had significant influence in Latin America, leading to survey-based studies on corruption sponsored by the World Bank. One important contribution from this approach of capture as corruption is the universe of opinion studies that allow us to produce a "state capture ranking" and associate this ranking with inequality: greater capture signals greater inequality. Nonetheless, one limitation of this view is that it does not identify the economic elite (referring to companies

12 On these two views, see: Francisco Durand, "El debate sobre la captura del Estado peruano". DESCO, Perú Hoy: la gran continuidad. Pp. 19- 56 (Lima: DESCO, 2012). See also: Luis Jorge Garay, "La reconfiguración cooptada del Estado: más allá de la concepción tradicional de captura económica del Estado" (Bogotá, 2008, unpublished), pp. 30-31.

without making size or sector distinctions), and views impact only in the passage of laws, just one aspect of the public policy cycle.<sup>13</sup>

The second view analyzes "excessive influence" in national politics, and places greater emphasis on exploring the main agents of capture, starting with corporations as the strongest economic agents, whether domestic or foreign, and taking into account their varied influencing mechanisms. The authors emphasize the legal and less questionable forms in which strong and organized economic actors gain an advantage, without discounting corruption. An example of this type of view is found in a Global Witness report. We cite it here given its particular importance for our case study, as it describes how the ongoing weakening of the state removes layers of protection for civil society.

By using corporate influence to soften regulation and weaken regulatory powers the ever deepening corporate-government relationship is weakening the state institutions and processes that are responsible for ensuring they can respect, protect and fulfill human rights. While illegal, corrupt practices are a form of corporate capture, many legal practices are also effective at capturing the state leading to serious human right violations.<sup>14</sup>

Omelyanshuk studies the cases of Russia and Ukraine (countries that moved into market economies at the same time that Latin America was making this transition) from a broad and critical perspective. The author asserts that political capture can be best understood through its linkages with the concentration of economic power (which requires an economic power map), the concentration of political power (which depends of types of political systems), and weakness in civil society.<sup>15</sup> These structural variables will be central factors for our work. In a previous work, the author of this study built

13 See: Joel S. Hellman, Geriant Jones and Daniel Kaufmann, "Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition". Policy Research Working Paper No. 2444 World Bank (September 2000). Joel S. Hellman, and Daniel Kaufmann, "Confronting the Challenge of State Capture in Transition Economies (Oligarchic Corruption and Economic Reform)", Finance & Development, No. 38, vol. 3 (September 2001), 25-41. For the case of Latin America, see the comparative study conducted by the Office of the Vice-President of Colombia and the World Bank. "Diagnóstico de la corrupción y gobernabilidad en Colombia". Bogotá, Vicepresidencia de la República, Banco Mundial and Centro de Consultoría (February 7, 2002), p. 13.

14 Global Witness, "Developments in the Fields of Corporate Capture & Company Ownership Transparency", at [http://www.ohchr.org/Documents/Issues/Business/ForumSession4/18\\_Nov\\_820\\_CorporateCaptureAndTransparency.pdf](http://www.ohchr.org/Documents/Issues/Business/ForumSession4/18_Nov_820_CorporateCaptureAndTransparency.pdf) (Accessed March, 2016).

15 Oleksiy, Omelyanshuk, "Explaining State Capture and Capture Modes. The Cases of Russia and Ukraine", Budapest: Central European University, 2001, p. 9.

on Omelyanshuk's thinking to conduct studies on the capture mechanisms around tax revenue that favored important Peruvian corporations over the course of several government administrations.<sup>16</sup>

Garay, based on the case of Colombia, also sought to go beyond the approach of capture as corruption, to discuss a larger and more penetrating phenomenon, that of "economic capture of the state". He affirms that "capture and bribery is one thing, while [capture] as an exercise of power and influence is another", and points to corporations as the main captor actors. Membreño takes a similar bearing in discussing the case of Central America. He distinguishes between "simple corruption" (bribery) and "legal corruption" (also called white corruption) that generates "excessive influence". According to this author, capture leads to an uneven playing field in which large companies are the main agents of capture.<sup>17</sup>

In the cases of Central Europe and Latin America, it is worth adding, private influence over democracies is a part of the discussion; the literature points to campaign funding as a key instrument, leading to a discussion of political parties as another dimension that should be considered in the broader and more critical views centered on corporate capture.<sup>18</sup> Omelyanshuk, in the case of Central Europe, as well as Garay, Membreño, and the author of this article in the case of Latin America, agree in considering private corporations as the principal captor actors.

For this view it is important to build an understanding that goes beyond mere corruption and identifies other influencing mechanisms (campaign funding, shadow lobbying, and the "revolving door"), to explain the impacts on legal

16 See: Durand, "El debate sobre la captura del Estado peruano" (2012) and Garay "La reconfiguración cooptada del Estado" (2008). For Central America, see: Mario A. Membreño, "Qué se entiende por captura del Estado". Tegucigalpa, Colección Ética e Integridad para el Desarrollo, Consejo Nacional Anticorrupción, 2007. For Argentina under Menem, see: Susana, Calvo, "El Estado capturado". Encrucijadas, No. 19 (May, 2002).

17 Membreño, "Qué se entiende por captura del Estado" (2007), 16.

18 Garay, "La reconfiguración cooptada del Estado" (2008), 25. See also: Francisco S. Gutiérrez and Paula Zuluaga B., "Hacia un país minero: retos para el sistema político y el Estado", Nueva Sociedad (January-February, 2011) and Vesna, Pesic, "State Capture and Wide spread Corruption in Serbia". CEPS Working Document, No. 262 (2008), p. 18. Pesic analyzes the case of Serbia, where political parties play an important role. In the case of Chile, where the parties are well organized, see: Romero "¿Capturados por nuestra suspicacia? Algunas aproximaciones acerca del origen, desarrollo y extinción de las regulaciones" (2008), in which the author presents important observations on campaign funding, lobbying, and the use of the revolving door.

initiatives, as well as public policy implementation overall. It is worth asking what happens in semi-democratic or dictatorial regimes, and how these systems require changes in strategy by captor actors, including whether they resort to more persuasive mechanisms, the ones mentioned above, or others. Bribery may be one of the most important components in some economic sectors.

In cases on corporate power in democracies, we understand that the material advantages of private actors and their relational capacities that allow them at times to exert excessive influence are linked to structural elements as well. The composition of concentrated economic and political power structures and the weakness of civil society lead to the configuration of a political capture system, despite the existence of democratic institutions and rules. The capture system acts as a force field that drives specific short-term capture processes, responding to the variations of each political cycle and turnover in government administrations. This critical view of corporate capture, which considers the multi-dimensional powers of captor actors, helps to understand the case in Peru of the "captured" Humala administration and the context for the decision-making process that led up to and facilitated the passage of Law 30230.

Methodologically, we choose a qualitative study of a particular government administration. In cases such as this one, process tracing is a particularly important analytical approach. This process tracing methodology sketches out a specific influencing process performed captor actors, and establishes a sequential timeline of events, identifying the actors and actions that produce a specific public policy outcome (Law 30230 and its application).<sup>19</sup>

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19 David, "Understanding Process Tracing", (2011): 825.





## 2. STRUCTURAL FACTORS AND THE CAPTURE SYSTEM

In every country there are different modes and times in which: a) private economic power is structured, b) the rules of the games and practices that concentrate political power are defined, and c) civil society movements evolve. A brief review of these factors that configured the capture system in Peru is presented below. In the following section we will discuss the mechanisms that come into play in capture processes producing specific outcomes.

### 2.1. BRIEF HISTORICAL REVIEW

Economic resources in Peru have historically been concentrated in the hands of large families and foreign capital (plantations, urban properties, factories, and businesses) with high levels of influence.<sup>20</sup> This situation has its roots in the country's colonial era and the early days of the republic; while modernization and social change has brought some modifications, the essential nature of this situation remains unchanged.

<sup>20</sup> Historians note these characteristics of elitism, control, and inequality as particularly important. Klarén maintains that: "If there is a predominant issue underlying my approach, it is the struggle between Hispanic elites and indigenous, mestizo and Afro-Peruvian 'masses' over power and inclusion". See: Peter, Klarén, Peru: Society and Nationhood in the Andes (Cambridge: Cambridge University Press, 2000), p. xiii.

The oligarchic elite in the republic, descendants from European aristocratic culture, both in the case of dictatorships and democracies, directed a small state apparatus and organized elections (clean or rigged) in which only a minority of the population voted, as the system disenfranchised the illiterate population, which was the majority. The slogan of the regime, "Order and Progress" suggested that extractivist economic growth required the installment of a militarized state. This model of exclusion, repression, and inequality continued in effect through the beginning of the 20th century, until the state and its elite came under pressure from labor unions and grassroots political parties. These pressures eventually produced new government administrations. The anti-oligarchy military revolution of 1968 emphasized social change and an active role of the state in economic and social affairs. The reforms eliminated large land estates and reduced inequality to a certain extent. Social organizations grew stronger, but the regime continued to operate on the basis of executive orders and maintained its repressive nature. This populist/statist period continued on a democratic path once the military forces left power and voting rights were expanded in the 1979 constitution. Populism, which later continued under the civilian governments of the 1980s, receded as a result of inflationary recessions (that sparked greater poverty), a civil war, political instability, and widespread corruption.

Beginning in 1990, conditions emerged to reorganize the economy, re-concentrating property among a new business elite, and laying the foundation for a more modern economic regime. While this new scenario did not explicitly disenfranchise voters, civil society (and particularly labor unions) were greatly weakened, limiting popular power through repression. In the 1990s, the economic elite operated with a system of indirect control, in partnership with President Alberto Fujimori, who reinforced executive powers thanks to a new constitution passed in 1993 and pro-market legislation enacted. Fujimori, whose electoral slogan in 1995 was Order, Peace, and Progress, enjoyed popularity in opinion polls as he was able to promote economic recovery, end the internal war, and establish patrimonialist practices for the poor. The Fujimori regime weakened the system of political parties and social organizations. These trends fortified power in the executive branch and facilitated the influence of shadow lobbies.

Starting in 1990, the state began to promote large-scale investments, especially extractives, while also orchestrating a re-concentration of economic power. During this period, the state also avoided enforcing strict

sanctions in cases of environmental deterioration or abuse of market position, revealing distinct regulatory weaknesses, and delaying the recognition of rights such as prior consultation in cases of extractive investments that would impact indigenous peoples.<sup>21</sup>

In the decade of *Fujimorismo*, centers of economic power formed in cities around industrial-financial conglomerates and in the field of extraction and exportation in mining, gas, oil, and agriculture. Since 2000, the subsequent democratically-elected governments maintained the alliance between the state and large businesses, all "deepening" that model while continuing to support big corporations with initiatives for privatization and 13 free trade agreements signed, which effectively "armored" the free market policy. The spike in international prices for raw materials in the period from 2002 to 2013 allowed for the continuation of these state policies. The boom subsided in 2014, as prices and international demand began to taper off. The government response was to propose a series of "Reactivation Reforms" to stimulate large-scale investments. That is the moment that we will examine the capture process.

## 2.2. ECONOMIC POWER MAP

The economic power structure that emerged from reforms in the 1990s has certain elements of both continuity and change. Now the owners tend to be more business leaders and technocrats rather than oligarchs. The economy no longer exclusively rests on extractive industries (the leading export sector), as there is a more developed urban financial market. The economy is also more open to including all types of business actors, whether from the traditional elites or more popular factions. Nonetheless, the economy continues to be highly concentrated, or re-concentrated in this case, as the reforms led to a privatization of the economy, shrinking the state and dealing a swift blow to communally-held property.

The economy is commanded by an urban-finance nucleus and a separate group of extractive industries, organized as domestic and foreign conglomerates or economic power groups (EPG) with diversified investments. Chart 1 presents a

21 On DL 120-94-EF, Merger Law and political capture, see: Durand, "El debate sobre la captura del Estado" (2012).

calculation of contributions to GDP by property type, divided into the business and non-business sector (considered as such by virtue of its smaller size and traditional characteristics). Chart 1 also illustrates the historic trend for concentration of private economic power.

Before 1968, the state sector accounted for only 7% of the GDP by property type. Thanks to nationalizations, this sector grew to account for 21% by 1975 (the year in which Velasco's military reform government falls). Cooperatives, thanks to the agrarian reform climbed to 8% from 1968 to 1975. The domestic private business sector accounted for 43% in 1968, and shrank to 27% in 1975 before the advances of the state and cooperative sector. Foreign capital maintained its weight over the course of this same period, hovering at 10% and 11%; this sector did suffer certain expropriations, but it also made strides in large extractive projects (oil, copper) and some manufacturing (vehicles, chemicals).

**Chart 1**  
**PARTICIPATION OF DIFFERENT TYPES OF CAPITAL IN GDP (1950 - 2000)**

Capital	1950	1968	1975	2000
State (Public) Sector	7%	11%	21%	6%
Foreign Capital	10%	22%	11%	28%
Domestic Capital	43%	34%	27%	28%
Cooperatives			8%	
Total business sector	60%	67%	67%	62%
Total non-business sector*	40%	33%	33%	38%
Total GDP	100%	100%	100%	100%

\*The non-business sector includes micro-enterprise (up to 10 workers), independent contractors, and workers in private homes.

Source: Humberto Campodónico, based on Fitzgerald, Evin V.K. (1981). La economía política del Perú: desarrollo económico y reestructuración del capital. Lima, 2016. Instituto de Estudios Peruanos (Table 19, p. 50 for 1950, 1968 and 1975). For the year 2000, the source is: "Perú 1950-2000: el péndulo de las inversiones" (La República, November 30, 2009), p. 7.

Nonetheless, a great change emerged near the year 2000, after the crisis of the 1980s and the movement to privatization in the 1990s (cooperatives were dissolved and many state enterprises and pensions were privatized), the establishment of open market policies (that facilitated the entrance of foreign capital), and the *Fujimorista* constitution of 1993 (that shrank the size of the state). With these changes, economic power was more concentrated than at any other moment in history in the private sector (and within the sector, in corporations), with the corresponding considerable growth in this sector's participation in GDP. By the year 2000, the cooperative sector had once again disappeared and the state sector only accounted for 6% of GDP, while domestic capital grew to 28%, and foreign capital accounted for another 28%. This shift indicated the predominance of private economic power; this trend was also accelerated by the rapid dissolution of communally-held property in the Andean and Amazon regions.

The tendency toward privatization occurred at the same time as economic power was being concentrated into a tight core of EPGs that moved to purchase these state assets and join in mergers thanks to tax incentives. Many of these EPGs ended up as owners of the best lands. The same dynamic emerged for mining, energy, oil, gas, and forestry concessions, which were given contracts with legal stability and investment protection clauses under the free trade agreements.

This concentrated and diversified private nucleus prevailed economically over other business sectors that did not have the resources of material and political power, eventually standing out as the "influential elite". A look at the current economic power structure demonstrates the weight and structural characteristics of the main economic powers in modern Peru. The business structure data presented in Chart 2 show in broad strokes the current differences by size, showing stark asymmetry. Large and medium-size companies (which boast better productivity and a monopoly on exports) represent 12% of the total, while small companies (low productivity) account for 81%.<sup>22</sup> This number is considerably larger if the informal small business sector is included.

22 Of a total of 8,000 exporters in 2015, 464 large companies account for 80% of the total exports, particularly dominated by the mining sector (La República, February 24, 2016), p. 15.

**Chart 2**  
**PERU: COMPANIES BY SIZE, 2014**

SEGMENT BUSINESS	2014	PERCENTAGE STRUCTURE, 2014
<b>Total</b>	<b>95.674</b>	<b>100%</b>
Small business	77,503	81%
Medium and large businesses	11,380	12%
Public administration	6,791	7%

Internally-produced chart. Source: Instituto Nacional de Estadística e Informática – Directorio Central de Empresas y Establecimientos (Lima: INEI, September, 2015), p. 64.

There is also a clear distinction within the sector of large and medium-size companies. Of the total of large companies, the EPGs are the most important players; these are domestic and foreign conglomerates (multinationals) that represent the largest companies in the main sectors of the national economy.

In the EPG ranking in Table 3, a total of 42 diversified EPGs are led by "banking and mining" groups, which in turn lead hundreds of companies. Of the 42 EPGs, one is state-run (National State Financing Fund, FONAFE) and at the head of the list by virtue of its control of some large oil, water, and energy companies. Of the 41 remaining groups, 26 are private domestic groups and 16 are foreign groups or joint ventures (such as the case of Banco Bilbao Viscaya Argentaria, BBVA). The latter appear shaded in grey in the table.

**Chart 3**  
**RANKING OF ECONOMIC GROUPS (INCOME GENERATED IN PERU) THROUGH 2014**

		IN THOUSANDS OF SOLES or DOLLARS			
		2012		2013	
Rank	GROUP	INCOME		EXPORT	IMPORT
		S/.	US\$ (*)	US\$	US\$
1	FONAFE	23,156,927	8,767,540	14,445	30,618
2	REPSOL	21,368,100	8,100,114	901,373	3,446,163
3	ROMERO	12,232,677	4,525,592	235,446	928,023
4	BRECA	10,387,890	3,914,305	579,276	138,466
5	TELEFÓNICA	10,211,225	3,870,821	1,292	353,097

6	GLENOREXSTRATA	9,847,768	3,733,043	3,648,757	347,224
7	CREDICORP	8,466,438	3,190,620	0	3,997
8	BUENAVENTURA	8,418,102	3,191,093	1,726,898	81,026
9	GRUPO MÉXICO	7,788,212	2,952,317	2,196,234	310,734
10	GLORIA	7,661,599	2,904,321	222,196	416,615
11	FALABELLA	6,966,166	2,640,700	3	446,398
12	BBVA	5,497,942	2,034,015	32	79,334
13	BACKUS (SABMILLER)	5,380,498	2,039,613	13,994	154,711
14	INTERCORP	5,098,150	1,932,581	4	37,137
15	CENCOSUD	4,731,150	1,793,444	0	84,805
16	PLUSPETROL	4,702,999	1,782,790	2,050,557	21,700
17	VOTORANTIM	4,567,762	1,731,525	840,033	44,332
18	AMERICA MÓVIL	4,430,191	1,679,375	4,736	372,916
19	FERREYCORP	4,391,107	1,664,559	20,575	971,180
20	SCOTIABANK	4,384,296	1,661,977	0	4,290
21	PECSA	4,116,336	1,560,400	2,530	81
22	ENDESA (ENEL)	3,935,086	1,491,693	959	50,924
23	BARRICK	3,758,580	1,424,784	902,891	28,540
24	HOCHSCHILD	3,314,266	1,256,356	253,119	63,125
25	UNACEM	2,953,933	1,119,762	218	143,004
26	GRAÑA Y MONTERO	2,306,991	874,523	5	158,127
27	SAN FERNANDO	2,238,395	882,637	29,280	242,357
28	RIPLEY	2,282,005	865,051	14	140,732
29	LINDLEY	2,059,123	780,562	6,176	197,342
30	D&C	1,404,774	532,515	373,466	8,101
31	EL COMERCIO	1,377,831	522,301	6,081	69,141
32	SURA	1,088,569	412,649	0	0
33	ISA	812,019	307,816	12	28,513
34	SANDOVAL	779,892	295,638	0	41,711
35	HUANCARUNA	674,380	255,641	144,737	17
36	AJEGROUP	627,075	237,708	3,266	79,745
38	AB-INBEV	531,000	201,289	80	16,813
39	WONG	435,946	165,256	34,399	3,047
40	TOPYTOP	283,777	107,573	68,005	994
37	WIESE	194,773	56,634	0	1,110
41	ISM	154,013	58,382	4,409	2,383
42	MARCAN	43,605	16,530	0	0

Source: Peru Top Publications, Peru: The Top 10,000 Companies 2014 (Lima: Peru Top Publications, 2014), p. 613. Note: foreign companies or joint ventures appear in grey.

A study by this author on the 12 leading Peruvian EPGs in 2014, summarized in Chart 4, shares further important detail on this national upper echelon. These dozen groups control a great number of companies (441), with an average of 38 companies each. These are the groups that wield economic power, including three of the four main banks (Credicorp, BBVA, and Interbank), the two largest insurance companies, two of the five pension funds, and the main oil and fish company in the country. In addition to these businesses, the list includes five of the conglomerates that control most of the arable land (for sugar, coffee, fruit, and oil palm), mining, oil, and energy companies, the main importer of heavy machinery, the largest dairy company, and cement and beverage companies as well. Finally, the list includes the largest construction company, the principal owner of malls and shopping centers, the main owner of urban land plots, the largest hotel chain in the country, and one of the main owners of "for-profit universities" (a new area that has attracted growing capital as a result as a shift to a pure privatized model in Peru).

**Chart 4**  
**ECONOMIC CHARACTERISTICS OF THE 12 LARGEST DOMESTIC GROUPS**

N°	GROUP	HOLDING	N° of COUNTRIES	N° of COMPANIES ABROAD	N° of COMPANIES IN PERU
1	Romero	Credicorp (Bermudas) / Alicorp (Perú)	8, Alicorp; 12, Credicorp	16, Alicorp; 33, Credicorp	31, Alicorp; 21, Credicorp
2	Breca	Inversiones Breca S. A. (Perú) / Holding Continental S. A. (Perú)	7	29	47
3	Benavides	Compañía de Minas Buenaventura S. A. A. (Perú)	3	3	19
4	Ferreyros	Ferreycorp S. A. A. (Perú)	12	13	15
5	Graña y Montero	Graña y Montero S. A. A. (Perú)	5	10	25



6	Rodríguez Pastor	Intercorp Perú Ltd. (Islas Bahamas)	6	9	47
7	Rodríguez Rodríguez	Gloria S. A. (Perú)	7	31	39
8	Añaños - AJE	Grupo Embotellador ATIC SL (España)	19	42	8
9	Acuña	--	-	-	11
10	Flores	Lupsil International S.A. (Uruguay)	1	1	5
11	DYER	Camposol Holding Ltd. (Chipre)	5	9	14
12	Huancaruna	Corporación Perhusa S. A. (Perú)	1	1	5
<b>Totals:</b>				<b>197</b>	<b>289</b>

Chart by: Francisco Durand, current research for the PUCP.

In four of these groups (Credicorp, Holding Continental, Ferreycorp, and Graña y Montero), while foreign shareholders account for 50% or more of the capital, the groups are led by Peruvian nationals. Lastly, it is noteworthy that Lima-based groups account for many of the 12 strongest EPGs (Romero, Brescia, Benavides, Ferreyros, Graña y Montero, and Rodríguez-Pastor). These groups located in Lima, the center of government power, have the greatest personal influence over governments, more experience with political parties and elections, and the greatest weight in the large business guilds and associations (particularly the Confederation of Private Business Institutions, CONFIEP, which brings together 23 federations that represent important large and medium-size businesses in the country).<sup>23</sup>

23 <http://www.confiep.org.pe/articulos/quienes-somos/asociados> (acceso noviembre 2, 2015).

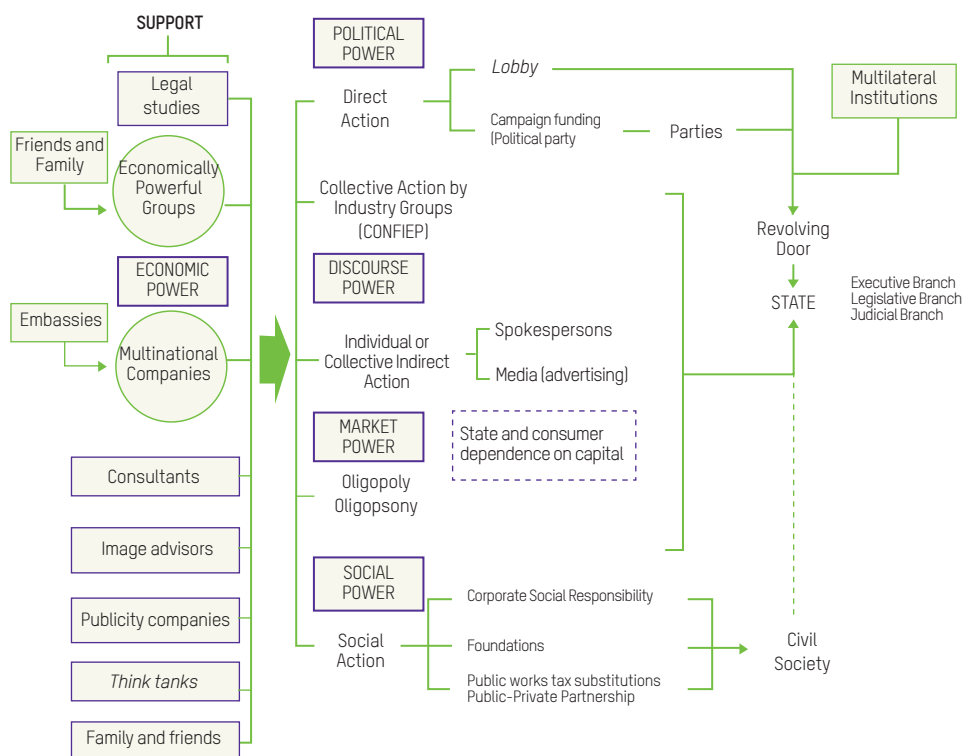
It is worth underscoring the considerable social and technocratic power of the Lima-based corporate elite. In addition to having a dense family and friendship networks, along with intimate linkages with the main business think tanks, these elites are the principal partners of multinational corporations, participate as minority shareholders in other ventures, and are backed by the best law firms and consulting companies.

For example, the Graña y Montero group is the main construction group for public works, which regularly operates in alliance with the Brazilian construction company Odebrecht, and is also a shareholder in other large companies. By family ties, the head of the group, José Graña Miro Quesada, is a minority shareholder in the El Comercio group, which controls 75% of the written press news and owns the two most important television channels (Channel 4 and Channel N). El Comercio is considered one of the "de facto powers", given its influence over public opinion and the pressure that it exerts on the branches of the state (Executive, Legislative, and Judicial) by shaping the country's political agenda. The highly concentrated press has given rise to legal suits and a claim filed with the Inter-American Human Rights Court, arguing that the group's broad reach limits plurality in the media.<sup>24</sup> In turn, this group through a board member participates in the Peruvian Institute of Economics (IPE), the most influential think tank in the country on economic and labor policy, led by Roberto Abusada. This economist has worked for the World Bank and in private sector, he participates in the Graña y Montero board of directors, is also an important columnist for El Comercio, and provides regular commentary on Channel N and Channel 4. Further on, in examining the case of Las 30230, we will see these different players in action.

<sup>24</sup> La República (September 11, 2015), reported how these claims were filed with the Lima Supreme Court, and then internationally: "On August 22, 2013, El Comercio group informed the Stock Exchange Superintendent that on August 21, 2013, companies within its business group had acquired a package of shares, thus taking over 54% of the social capital of EPENSA and 54% of Alfa Beta sistemas..." this stock purchase produced an increased concentration in the market for newspaper sales in Peru and advertising revenue; as we will explain, the first direct consequence of this highly-questioned purchase is that the business group now accounts for nearly 81% of newspaper circulation and over 80% of advertising revenue. <http://larepublica.pe/impresia/en-portada/702670-demanda-ante-la-cidh-busca-protger-la-pluralidad-informativa> [Accessed: September 22, 2015].

This network of resources is mobilized strategically, at times through joint action by individual firms (individual action), and at times through industry groups (collective action). Graph No. 1, inspired by Domhoff's work on contemporary multi-dimensional corporate power and different studies on the Peruvian economic elite, indicates that these corporations not only have material resources at their disposal; they have personal networks and varied institutional mechanisms that can be set in motion to influence the three branches of the state and civil society alike. No social group comes close to this level of access and influence in the state. In this graph we can make out the multi-dimensional nature of the power of the corporate elite: economic, political, discourse, and even social power, as modern corporations project outward into society through aid programs.

**Graph 1**  
**POWERS AND REACH OF THE ECONOMIC ELITE INTO THE STATE AND SOCIETY**



## 2.3. CONCENTRATION OF POLITICAL POWER

The concentration of political power in the Executive Branch and the use of executive orders and decrees (along with discretionary decision-making and a culture of secrets and opaqueness) are related and deeply-rooted phenomena that are adapted to the new circumstances as the country has moved in the 21<sup>st</sup> century through democratic political cycles and undergone processes of social change and economic modernization.

It may be helpful to discuss the practice of executive decrees first, as a conventional and legal form of concentration of political power. A study by De Soto shows that in the period from 1947 to 1985, under both dictatorial and democratic governments, the Executive Branch dictated and decreed 98% of norms.<sup>25</sup> This situation continued under the Fujimori administration (1990-2000), as market reforms were introduced through executive decrees as a shock policy in successive waves starting in 1990. The "technocracy" played a central role in this period, led in particular by economists who emerge as new powerful players linked to international financial institutions and corporations. These economists tended to be employed by one actor after another, particularly prone to maneuvers using the "revolving door". This concentration of political power in the executive branch, and even within the executive branch held by the President and certain ministers and technocrats, continues to be the case today.

La concentración del poder político que el "decretismo" ilustra se apoya The centralization of political power illustrated by the use of executive decrees rests upon written and unwritten rules, a tradition of concentration of power and discretionary decision-making, and the constitution itself. For the purposes of our analysis, it is important to note that this concentration of decision-making power on economic affairs allows the Ministry of Economy and Finance (MEF, the most powerful among the state ministries) to legislate with prior congressional authorization through statutory decrees. It also accelerates the passage of laws, allowing the President to introduce legislation under an "urgent" or expedited track in Congress, and implement legislation according to specific criteria that favor the economic elite by prioritizing large investments. This is also a system that facilitates lobbying activities.

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25 Hernando De Soto, *El otro sendero* (Lima: Instituto de Libertad y Democracias, 1986), pp. 247-248.

Starting with the market reforms in the 1990s, a distinct pattern of appointments to the MEF and other important economic ministries has emerged. This pattern can be seen as the recruitment of ministers and high bureaucratic officials is limited to pro free-market technocrats and executives from big business. In many cases, the economic elite pressure the state to appoint these officials, as their presence in government positions provides them with greater assurances that the state will continue to promote large investments as a top priority.<sup>26</sup>

Ex-Minister of the MEF, Carlos Boloña, explained how this pattern of appointments originated under the initial influence of the neoliberal economist Hernando de Soto, who worked with President Alberto Fujimori. This is the moment when economic policy swings in favor of the large corporations:

De Soto had the good sense to persuade Fujimori to take a trip to the United States when he was President Elect, to speak with representatives from international agencies... he also suggested that, to ensure a fruitful dialogue, [Fujimori] surround himself with strong technicians and advisors... (Boloña, 1993: 21-22).

From May, 1991 to April, 1992, these new policy-makers led by the MEF issued 61 executive decrees to liberalize the financial, commercial, and labor markets, and to privatize public businesses.

Boloña (the second Minister of Economics and Finance under Fujimori, after the businessman Juan Carlos Hurtado had to resign from the post following the shock), was tasked with accelerating the "change in course" after the closure of Congress in June, 1992. This period saw the approval of 745 more legislative decrees to promote finance and trade, and to introduce private pension funds.<sup>27</sup> The statutory decree system was buttressed by the Constitution of 1993, which authorized the legislature to delegate extraordinary powers to the Executive Branch to legislate by decree, or prepare bills and submit proposes legislation to Congress for fast-track approval.

26 On the CONFIEP-USAID connection, see: Francisco Durand, *Riqueza económica y pobreza política* (Lima: Pontificia Universidad Católica del Perú, 2003), p. 191.

27 Carlos Boloña, *Cambio de Rumbo* (Lima: Instituto de Libre Mercado, 1993), p. 55.

With the emergence of such an institutional structure around this *modus operandi*, political analysts began to use the term "state capture" to refer to the concentration of political, intellectual, and decision-making power among this group of free market economists, who engaged in strong legal interventionism while simultaneously pushing aside any regulatory intervention.

According to the political analyst López, in the 1990s President Fujimori and his sinister advisor Vladimiro Montesinos, head of the National Intelligence Service, the two most powerful political players in the country, allied themselves with the center of economic power:

After the collapse of the economy, state, and political parties, the de-facto powers captured the state apparatus in alliance with the "*Fujimontesinismo*" faction that controlled the government; they established order in the economy through stabilization programs and structural reforms, and organized a neoliberal and clepto-patrimonialist state to distribute the spoils: international financial institutions lined up to collect on their loans, large-scale investors came to take the lion's share of mining and hydrocarbon revenue, and *Fujimontesinismo* and the upper bureaucratic echelons (civilian and military) launched an attack on the tax system in their own self interest. This capture focused principally on the economic apparatus of the state.<sup>28</sup>

Later, López argues whether this logic continued into the 2000s:

What changed in the neoliberal state after the fall of Fujimori? Very little. Governments have come and gone (Paniagua, Toledo, and García), and corruption was curbed in some administrations more than others, but state capture continues under the same essential structure.<sup>29</sup>

Given this dynamic, even with successive free and fair elections, there is a standing alliance or power partnership between large corporations and the state, manifested principally in the relationships they maintain with the President, the MEF, and economic ministries, and the pattern of nominations of close allies to important positions.

28 Sinesio López, "La captura del Estado" (La República, August 6, 2010) en <http://larepublica.pe/columnistas/el-zorro-de-abajo/la-captura-del-estado-06-08-2010> (November 2, 2015).

29 López, "La captura del Estado", 2010. See also: Sinesio López, "La captura de Ollanta" (La República, enero 29, 2012), p. 7. <http://larepublica.pe/columnistas/el-zorro-de-abajo/la-captura-de-ollanta-29-01-2012> (noviembre 3, 2015).

In effect, with regard to the economic activities fortified by the government and undertaken at great speed during the export boom from 2002 to 2013, the practice of executive and statutory decrees was particularly important for large-scale mining, whose interests are represented by the National Society for Mining, Oil, and Energy (SNMPE), one of the most important groups within the CONFIEP.<sup>30</sup>

A report produced for Oxfam America described the considerable power of the SNMPE:

Its power can be seen in its lobby for public policies and in ensuring that the Ministry of Energy and Mines (MINEM) continues to stimulate investment in the sector and limit regulation. The result is that while the oil and gas sector has extensive legislation, mining is only regulated by a decree which did not make it through Congress. Explaining this, a former Director General of the Social Management Office of MINEM stated: "This is a decree. Why? Because the mining companies wanted it. They are strong (...) if you look at the law, the Oil and Gas Act is a tome of 200 pages, but the Mining Law has 20. (...) The Oil and Gas Act is a solid law, with an explanation of the motives and it has structure, supplementary and temporary presentations (...) it was drafted when there was inflation, terrorism, Fujimori's structural adjustment, Congress had been suspended and there was pressure from the OAS, the IMF and the World Bank; the Bank offered experts. I knew many of those who came to work here with MINEM to draft some norms but when they left it was the Oil and Gas Act that prospered, not the mining legislation, because that was in the hands of the mining companies."<sup>31</sup>

This testimony reveals the preference of the mining elite to lean on the concentration of political power to "dictate" or "impose" laws, wielding excessive influence.

30 Javier Arellano Y. *¿Minería sin fronteras?: conflicto y desarrollo en regiones mineras del Perú* (Lima: PUCP, UARM and Instituto de Estudios Peruanos, 2011).

31 Cited in OXFAM AMERICA, "The Weak Link: Local Institutions in Accountable Natural Resource Management: Peru", 2016.

## 2.4. WEAKNESS IN CIVIL SOCIETY

The vitality of Peruvian civil society has historically been linked to the presence of labor unions, people's organizations, and grassroots political parties that appeared in the 1920s, with continued influence until 1990. That year marked a breaking point, as the economic recession and inflation crisis of the 1980s, growth of the informal economy, the shock policy in 1990, and the economic and labor reforms under the Fujimori administration, continued by democratically-elected governments after the year 2000, as well as the repressive practices of the state, all led to a considerably weakened civil society. Labor unions, a historic pivot for the social movement starting with the fight for the 8-hour day in 1919, have suffered the greatest negative effects. The sum of these factors together has made it difficult for social organizations to exercise any real influence on public policy through institutional channels, leading many groups to resort to strikes, street protests, or blocking roads and highways. These actions led to demands for "respect for the law" from extractive industries, and repressive reactions from the state.

In terms of the informal economy, the growth in self-employment and unregistered businesses that appeared in the 1980 crisis has continued to be an important pressure valve, especially given the scarce generation of formal employment. The effects of this phenomenon on civil society are particularly pervasive. We mention this sector in this analysis, as it includes an important swath of businesses that are legally and practically excluded from the decision-making process. According to official data, a large part of the business pyramid is informal, and thus lies outside the established system and has little means to influence national policy.<sup>32</sup>

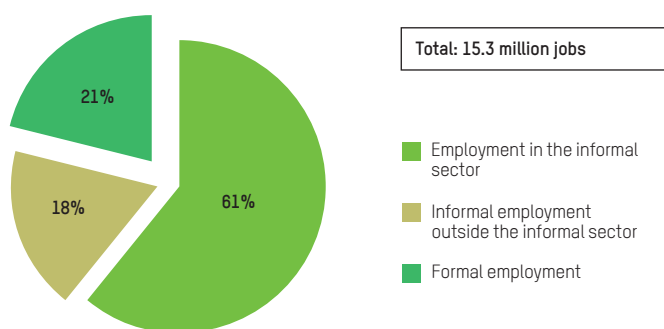
The National Statistics and Information Institute reports that only 23.1% of "business units" had Registered Taxpayer Numbers (RUCs by the Spanish abbreviation) in 2012, as an indicator of inclusion in the tax system and thus the formal economy. This modern form of exclusion is also closely linked to poor labor conditions. Graph No. 2 shows a snapshot from the peak of the boom, in which only 21% of workers are included in the formal sector.

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32 INEI, Encuesta Nacional de Hogares 2012 (Lima: INEI, 2012).



**Graph 2**  
**FORMAL AND INFORMAL EMPLOYMENT IN 2007**



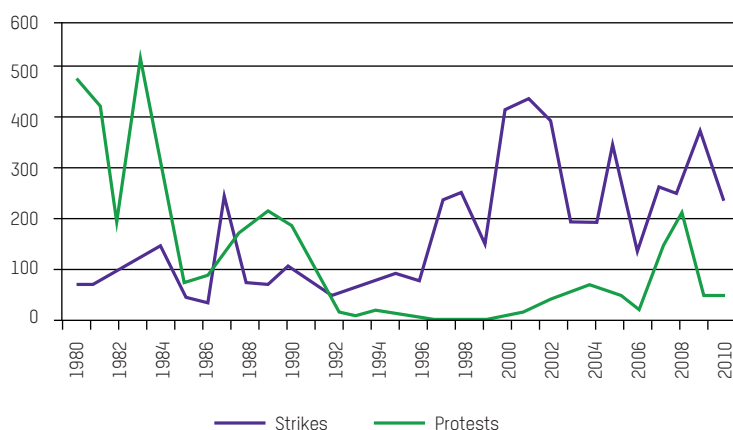
Source: National Institute of Statistics and Information, National Accounting, 2007

To understand the problem of capture vis-à-vis weakness in civil society, it should be noted that indigenous groups are also left without the same level and access and influence as the economic elite; the former are much more likely to attempt to exert influence through protest.

Graph No. 3 describes the decade under Fujimori starting with the application of the shock policy and greater repression. The trends describe a considerable reduction in strikes and protests, unlike in previous eras. Immediately following the transition to democracy in 2000, as a main effect of the new labor policies and the economic boom, the number of strikes tailed off, although protest activity grew. With the start of the export boom (2002-2013), strikes (indicating a recovery of labor unions and better use of legal resources to defend union leaders from firings) as well as conflicts rose (due to the proliferation of extractive projects and greater mining revenue). The main forms of protest include opposition to large extractive projects, demanding the right to prior consultation, environmental remedies, and the defense of water sources. In several important cases, the Defense Fronts (Frentes de Defensa) have been able to negotiate improved conditions (Cerro Verde, Tintaya, Las Bambas), while in other cases the projects have been suspended as a result of social outcry (Majaz, Tambogrande, Santa Ana, Conga, Tía María). The protests led the Alan García government administration to resort to extreme measures. In 2009,

a law was passed authorizing police forces to establish outposts in mining camps, receiving payment, transportation, and lodgings from the mine.<sup>33</sup> This law further entrenched the notion among the Defense Fronts that the police forces were "working for the mines".

**Graph 3**  
**STRIKES AND SOCIAL PROTEST (1980-2010)**



Source: Arce, Moisés, *Resource Extraction and Protest in Peru* (Pittsburgh: University of Pittsburgh Press, 2014), p. 42. The data on strikes and protests were taken from Base de Protestas Sociales del Perú. Protests include marches, blocking roads and highways, demonstrations, and occupation of buildings.

It should be noted that the great majority of victims (people killed or wounded) in social and environmental conflicts have been local inhabitants, although in certain particularly violent incidents, police have also suffered the effects. From 2001 to February, 2015, in the period under the Humala administration covered in this case study, 53 civilians and 2 police officers were killed, along with 870 civilians and 582 police injured.<sup>34</sup>

33 The author's work, "Poder político y gobierno minero" (2014), discusses contracts between mines and the police, and presents a copy of the Antamina contract. These contracts have been questioned by human rights defense organizations in Peru and abroad, and have been deemed unconstitutional by legal experts. See: NACLA Blog "Peru: Police Abuse in the Pay of Mining Companies" (December 16, 2013) at <https://nacla.org/blog/2013/12/16/peru-police-abuse-pay-mining-companies> (Accessed September 22, 2014). There is also one case, *Minera Afrodita*, in which a contract was signed with the army.

34 Data provided by Rocío Silva Santisteban from the National Human Rights Coordinator.



### 3. CAPTURE MECHANISMS

The diverse mechanisms of state capture utilized by the economic elite, making use of their property, resources, relationships, and capacities, tend to combine over the course of the political cycle, starting with campaigns to elect new government administrations.

The political system, in this case a democratic regime, sets the conditions for the use of these mechanisms. Campaign funding is one of the various tools that give the economic elite an advantage. Although the effects of this financing can only be understood by looking at the overall panorama and how it combines with other instruments, this tool is activated throughout the political process. The new economic elite financed campaigns in free and fair elections from 1980 to 1990, and again from 2000 to the present.<sup>35</sup>

The main campaign donors are those with the most money, that is, wealthy families and big businesses, although organized crime may participate as well. These funders make political donations for a variety of reasons, and certainly one of them is to be able to exert influence on governments, to protect themselves from future arbitrary action (as an insurance policy), to impose or “buy” legislation, and to gain contracts, concessions, and

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35 Nonetheless, these resources are also used in dictatorships, provided through contributions known as *bolsas*.

access to state properties.<sup>36</sup> It is important to remember that campaign support is not limited to money; donations can also be made in-kind or through different favors, all facilitating access and influence in critical moments. As campaign advertising on television and in print or online media grows more expensive, and insofar as the main channel in the Peruvian political system to distribute campaign media is through paid access, political candidates' pressing need for external funding ratchets up the possibility of being influenced by the actors that hold the majority of the material wealth.

In general, it is reasonable to assert that this sort of financing ensures connections with state officials and congress members, which can be activated according to the donor's specific objectives. While it does not mean that these officials are "in the pockets" of the economic elite, by accepting donations they enter into a sort of force field. Campaign funding is not a magic wand; it is one resource out of many, but one in which the economic elite hold clear advantages. The fact that this mechanism is used with growing frequency, as seen in investments in campaign spending, suggests that campaign funding bears important yields for the economic elite in terms of government decision-making.

It should be qualified that in cases such as the situation in Peru there is very little information available about campaign finance, which is one of the least transparent areas for political influence. Many factors contribute to the opaqueness of this area: little information offered by donors and parties, weak legislation, inadequate oversight, and generalized inhibition on the part of state institutions to assess penalties for parties that violate electoral law.

Given the stark inequality in Peruvian society, the impact of campaign funding from the economic elite tends to be even more significant than what can be observed in more egalitarian societies. The economic elite "invests" in campaigns, so that candidates with positions similar to their own can access the resources they need; candidates with positions more closely aligned to the majority, or those who try to represent the poor, lack these resources and often find themselves at a steep disadvantage.<sup>37</sup>

36 This is a complex issue with largely subjective analysis. See: Kevin Casas-Zamora, *Paying for Democracy* (Oxford: ECPR Monographs, 2015), which examines the cases of Costa Rica and Uruguay.

37 Sebastian Galiani, "El rol del dinero en las campañas" (El Comercio, March 17, 2016), p. 35.

Now certainly, the game is more complex than that. Contributions can also be channeled to the latter field of candidates in an attempt to encourage them to change their positions and, if elected, back the economic elite. This is precisely the case for our analysis. Just as it is possible to "buy laws", one can also "buy candidates".

By examining selected evidence we can gain a sense of the *modus operandi* of the economic elite in the case of Peru for elections in the past decades. There are few accounts, but they cast important light on the topic. In the 1985 elections, the banker and industrialist Dionisio Romero Seminario (back then CEO of BCP, the country's leading bank and recognized as the "country's most powerful businessman" for 30 years running) admitted to having funded at least three of the leading parties, including APRA, the ruling party, which President García denied vehemently.<sup>38</sup> Upon re-democratization in the year 2000, Romero supported candidates by offering them use of his aviation company to campaign across the country. In the 2016 elections, the chair of CONFIEP, Martín Pérez (Romero group) confirmed the business practice of making multiple campaign contributions, noting that "it is normal for companies to support the campaigns of two or three candidates".<sup>39</sup> In the elections in 2011, the Romero group, headed by Dionisio Romero Bailetti, supported some candidates' campaigns, although it is not known which. When asked to confirm these donations, Walter Bayli, the Banco de Crédito main executive officer, answered "Yes" in an interview with *El Comercio* on August 22, 2015 (page 2); when asked to whom, he answered "I prefer not to say", declining to discuss the issue further.

Contributions made in the political system are channeled according to their nature, and some provide greater impact than others. Peru's political system with a single-chamber congress and multiple improvised political parties, most of which spring up just prior to elections and are led by popular political strongmen, exacerbates the precarious state of representative democracy in the country, and facilitates the influence of political donations. An important indicator of fragmentation is the trend of having more and more parties and candidates for the presidency or congressional seats, which splits the vote and tends to open the door for the election of political strongmen with little experience and personal agendas. Under these conditions, the number of

38 Francisco Durand, *El grupo Romero: fe, fama y fortuna* (Lima: Editorial El Virrey y DESCO, 2014), p. 303.

39 *La República* (February 8, 2016), p. 5.

registered parties reached its highest historic level, growing from 9 parties in 1985 to 20 by 2006. In the 2011 elections, 13 presidential and vice-presidential candidacies were announced, and 19 ran in the elections in 2016. At the same time, there is a remarkably low number of congressional representatives that win reelection, with an average of 15 congresspeople reelected out of a total of 120 seats from 1995 to 2011, in the unicameral system created by the political reform.<sup>40</sup>

Tanaka writes that Peru "stands out for its exceptionally low levels of institutional political party structure".<sup>41</sup> Moisés Arce argues that the "political fragmentation" on a national and regional level explains the scattered nature of protests and the contentious nature of social movements in the case of extractive industries. These are two sides of the same coin. When money speaks and representation fails, the poor tend to use to other resources.

Lobbying is a second important mechanism in the system, referring to the actions of politically well-connected individuals engaging with political actors and decision-makers to "promote the interests" of specific groups or individuals. These "promoters" take advantage of the weaknesses in the political system. A novice congressman, ill-prepared and ill-informed, urgently needs information and counsel. This need can be met by lobbyists who provide reports, hire experts, or pay advisors to work for him and improve his parliamentary performance, all while promoting the agenda of the interests that pay their salaries, and providing regular feedback and reports on what is going on in congress.<sup>42</sup> It is worth noting that in the case of Peru there is little known about the role of lobbying, and most of the operators in

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40 Jurado Nacional de Elecciones, 80 años de elecciones presidenciales en el Perú: 1913-2011 (Lima: JNE 2013), pp. 44 and 104.

41 Martín Tanaka, *Los problemas de representación y las propuestas de reforma política* (Lima: Instituto de Estudios Peruanos, 2005), p. 101. With the return to democracy in 1990, free and fair elections were held, but political parties were overabundant and poorly organized. Starting in the year 2000, the "relative ease with which political groups enter into the system and achieve representation does not stimulate the formation of great political coalitions; to the contrary, this produces greater fragmentation". (p. 108). The National Elections Board (Jurado Nacional de Elecciones, JNE) produces a fragmentation indicator. See: Jurado Nacional de Elecciones, 80 años de elecciones presidenciales (Lima: JNE, 2013), 84.

42 In the period from 2001–2003, the author was a parliamentary advisor in the Committee on Economic and Financial Crimes, and was able to closely observe the role of paid advisors to serve as liaisons with economic interests and provide regular reports to their superiors on Committee sessions and trends when bills are put to a vote on the Congress floor. That is, these advisors play the role of permanent lobbyists whose work complements the efforts of occasional lobbyists. There are no studies on this dynamic at this time.

the country are "shadow lobbyists" rather than registered lobbyists. There is a law regulating interest promoters (lobbyists), but there are fewer than 10 registered personal or institutional interest promoters on record.<sup>43</sup>

Political fragmentation pushes the numerous organizations and congresspeople to compete for donations, offering their loyalty to the donors; the pervasive "*personalismo*" makes them more susceptible to the influence of private lobbies. This opportunistic action also generates instability and makes politics more volatile and unpredictable, even for the lobbying groups themselves; congresspeople may flip positions at will and there is thus no guarantee of their continued support.<sup>44</sup>

A study by Figueroa on the Congressional Committee on Energy and Mines in the 2006–2011 term reveals the institutional factors that facilitate the work of mining lobbies in congress. Figueroa asserts that the influence of the National Society for Mining, Oil, and Energy (SNMPE) operates with:

A pernicious mix of a bureaucratic framework and political institutions with profound weaknesses in the short term that gives [the SNMPE] a wide berth to produce influence at a low cost.<sup>45</sup>

The tenuous position of political institutions, as we have mentioned, is functional for the economic interests in times of "business as usual", but it also opens the door to political decisions that go against the interest of their donors.

The political advantages that the economic elite hold over the majority social groups, low-income sectors, and indigenous peoples, is made even more evident with the use of the "revolving door", another important influencing mechanisms. The use of the "revolving door" can be seen when the President

43 In Peru, where there is strong opposition to lobbying, these promoters prefer not to register. The trend in the United States of hiding lobbying efforts and operating in the shadows has increased as fewer are officially registered. See: Wedel, *Unaccountable: How Elite Power Brokers Corrupt Our Finances, Freedom, and Security* (2014). For a study on congressional lobbying during the Humala administration see: Leonidas Ramos M., "Redes de lobby informal de los gremios empresariales frente a la administración pública del MEF al momento de debatir la propuesta de Ley General del Trabajo (2011–2012)", Master's Thesis in Political Science, Pontificia Universidad Católica del Perú, 2014.

44 Moisés Arce, *Resource Extraction and Protest in Peru* (Pittsburgh: University of Pittsburgh Press, 2014), 57.

45 Manuel, Figueroa B., "Precariedad política y burocrática como ventana de oportunidad para el poder privado. Caso de la Comisión de Energía y Minas durante el periodo 2006–2011", Bachelor's Thesis in Political Science and Government, Pontificia Universidad Católica del Perú, 2013, p. 46.

and ministers appoint individuals recommended by the de facto powers to important posts. Many of these appointees come from work in private institutions, banks, or international financial institutions, with positions and ideas driven by this economic model.<sup>46</sup> That alone is not an affirmation that as a result of their work experience these appointees will necessarily forsake the public interest in favor of economically powerful groups. It is only when examining the cases that a pattern of behavior emerges in which the appointed officials stray from acting in the public interest. Additionally, there are career public servants who may be intimately linked to the economic interests, and as a result lose the neutrality that in theory every public official should have.

The economic elite are certainly concerned with who holds the key positions in government, far preferring to deal with politicians and technocrats that are both personally and ideologically aligned with big business (cognitive capture). These economic elite tend to use the "revolving door" more than any other social group seeking access and influence.

This pattern of a "revolving door" can be observed in the study of the particular case of the MEF, the government ministry with the most power that produced Law 30230. This ministry is so powerful the former President of Congress, Daniel Abugatás, quipped that in the Humala administration, "the MEF rules", not the president. It is also worth noting the role of the Peruvian Central Reserve Bank (BCRP). One channel of influence is to affect the selection process when a government administration takes office. If you are able to influence the election of the president, and then a minister, or at least his most important advisors and technicians, it is easier to get your recommendations heard. Lest we forget, De Soto's advice to the newly-elected Fujimori was to "surround [himself] with heavyweight technicians and advisors". This way ensures a "friendly face" that shares the same ideas (cognitive capture) and makes decisions in favor of large economic interests, both in general as well as in enacting specific norms.

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<sup>46</sup> The topic of the ideas and convictions of the officials and congressional representatives that accept the notion that large economic interests should be prioritized, to the point of facilitating capture, leads us to a discussion of "cognitive capture", also described as "psychological capture" or "cultural capture". See: James Kwak, "Cultural Capture and the Financial Crisis," 3n Daniel Carpenter y David Moss, eds. *Preventing Capture: Special Interest Influence in Legislation, and How to Limit It* (Cambridge: Cambridge University Press, 2013).



Control or influence over political appointees also short-circuits the appointment of independent-minded officials with critical views or concern for the defense of the public interest, even if they are technically competent. We will come back to this factor in the course of studying concrete cases. The important thing to keep in mind is that if a capture system is developed and passed on from administration to administration, it creates a force field that sways appointments in favor of maintaining the system itself. This is a setup that can be established and maintained using the "revolving door". One of the most drastic examples of this practice was the banker Romero's insistence to Montesinos in 1998, on several occasions, to use his influence as an advisor to the president to ensure that a personal friend or business partner of Romero be appointed to the MEF. This practice on the part of the Romero group was so blatant that in 2001 Congress investigated his use of the "revolving door" to gain direct influence in the government for more than 10 years.<sup>47</sup>

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47 See: Los Romero: fe, fama y fortuna (Lima: Editorial El Virrey y DESCO, 2013), pp.380-394.



## 4. THE CAPTURE OF HUMALA

With this panoramic and multi-dimensional view of the power structure of the contemporary Peruvian economic elite, we can observe how they use their resources, experience, and extremely broad range of contacts and allied organizations to gain multiple channels and access to power to influence public policy. There is no other social group that can boast a similar level of power. The corporate economic elite, compared to other social groups, have rapid access to the highest levels, and enormous influence in decision-making. Our case for analysis demonstrates this. This "power", nonetheless, is not all-encompassing. Not all of the initiatives promoted by the elite necessarily produce their desired outcome. There is certainly, however, a pattern of significant cases in which their excessive influence is apparent.

The "excessive influence" of the elite is built on the basis of the factors that we described in the previous section, and is activated through certain tools deployed deliberately and sequentially, with some more visible than others. This process can be seen when a new government administration is elected, as the decisions made in this transition are of great interest for the economic elite, allowing us to infer certain conclusions.

In this section we will follow two sequences. One, on a more general scope, explores the capture scenario configured when the government takes

office and takes its first steps, giving an indication of its deference to certain interests or alliances. The second sequence, which is specifically conditioned by the first, is the sequence that leads to the enactment of Law 30230. In both sequences, we can identify the actors on stage: business and industry groups, mass media, technocrats, and politicians, as well as the audience that reacts to and is affected by these shifts in power: social organizations, social movements, intellectuals, and NGOs who respond to the negative effect of this "imposed" legislation.

## 4.1. TOWARD THE CAPTURE OF HUMALA

We begin with a contrast revealing a power play that involves the effectiveness of the economic elite, their allies, and their spokespeople, one which sets us on a direct course toward a national debate on political capture. This description is important for conceptual discussion on political capture as it demonstrates how power, once acquired, is self-reinforcing.

The 2011 election was unique in that Ollanta Humala, head of the Peruvian Nationalist Party (Partido Nacionalista Peruano), organized a campaign with a discourse that was critical of the economic elite, the economic model, and free trade agreements, speaking out against the negative effect of extractive industries, and promising a radical break from the policies and practices of the previous administrations. He then took a sudden turn, giving signs that his government administration had been captured. The evidence for this assertion, it should be clarified, is found in Humala's relations with the economic elite as well as in concrete cases linked to extractive industries and mining conflicts. Given that several of the provisions in Law 30230 have to do with the way in which the state seeks to "unblock investment", there is a direct correlation between the sequence of events at the start of the Humala administration in July, 2011, and the factors that are behind the passage of Law 30230 in 2014.

During his campaigns, Humala gave clear indications of his radical orientation, and was particularly explicit in areas of mining conflict such as Conga, in Cajamarca (where Minera Yanacocha attempted to expand its excavation site, to the detriment of lakes and natural water sources, and was met with resistance from farmers, NGOs and radical groups), and Tía María, in Arequipa (where Southern Peru Copper Corporation also was looking to expand its facilities near the Tambo valley, eliciting a similar reaction). In

both cases, poor farmers and local inhabitants mobilized against the mining projects, starting by questioning why they were not duly consulted, and rejecting the validity of the Environmental Impact Assessments approved by the government.<sup>48</sup> Humala the candidate publicly backed local inhabitants' demands to defend water access and quality, and he criticized the response of the previous government. As president, however, Humala condemned protest and repressed the mobilizations. This about-face can also be observed in labor and wealth distribution issues. During his campaign, Humala met with the CGTP, the main workers confederation, and other labor organizations to support the union demands of fair labor standards and to promise his support for a General Labor Law.

The sequence of events that shifted the scenario in favor of the economic elite can be seen with an acceptable level of certainty, starting with the elections. It should be noted that the Peruvian electoral system requires a run off election or *segunda vuelta* if the leading candidate does not surpass the threshold of 50% of the valid votes cast. Voting is obligatory, which means that 80-90% of the population participates in the elections. In the 2011 elections, Humala made a tactical pivot in his radical positions after not achieving a first round victory (31% of the votes); the candidate approached business sectors to present his platform (which he called the Grand Transformation)<sup>49</sup>, and sought support from centrist political organizations such as Alejandro Toledo's *Perú Posible*.<sup>50</sup> In the second round, Humala won with 52% of the votes cast, beating out Keiko Fujimori, who was considered to be a candidate that favored and was supported by serious economic interests. But what happened to Humala and his party was not a moderation of his positions, rather a radical change, described by his old followers as "capture"; this perception also spread among the population ("the ones who lose the elections end up winning the government").

48 A declaration when the campaign began in 2006 shows his position: "The country is being plundered as its natural resources are committed to foreign capital." He then affirmed that his administration would begin a "new distribution of power" that would be fair and equitable. This discourse was repeated in 2011. *El Comercio* (February 25, 2006), p. A 11.

49 The first chapter was entitled "Nationalist critique of the neoliberal development model", and the third discussed "building a new development model: the national market economy".

See the document at: <http://e.elcomercio.pe/66/doc/plandegobiernoganaperu.pdf> (November 2, 2015).

50 It should be noted that the Peruvian electoral system requires a "second round" of voting if the leading candidate does not surpass the threshold of 50% of the valid votes cast. Voting is obligatory, which means that 90% of the population participates in the elections.

Voters had expected Humala to begin a populist and nationalist government similar to the administrations in neighboring countries such as those of Ignazio "Lula" da Silva and Dilma Rousseff in Brazil (who were active supporters of the 2011 campaign), Hugo Chávez and Nicolás Maduro in Venezuela (who supported Humala in his run in 2006), and Evo Morales in Bolivia, with whom Humala was initially very close. His moderation, or "pragmatism", was initially expressed in the short version of his Government Plan called "the Roadmap", and insisted on programs for the majorities and a national market economy, and in which Humala committed to defending democracy and respecting international legislation (free trade agreements) to avoid confrontation with powerful economic interests.

Nonetheless, Humala went far beyond this initial moderate layout. The explanation most consistent with the facts would be that this turnaround came as a result of the influence of the economic elite. These elite were able not only to garner government support for their interests, rather, they also influenced the decisions on who would hold the key positions within the economic apparatus. During the campaign and after his election, Humala began to engage with the CONFIEP and organizations such as the Pension Fund Association (AFP), holding public and private meetings with these actors that led to an eventual rift with his governing team and advisors once the Conga conflict broke out. Under these circumstances, Humala ended up throwing his unquestioned support behind the continuation of the corporate-led extraction and finance model. He moderated his proposals on mining taxes, cut funding for social programs, and abandoned his positions of support for indigenous peoples and local inhabitants against modern mining and union labor demands. Humala pushed greater criminalization of protest, ensured continued police support for large-scale mining operations, and ended up more closely allied with the Pacific Basin countries led by the United States.

Appointments to key positions are one of the most evident mechanisms for capture, as they are public acts about which the economic elite and corporate press (another leading actor in this scenario) then issue opinions and statements, praising the president's "pragmatic choices". In other words, to ensure Humala's change in course (and continuation of the state policies from previous administrations), captor actors sought to influence appointments to key positions in the economic apparatus of the state, choosing ministers and advisors from previous administrations and from private corporations.

Let's first examine the web of relationships connecting the two powers and the mechanisms and actors that come into play on the political scene; it should be noted that some of these movements are more visible than others. The first official contact between the President and the CONFIEP came just after Humala emerged as the leading candidate following the first round of elections in May, 2011. This engagement intensified after his election, with a pattern of close relationships and cooperation woven into the institutional structure of the state, as the economic positions of the government from previous administrations continued without deep changes. This continuation of economic policy was supported by CONFIEP and the corporate press, which had demanded a say in the economic appointments as an assurance of goodwill. As we will see further on, these negotiations occurred fairly explicitly.

The other significant turn in Humala's positions came with the Conga mining conflict that burst onto the scene in November, 2011, just a few months after his inauguration. The Conga conflict ended up producing a capture situation that would later generate a series of legal initiatives to "unblock" mining investments. We won't go into the details of the conflict. It is enough to say that the president forgot his campaign promises, lost his neutrality, and shifted his view until he came to see social movements as enemies of his government that should be neutralized through force. With this state policy failure, even once negotiations began with mediators, the Humala administration was still perceived as pro-mining, which further polarized an already tense situation. CONFIEP, the El Comercio group, and other actors demanded that the government "guarantee[protection] for their investments, issue harsher measures against the populations that opposed the projects, and do everything possible to "unblock" investments. In other words, they shared the same position. The protests in Cajamarca ended up paralyzing a 2.5 billion dollar mining investment project, but they were also a tipping point that cemented the connection between big business and the government. As a result of this conflict, in November Humala asked for the resignations of the advisors and ministers who had initially supported his campaign, and who continued to hold certain positions within his administration. Humala's position vis-à-vis the Conga case triggered a definitive rupture with the remaining left-wing faction of his administration.

At the same time, Humala's growing rapprochement with the CONFIEP and extractive industries became more visible. The MEF began to propose the

investment facilitation measures that the CONFIEP had demanded, launching a clear trend. Alfonso García Miró, named Chair of the CONFIEP in 2012 (a mid-sized business owner but with family ties to El Comercio group), declared in January of that year:

There is a great backlog of private investment projects paralyzed by administrative red tape. There are energy, oil, mining, and industrial projects at a standstill due to a lack of authorizations and permits.<sup>51</sup>

García Miró reported that President Ollanta Humala had given his approval for the formation of a committee to unblock these processes, with participation from the private sector and the state ministries involved. At the same time, the government renewed the police protection programs for mines, and continued to "prosecute protest", even leveling charges of terrorism against protest leaders. In this context, Supreme Decree No. 104-2013-EF was approved on May 25, 2013, declaring that it was in the national interest to "promote private and public-private investment to maintain sustainable economic growth and improve the country's competitiveness..." This decree tasked the MEF with the creation of a Specialist Team for Investment Monitoring (EESI by its Spanish abbreviation). In June, the ex-banker Segura was appointed to lead the EESI, and in September he was named Head of the Cabinet of Advisors.<sup>52</sup>

In this context, a capture scenario begins to emerge with specific results in decisions made in favor of the economic elites over the course of three successive actions: initial contact with Humala, appointment of individuals proposed by the CONFIEP economic elite to key government positions, and the Conga mining conflict.

## 4.2. CONFIEP, EL COMERCIO GROUP, AND THE "REVOLVING DOOR"

Shortly after Humala was elected, multiple journalistic outlets from the El Comercio group, economists linked to big companies, business leaders, conservative presidential candidates, and the CONFIEP joined efforts to put

51 "Hay stock de inversión paralizado", Peru21, January 30, 2012, in [Peru21.pe/2012/01/30/economia/hay-stock-inversion-paralizado-2009689+&cd=2&hl=es&ct=clnk&gl=pe](http://Peru21.pe/2012/01/30/economia/hay-stock-inversion-paralizado-2009689+&cd=2&hl=es&ct=clnk&gl=pe) (Accessed November 6, 2015).

52 "Implementan Comisión para destrabar inversiones mineras", El Comercio, August 11, 2014, B4. Two separate norms indicated the direction that the government would take, particularly DS 054-2013-PCM (May 16, 2015) and DS 060-2013-PCM (May 24, 2015). Nonetheless, these executive decrees were ultimately unsuccessful. The Lima Supreme Court later declared them unconstitutional."

public pressure on the elected government to "make the right choices", starting by appointing personnel to the MEF and BCRP who would ensure the continuation of policies from the previous administration. In this sequence of events leading to the political appointments it is easy to identify the key actors among the economic elite, who will reappear in the case of Law 30230.

After the first round of the elections in June, 2011, the President of CONFIEP, Humberto Speziani (manager of Grupo Brescia) declared in *El Comercio*:

We need to set the markets and domestic and foreign investors at ease (...) and maintain the macroeconomic course to ensure tranquility, otherwise all of Peru will suffer.<sup>53</sup>

In that same newspaper, the editor of the Political Section specified that "signs of confidence" would depend on the appointees meeting certain requirements:

A Minister of Economy and Finance with high foreign credibility and not only immediate local availability; and... a new president of the Central Reserve Bank, of the caliber of Julio Velarde ...<sup>54</sup>

This editorial line was corroborated through interviews in *Peru21* (a newspaper from *El Comercio* group). The paper interviewed the BCP economist Alfonso Segura on June 5, in which Segura stated: "it is important that these key appointees be announced as soon as possible... to eliminate any type of uncertainty."<sup>55</sup> This individual would eventually play an important role in Law 30230 in his position as Minister of Economy and Finance.

The next day, June 7, the Lima Stock Exchange plummeted by 14%, which *El Comercio* group and the CONFIEP immediately attributed the "lack of confidence" sparked by Humala's election. The editorial by *El Comercio* that day urged to government to send "clear signals":

The President Elect must understand the urgency and need to appoint his key authorities such as the Head of the Cabinet and Minister of Economy, key pieces for economic management. These appointees must

53 "Humala debe dar señales para tranquilizar a los mercados", *El Comercio*, June 5, 2011, p. A4.

54 Juan Paredes Castro, "Humala versus Humala en su hora más crucial", *El Comercio*, June 7, 2011, p. A7.

55 Declarations by "Economista Alonso Segura", *Peru21*, June 6, 2011. 12.



be well-recognized professionals with an unquestionable commitment to the principles of the social market economy, who can be valid interlocutors with opposition forces but also engage with economic agents, international financial institutions, and investment bankers.<sup>56</sup>

As this was going on, Humala's supporters protested the pressure and lobbying from the CONFIEP. Omar Chehade, the Vice-President elect, remarked that "the losing side was attempting to dictate its conditions". Salomón Lerner G., an advisor to Humala and leader of the leftist faction, asserted: "they want to impose a government upon us", and he argued that the appointments should obey the people's mandate.<sup>57</sup> That same issue of *El Comercio* sported the headline: "Humala does not rule out keeping Velarde at the head of the BCRP".

It is in this moment of tension between two political forces that Humala begins his turnaround. On June 9, Humala attended a meeting of the CONFIEP board of directors for the first time, where he finally gave the "signs of confidence" that were demanded of him. After the meeting, *El Comercio* celebrated the news. "The concerns have dissipated", asserted a CONFIEP leader. Other businesspeople interviewed remarked that "everything is now clear", indicating that the President Elect had taken their suggestions into account for the MEF and BCRP.<sup>58</sup> *El Comercio* voiced its immediate approval for the appointment of Luis Miguel Castilla to the MEF, affirming that "The former Vice-Minister of Treasury was known for his respect for orthodox economics, making him an ally of the Peruvian Institute of Economics (referring to the IPE, another important actor in the Reactivation Reforms of 2014). It is helpful to note that the IPE is the principal think tank for the economically powerful groups, and its genesis is directly linked to the CONFIEP.

Based on these agreements, Humala ratified Julio Velarde in his post at the BCRP, and soon after announced that the Vice-Minister of Economy from the previous administration, Luis Miguel Castilla, would oversee the MEF. Once appointed, Castilla recruited Segura, who left BCP and took an important public role, (eventually replacing Castilla after his departure from the cabinet in 2014).

56 Editorial, *El Comercio*, June 7, 2011, p. A6.

57 "Gana Perú no admite presiones", *El Comercio*, June 8, 2011, p. A 4.

58 *El Comercio*, June 9, 2011, A1.

Symptomatically, Dionisio Romero Paoletti, the CEO of BCP who rarely spoke out in public, wrote an article in *El Comercio* lauding that extraordinary growth had "generated an Economic Miracle, and it is of the utmost importance that this growth continues; to ensure success in this endeavor, it is essential that the economic model is maintained".<sup>59</sup>

On July 25, shortly after the new government took office, the lead economist and founder of the IPE, Roberto Abusada, appeared at the head of a byline of 60 economists who published an advertisement in *El Comercio* entitled "Social Progress and Good Economic Policy". These "economists" asserted that the first challenge for the government was to "maintain macroeconomic stability in the country", the second was to "conserve the conditions allowing economic growth", and the third was to "improve the efficiency of the state", suggesting that any social agenda held by the government should be of lesser priority.<sup>60</sup> Through these actions and statements, CONFIEP, *El Comercio* group, the IPE, and economists defending the free market or linked to big business were able to define the state priorities and agenda.

From this point on, the Humala administration kept a strict course in terms of its economic policy, and enjoyed the support of extractive industry groups and the financial system. Humala went from being the president of economic change to the president of economic continuity. By engaging multiple mechanisms of political pressure and mobilizing a spate of private groups (CONFIEP, IPE, free-market technocrats, and *El Comercio* group), the economic elite were successful in influencing the appointments to the BCRP and MEF, and using external public pressure and private negotiations to shape government positions.

President Humala's appointees to key positions in 2011 reveal how these figures move back and forth between the private sector, multilateral organizations, and key posts in the bureaucratic apparatus in charge of monetary and economic policy, playing a vital role in maintaining the positions of the economic elite in the power structure, and keeping the investment promotion as the state's number one priority.

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59 "Reconozcamos el modelo económico peruano", *El Comercio*, July 16, 2011, B6.

60 *El Comercio*, June 25, 2011, A13. It is worth mentioning that these economists only indicate the universities where they obtained their degrees, but do not disclose not their institutional affiliations. Abusada's position at the head of the lists suggests his role of professional and technical leadership.

Chart No. 5 shows how Julio Velarde built experience working in the private banking sector in the 1980s and 1990s (Banco Financiero and Banco de Comercio), operating as the Director of the BCRP for several terms and holding various positions in the state system and public agencies (Latin American Reserve Fund, MEF, INDECOPI, Ministry of Industry, etc.)

**Chart 5**  
**PROFESSIONAL EXPERIENCE OF JULIO VELARDE**

Official	Position at the Peruvian Central Reserve Bank	Before the BCR	
		Public Sector	Private Sector
<b>Julio Emilio Velarde Flores</b>	President of the Board of Directors 3/10/2011 – Present	<b>Latin American Reserve Fund</b>	<b>Universidad del Pacífico</b>
	President of the Board of Directors October 2006 – October 2011	Executive Chair, 2004 – October, 2006	Dean of the School of Economics, 2003
	Director 1990 – 1992; 2001 – 2003	<b>Ministry of Economy and Finance</b>	Academic Department of Economics Researcher and Lead Professor, 1986 – 2003
		Member of the Consulting Council, 1999	Head of the Academic Department of Economics, 1994 – 1997
		Advisor to the Ministry of Economy and Finance, 1990	<b>Financial Company EDPYME Pro Empresa</b>
		<b>INDECOPI</b>	Director, 1995 – 2001
		Member of the Anti-Dumping and Subsidies Commission, 1993 – 1995	<b>Banco de Comercio</b>
		<b>Banco Central Hipotecario</b>	Director, 1995 – 1998
		Financial Manager, 1984 – 1985	<b>Banco Financiero</b>
		<b>Ministry of Industry</b>	Director, 1992 – 1995
		Advisor to the Minister, 1983 – 1984	<b>APOYO S.A.</b>
		<b>Banco de la Industria y Construcción</b>	Economic Advisor, 1988 – 1990
		Manager, 1980 – 1981	<b>Instituto Libertad y Democracia</b> Director of Economic Studies, 1988 – 1989

Source: Curriculum Vitae annexed to Supreme Resolution No. 293-2011-PCM designating Julio Velarde Flores as the President of the Board of the Central Reserve Bank for the term from 2011 – 2016.

Internally-produced chart.

In the case of the new Minister of Economy and Finance, Luis Miguel Castilla, Chart No. 6 shows his experience built over the course of work with international financial institutions and the MEF. He first joined the MEF as the Head of the Cabinet of Advisors during the García administration, and then climbed to the post of Vice-Minister of Treasury, and stayed on in the MEF in the subsequent administration. It is worth noting that once appointed as minister, Castilla brought Segura into the ministry ranks, an official from the private banking sector (BCP, Romero Group). Segura would eventually be his successor, leading the ministry largely in the same direction.

**Chart 6**  
**PROFESSIONAL EXPERIENCE OF LUIS MIGUEL CASTILLA (MEF)**

Official	Positions at the MEF	Before the MEF		After the MEF
		Public Sector	Private Sector	
<b>Luis Miguel Castilla Rubio</b>	Minister of Economy and Finance 28/07/2011–14/09/2014	<b>World Bank</b>	<b>Universidad del Pacífico</b>	Peruvian Ambassador to the United States
	Vice-Minister of Treasury 28/01/2010 – 16/07/2011	Consultant to the Vice-President on Northern Africa and the Middle East, 1996	Professor, 2001 – 2002	
	Head of the Cabinet of Advisors October, 2009 – January, 2010	Country Analyst for Honduras under the Vice-President for Latin America and the Caribbean, 1994		
		Inter-American Investment Corporation Intern, 1990 – 1991		
		<b>Banco de la Nación</b>		
		Director 1/02/2010-23/07/2011		
		<b>Corporación Andina de Fomento – CAF</b>		
		Advisor to the Executive Chair, 2009 – 2011		
		Head Economist and Head of Public Policy and Competition, 2006 – 2009		
		Vice-President for Development Strategy, January, 2005		
		Director of Economic Studies, 2003 – 2005		
		Country Economist for Bolivia, Peru, and Argentina, Caracas 1996 – 2000		
		<b>Commission for the Promotion of Private Investment</b>		
		Intern 1992		

Source: National Fund to Finance State Business Activity, FONAFE.

[http://www.fonafe.gob.pe/UserFiles/File/Corporacion\\_FONAFE/Sobre\\_la\\_Organizacion/CV\\_Miguel\\_Castilla\\_Rubio.doc](http://www.fonafe.gob.pe/UserFiles/File/Corporacion_FONAFE/Sobre_la_Organizacion/CV_Miguel_Castilla_Rubio.doc)

(Accessed: October, 2015). Internally-produced chart.

The case of Segura shows the use of the "revolving door" through the private banking sector (suggested by his actions in terms of the evolution and goals of Law 30230). As was the case with Velarde as well, Segura also worked as a technician in international financial institutions. Beyond his origins and work experience, the key factors to examine are the decisions he made, which we will see when we analyze the sequence of events leading to the Reactivation Reforms in 2014.

Before joining the MEF, Segura worked as the manager of BCP, the most important bank in the country. Prior to that, he worked at the International Monetary Fund and Banco Wiese Sudameris, another important Peruvian bank.

**Chart 7**  
**PROFESSIONAL EXPERIENCE OF ALONSO SEGURA (MEF)**

Official	Positions at the MEF	Before the MEF		After the MEF
		Public Sector	Private Sector	
Alonso Segura Vasi	Minister of Economy and Finance 15.09.2014 – Present	<b>International Monetary Fund</b>	<b>Banco de Crédito del Perú</b>	
	Head of the Cabinet of Advisors September 2013 – September 2014	Economist, African and Public Finance Departments October, 2004 – September, 2008	Manager, Investment Strategies and Economic Studies October, 2008 – January, 2013	
	Member of the Cabinet of Advisors March – September, 2013; August, 2001 – August, 2002	Advisor to the Executive Director on the Southern Cone, Executive Board March, 2003 – September, 2004	<b>Banco Wiese-Sudameris (now Scotiabank Perú)</b>	
	Executive Director of the Specialized Team for Investment Monitoring March – April 2014	<b>Agency for the Promotion of Private Investment – PROINVERSION</b>	Manager for Economic Studies September, 2002 – February, 2003	
	Chair of the Specialized Team for Investment Monitoring June, 2013 – March, 2014	Chair of the Special Committee for Public Investment Projects March, 2013 – 13.09.2014	<b>Universidad del Pacífico</b>	
			Professor, Master's in Finance 2011 – 2014	

Source: Résumé provided to the Ministry of Economy and Finance. Requested under the access to information procedure described by Law 27806, Law for Transparency and Access to Public Information.

In all, the highest economic authorities in the country (at the BCRP and MEF) show this revolving pattern in which before and after their appointment to state positions, they served as professionals in the Peruvian banking system and/or at international financial institutions, building a profile that the economic elite describe as one that: "generates tranquility for investors".

### 4.3. THE DEBATE ON CAPTURE

The discussion on the capture of Humala was highlighted by advisors and officials in his administration who accompanied Humala during the campaign, and later left his government, offering a stark interpretation of the presidential turnaround. This discussion, however, was not limited to this group of ex-officials; there was also a more broadly-held perception among the population that Humala was a "traitor".

Alarco, an ex-official from the Humala administration, considered that with his early decisions the president had abandoned the Great Transformation, and eventually came to represent the "Great Continuation".<sup>61</sup> What the state capture ultimately achieved was to continue the standing economic policies rather than changing them: continuing the state policy of preference and promotion for large investments, especially in extractive industries.

According to López, who was also a political advisor to Humala in the first months of his administration, the key to "Ollanta's capture" lay in the appointments to two key posts for state economic policy in the newly-inaugurated administration in July, 2011: the MEF and BCRP, along with the departure of Humala's leftist allies, including López himself, at the end of that year in the midst of the Conga conflict.<sup>62</sup> Here is where we see the "revolving door" come into play, most likely as a result of the campaign funding and shadow lobbying already done by the economic elite.

61 Germán Alarco, "Planeamiento débil y captura del Estado". DESCO, Perú Hoy: la gran continuidad. Pp. 57-78. (Lima, DESCO, 2012).

62 López, "La captura del Estado", 2012. See also: López, "La captura de Ollanta", La República 2012. Lopez argues that the main sign was the nominations made to the MEF and BCRP: "Few days after taking office, he gave into pressure and the siren song, and invited Velarde and Castilla to, on behalf of the large economic and financial groups, continue the state capture". For a commentary on Lopez see: Martín Tanaka, "Las tesis de Sinesio López", La República, February 5, 2012, <http://larepublica.pe/columnistas/virtu-e-fortuna/las-tesis-de-sinesio-lopez-05-02-2012> (November 3, 2015).

62 "Humala debe dar señales para tranquilizar a los mercados", El Comercio, June 5, 2011, p. A4.

According to Lynch, a political advisor to Humala and later Peruvian Ambassador to Argentina, the inflection point for the president occurred after a meeting with Beatriz Merino, the president of the pension fund association and member of the CONFIEP, following the first round of elections in April, 2011, where Humala softened his initial position on pension system reforms. This first change in course grew more apparent when Humala presented his Road Map after the second round of elections, confirming the appointments to the BCRP and MEF that had been agreed with CONFIEP in June, and emerged even more clearly through the Conga case.<sup>63</sup>

## 4.4. SEQUENCE TWO: REACTIVATION REFORMS

To describe the context that gave rise to Law 30230, and to follow the course of a second series of events, it is important to give a brief description of the economic cycle and its importance in the Conga case, as the suspension of large mining projects aggravated the downturn in the Peruvian economy. These changes in global economic trends pushed the government to develop a more aggressive strategy to support investment.

On top of these trends, the business sector at the time was also concerned by the passage of stricter norms against tax evasion that fortified the regulatory powers of the National Tax Administration (SUNAT) in 2012. At that time a series of norms to strengthen the SUNAT had been proposed by independent advisors linked to the new Tax Administration Superintendent, Tania Quispe, a cousin of the First Lady, Nadine Heredia, and directly connected to the presidential family. The reform plan consisted of giving the SUNAT greater autonomy, moving it out from under the control of the MEF, and providing greater legal tools for its operation. These reforms were enshrined in Legislative Decree 1121, passed in the year 2012, including Norm XVI in the Tax Code. These proposals coincided with recommendations by the OCDE to avoid potential revenue lost in tax havens or through the use of offshore companies to manage transfer prices, report higher foreign costs to lower the taxable revenue in Peru, and hold profits and revenue in countries with little or no taxation, such as Panama, Bermuda, or the Cayman Islands.

63 Conversation with Nicolás Lynch (Lima, November 4, 2015). See: "Humala dispuesto a conversar con representantes de las AFP", *El Comercio*, April 27, 2011, p. A6.

Norm XVI gave SUNAT a mandate to act against tax evasion and poor business practices. The text of the norm reads as follows:

In the case that any suspicion of the evasion of tax norms is suspected, the National Tax and Customs Administration Superintendence (SUNAT) is granted powers to demand payment of taxes owed or reduce any balance owed, tax losses or credits, or eliminate tax advantages, without prejudice to the reimbursement of any balance unduly refunded.

This norm, for which the MEF and business leaders were not consulted, caused immediate concern due to its broad mandate and powers. The Lima Chamber of Commerce reacted immediately, even calling the norm "unconstitutional".<sup>64</sup>

The magazine *Poder*, one of the more serious journalism outfits in the capital, issued the following assessment of the reactions to the norm:

This norm has been rejected by the main business groups in the country, including the CONFIEP and the Lima Chamber of Commerce, who cited fears that it granted discretionary powers to SUNAT for tax collection, not limited to cases in which specific laws had been broken.<sup>65</sup>

Business groups thus began to pressure the MEF to neutralize Norm XVI, searching for the right opportunity to eliminate or suspend the regulations. This opportunity arose in 2014 when the MEF, with whom the business leaders had cultivated close relationships, finally listened to their demands. The MEF, pointing to concerns of "excessive autonomy" of the SUNAT, tried to regain ground and maintain its preponderance in economic and tax policy, as well as its reputation as a "superministry".

We have seen how the MEF under Castilla had been coordinating a series of deregulation initiatives since 2013, keeping close watch of the mega-projects through the EESI led by Segura. In 2014, three international factors negatively affected the Peruvian economy: commodities prices fell, financial flows to Peru

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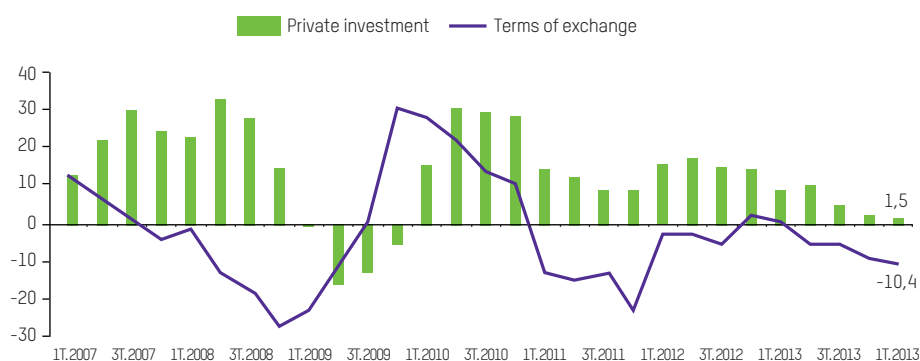
64 Jorge von Wedemeyer, president of the CCL: "We do not agree with this measure, as it maintains the root of the problem - unconstitutionality, a lack of legal security and predictability, and even worse, it could politicize intervention by the Sunat by transforming the committee into an entity with supreme powers, susceptible to arbitrary action, and thus force airing tax claims in the judicial system. "Cámara de Comercio en contra de norma antielusiva de la Sunat" (El Comercio, May 19, 2012).

65 "¿Qué se ha hecho para combatir la elusión tributaria en el Perú?" (Poder, April 4, 2016) in <https://poder.pe/2016/04/04/01006-que-se-ha-hecho-para-combatir-la-elusion-tributaria-en-el-peru/> (Accessed April 7, 2016).



shrank, and the value of the U.S. dollar rose. All of this had visible effects as the growth in GDP slowed, moving from annual growth of 5.8% in 2013 to 2.4% the next year, with a similar growth rate projected for 2015. This external shock put a stop to the export boom that began in 2002, and triggered a precipitous fall in private investments, especially in extractive industries. Graph No. 4 illustrates the steep drop in private investment from the start of 2014.

**Graph 4**  
**PRIVATE INVESTMENT AND TERMS OF EXCHANGE, 2007 - MARCH, 2014**



Source: BCRP, Inflation Report (July, 2014) p. 16.

As on previous occasions, the issue of excessive bureaucracy and “red tape” was positioned on the national agenda by *El Comercio* group and the IPE, with CONFIEP adding its voice as well. This is an interesting argument, in that it turns a blind eye to the role of the external shock in determining this trend.

The sequence of events is as follows: In June, 2014, *El Comercio* interviewed Roberto Abusada (IPE), who announced that “a powerful reform in ‘permitology’ is needed”, citing that “the determining factor in the paralysis of mining investment, beyond the issue of international payments, is the red tape preventing all formats of investment.”<sup>66</sup> When asked about the government finding the need to resort to urgent legislative decrees, he responded categorically: “it has to be done”, later adding emphatically: “we must deregulate”. The next day, *El Comercio* ran Abusada’s declarations in its editorial, indicating that “major reforms” were needed.<sup>67</sup> We should note the connections here between legislating by decree and capture mechanisms.

66 “Se requiere una reforma muy potente”, *El Comercio*, June 8, 2014, A2.

67 “La reforma que no se hizo”, *El Comercio*, June 9, 2014, A 14.

In addition to the MEF, another ministry that actively moved in response to the demands from CONFIEP was the Ministry of Energy and Mines (MINEM), a body in which mining companies and industry groups maintain a high level of influence, with a similar case of use of the revolving door. In August, 2014, recently appointed Minister Eleodoro Mayorga joined the state movement to cut through the "permitology", a term coined by the IPE led by Abusada. According to Minister Mayorga, (who came from the private mining sector and, as we will see later, maintained close ties to the private industry), the MINEM wanted to "organically deal with permitology... and with the state bureaucracy that ties down private investment". The minister announced, without going into detail, that his ministry was preparing a "new set of environmental regulations", and was hopeful that projects such as Conga and others could move forward. These regulations would trigger a political scandal on the role of lobbyist groups soon after the Reactivation Reforms were set in motion with Law 30230.

As the MEF was preparing this law, these proposals were not consulted or negotiated with the affected state entities (MINEM, SUNAT), rather they were imposed by the MEF or MINEM. Decisions were made based on the close relationships between industry groups, particularly the CONFIEP business confederation, and the MEF, which worked as the driving force in shaping the proposals.

The most important clue was given by Segura himself in a statement published in *El Comercio* just after he was named minister. Asked about any "meetings [he] had held with the private sector in designing the package of legislative decrees", he answered:

There have been discussions. There were conversations with the private sector to understand their diagnosis of the problems... I have been in CONFIEP, for example, and have had discussions with the business groups.<sup>68</sup>

Nonetheless, the Minister did not also meet at that time with different social actors such as NGOs and the indigenous groups that were to be affected by these decrees; this difference in attitude is revealing in terms of his preferences.

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68 "Segura sobre decretos: 'se discutieron con el sector privado'", *El Comercio*, September 28, 2015, A 12.

With regard to the tax provisions, importantly, the law eliminated the mandate to investigate cases of tax evasion (and thus undermined investigation of money laundering cases). A SUNAT official indicated in an interview that the tax administration had been consulted on these measures, and that they had voiced their opposition to these components that, as far as the official knew, had not been drafted by the SUNAT or by MEF technicians. In an event at the university, a CONFIEP representative reported that the business leaders had demanded the inclusion of these measures; to that end they had approached the minister and met personally with him.<sup>69</sup> The context analysis and the information from these sources outline a capture scenario that leads to a process of legislative decrees that give clear preference to privileged social groups.

The decision-making process under these conditions of political capture ran along this timeline: The campaign begins in the media through *El Comercio*, with the notable declarations of Abusada and the IPE, with an immediate reaction from President Humala and the ministers linked to the production sector (MEF and MINEM, and to a lesser extent MINAM and SUNAT); the CONFIEP is consulted exclusively on the proposed measures; the Reactivation Reforms begin with Law 30230, prepared by the MEF and presented to congress by the president for fast-track approval; a brief parliamentary debate concludes with passage of the law, which is then celebrated by CONFIEP as a great stride forward.

Law 30230 is an important example in analyzing capture and its consequences by virtue of its nature as a broad-spectrum omnibus law, with 87 pages of preamble and justification and 64 separate articles that impact a series of central state institutions, regional governments, municipalities, and social groups.

Graph No. 5 illustrates the influencing process by large investors and their main industry groups. Once again the role of key actors such as the CONFIEP stands out, working in coordination with the *El Comercio* journalistic group, with IPE Director Roberto Abusada as its leading intellectual and the “brains of the operation”. Through his articles in *El Comercio* and other papers, magazines, and television channels, Abusada successfully introduces the

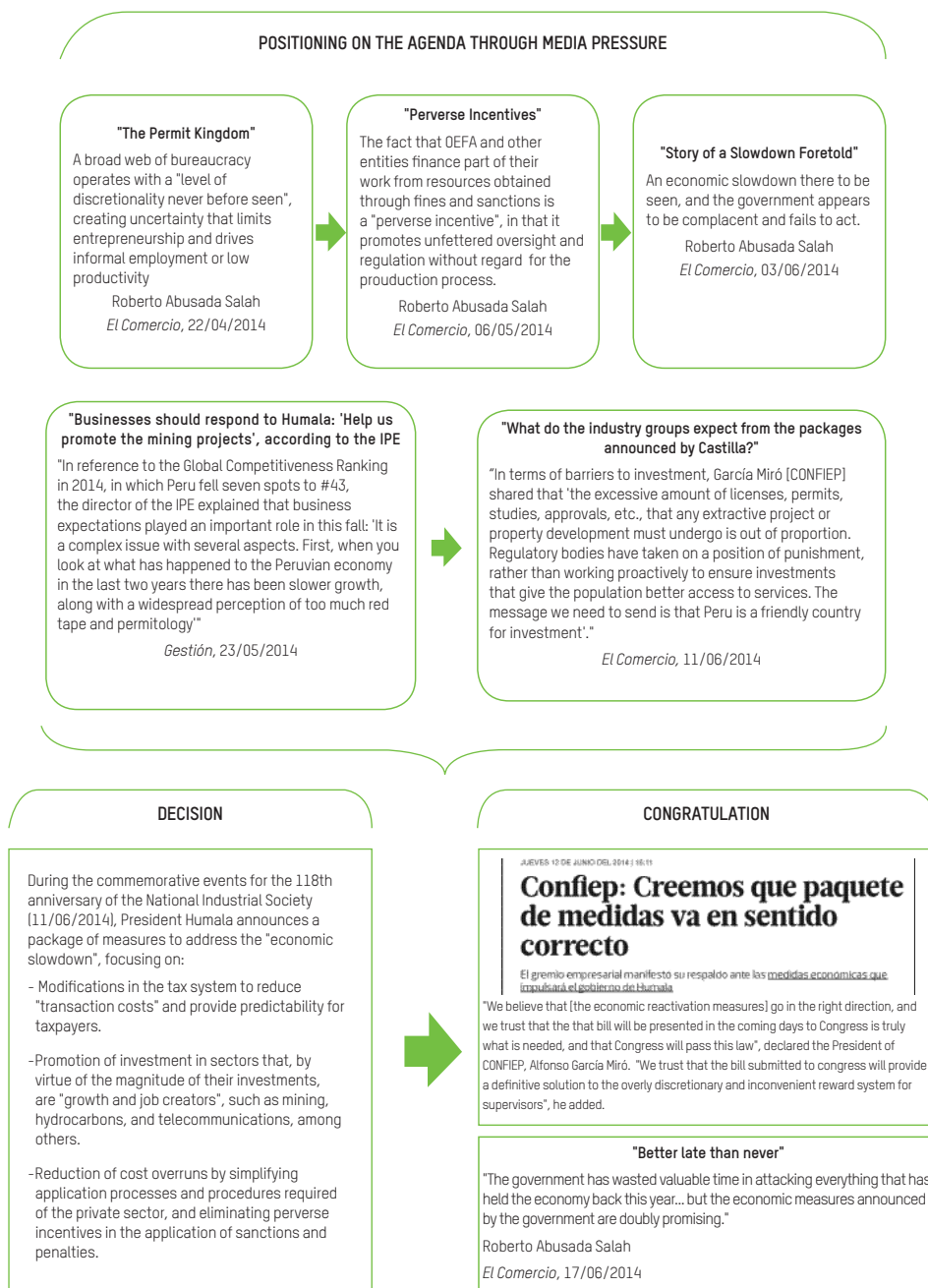
<sup>69</sup> In a university event that the author attended, a member of the CONFIEP director's council explained that the owners of the principal economic groups had demanded this measure in a private meeting with the government that they had requested. Lima, December 15, 2015.

topic on the public agenda, coining the term "permitology"<sup>70</sup>, and accusing public officials of using perverse incentives that harm investors. The impact of this interest management and lobbying is as visible as it is immediate.

President Humala coordinates with Segura and Castilla at the MEF; the MEF produces the bill, and Humala submits it to congress on June 18, 2014. On July 3, the bill is discussed and approved by the Standing Committee (which includes representatives from all of the political parties), and it is then debated in a single session on the floor of congress, and ultimately passed with 11 votes in favor, that is, less than 10% congress. Only three congresspeople oppose the law, and seven abstain from voting (thus facilitating passage of the bill). In all, in a demonstration of poor deliberation of this fragmented and barely competent congress, only 11 congresspeople vote in favor, with 21 votes against or abstentions, accounting for a little over 10% of congress. The rest of the congressional seats, for different reasons but cognizant that their actions will facilitate passage of the bill, are absent from the session. Thus, on July 12, after just one month and three weeks, the complex and controversial Law 30230 is passed. This is another victory for the legislative blitzkrieg of the CONFIEP and MEF. Tellingly, during the scant debate in congress, Congressman Lescano (a member of the Acción Popular Party) commented: "It appears, sir, that this bill has been prepared by some transnational corporation and not by the government." The passage of Law 30230 gives way to a national discussion on state capture, which is then accelerated by the passage of Law 30288 and the youth labor reforms.

<sup>70</sup> The concept of "permitology" is erroneous, and this would suggest the science of permits. What they meant to refer to was excessive permits and paperwork, or a "permitocracy" existing in the state.

**Graph 5**  
**INFLUENCING PROCESS FOR DECISION-MAKING: LAW 30230**



# SUBMISSION OF THE BILL TO CONGRESS



Proyecto de Ley N° 3627/2013-PE.



Bill 3627/2013-PE is discussed and approved by the Standing Congressional Committee on July 3, 2014.

## Votes on Bill 3627

Congresspeople voting in favor: (1) Omonte Durand, (2) Zamudio Briceño, (3) Gamarra Saldívar, (4) Gutiérrez Córdor, (5) Solórzano Flores, (6) Espinoza Cruz, (7) León Rivera, (8) Capuñay Quispe, (9) Canches Guzmán, (10) Huayama Neira, and (11) Otárola Peñaranda.

Congresspeople voting against: (1) Mavila León, (2) Beingolea Delgado, and (3) Lescano Anieta.

Congresspeople abstaining: (1) Schaefer Cuculiza, (2) Chacón De Vettori, (3) Aguinaga Recuenco, (4) Becerril Rodríguez, (5) López Córdova, (6) Neyra Olaychea, and (7) Iberico Núñez."

"It appears, sir, that this bill has been prepared by some transnational corporation and not by the government"

Congressman Yohny Lescano during the debate in the Standing Committee.

Board of Spokepersons decide to waive a second round of voting for Bill 3627/2013-PE.

Publication of Law 30230 on July 12, 2014.

## LEY N° 30230

EL PRESIDENTE DE LA REPÚBLICA

POR CUANTO:

LA COMISIÓN PERMANENTE DEL CONGRESO DE LA REPÚBLICA;

Ha dado la Ley siguiente:

**LEY QUE ESTABLECE MEDIDAS TRIBUTARIAS, SIMPLIFICACIÓN DE PROCEDIMIENTOS Y PERMISOS PARA LA PROMOCIÓN Y DINAMIZACIÓN DE LA INVERSIÓN EN EL PAÍS**

## 4.5 ANALYSIS OF LAW 30230

In this section we explore in detail the most important articles within the law, beginning with the tax provisions, followed by environmental measures and lastly promotion of private investment. This exploration seeks to link the broader discussion on political capture with concrete legislation to "anchor" the research in reality.

In terms of tax administration, the law seeks to "facilitate investment" by forgiving debts, limiting the regulatory powers of the SUNAT, improving the system of preferential treatment for tax payments, and expanding the terms of the Agreement on Tax Stability for large investments (which protects investment projects in the case that legislation changes over the course of the contract). In tax terms, two clear negative institutional impacts stand out, and demonstrate how political capture in cases such as this one lead to the deterioration or weakening of state institutions. First, the law grants amnesty in the case of unpaid tax debts, regardless of their status, which softens the state's power to sanction bad tax payers. Even more gravely, the law forgives debts that include payment of pensions and contributions to the national healthcare system; non-payment of these contributions may be considered unconstitutional, as resources for the system go toward upholding unalienable rights. Second, the law suspends Norm XVI of the Tax Code, which describes tax evasion. Without this norm, the state is deprived of an important tool to detect dips in tax collection from business conglomerates (economically powerful domestic groups and multinational companies), particularly in the case of their management of "transfer pricing", which represents a serious setback in state regulatory powers.<sup>71</sup>

In terms of the environment, Article 19 of the law suspends the sanction powers of the Office for Environmental Assessment and Oversight (OEFA) for a period of three years, reducing its oversight and limiting its powers to fine companies only to exceptional cases. This article has produced some controversy that will be discussed below. At this point we will simply indicate that in environmental terms,

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71 In a interview with a SUNAT official who preferred not to be identified, he opined that this norm "ties one hand behind our backs", as it makes it difficult to audit large business conglomerates for tax evasion. He added that it also waylaid the fight against money laundering, which served to detect illegal transfers within legal businesses. In this accounting, SUNAT was consulted on Law 30230 and issued an opinion on its negative effects. This opinion was ignored by the MEF, and conversations with MEF officials produced the conclusion that the opinion was not prepared by technical staff in the ministry, rather it came from a private source. Lima, December 4, 2015.

as is the case with tax issues, this law rewards bad behavior. Article 20 describes the creation of Protected Reserve Zones that would be created in this case by Supreme Decree rather than the authority of the MINAM; this practice reinforces the tradition of legislation by decree as described earlier. This article also deteriorates environmental institutions, as the MINAM should be the technical institution with a mandate in this field. This shift in power facilitates the development of more permissive extractive practices, putting the rights of indigenous peoples and environmental balance at risk. Article 21 sets a fixed period of a maximum of 45 business days to approve Environmental Impact Assessments (EIA), regardless of project type, and establishes that if officials do not issue a response within the fixed timeframe they will be subject to sanctions for a "severe infraction". This intimidates public officials and increases the possibility for errors. Article 23 provides that Environmental Quality Standards and Maximum Allowable Limits will be authorized by supreme decree (as is the case of Article 20, mentioned earlier), highlighting the trend toward executive action.

In terms of policies for the promotion of large investments, especially extractives, Article 25 enhances the authority of the MEF above the rest of the ministries, establishing that the EESI (formerly led by Segura) may request information from all public agencies, who in turn will be obligated to provide it within a maximum of 20 business days, regardless of the complexity of the request. To comply with this provision, all public agencies must designate a General Liaison responsible for coordinating with the EESI. These changes fortify the supremacy of the MEF above the other ministries.

Lastly, Law 30230 includes private investment promotion norms that seek to facilitate the "physical availability of the lands within the area of direct or indirect influence for investment projects". This norm facilitates the concession of wide tracts of territory for extractive companies, prioritizing private property and negatively affecting indigenous peoples. This norm runs contrary to Article 14.1 of ILO Convention 169, which holds that indigenous occupation of a territory is equivalent to a property holding.

In conclusion, a detailed analysis of Law 30230 reveals norms established through excessive influence by the economic elite, coordinated with the ministries using the "revolving door" that tend to favor the former. These norms also tie the hands and limit state powers for tax and environmental regulation, reduce the role of other important public agencies for accountability, and affect vulnerable social groups, particularly indigenous peoples in the case of extractive industries.





## 5. CIVIL SOCIETY REACTIONS AND THE PEOPLE'S DEFENSE OFFICE

Once enacted, Law 30230 triggered varied reactions, particularly complaints from NGOs and social, agrarian, indigenous, and human rights groups concerned by the softening of environmental oversight. Other important actors included hackers and journalists who opposed the law, shedding light on the "black box" of the system of political influence. These commentators contributed to a discussion on the role of lobbyists, the "revolving door", and the excessive influence of the economic elite. The debate on capture took on a national dimension.

Activist groups such as Anonymous Peru and Lulz Security played an important role in stimulating these civil society reactions by hacking into Prime Minister René Cornejo's files (February-July, 2014), in an incident that came to be known as "Cornejoleaks". These revelations provoked an intense national discussion on corporate lobbying, and opened a window into the conflict between ministries as a result of the unilateral and hegemonic actions of the MEF in preparing measures that affected other state agencies without any consultation. It should be noted that Minister Cornejo had to resign in the midst of revelations in the media indicating that

he had conducted private company business during his time as Minister, and engaging in collusion with private enterprise.

One of the most important files uncovered by the hackers was an email dialogue between two ministers, Eleodoro Mayorga of the MINEM and Javier Pulgar Vidal of MINAM, on the origin of the environmental norms. This conversation revealed that the environmental norms were prepared by the Petrolera Karoon oil company, at the request of the Minister, rather than by ministry staff and officials. This is another clear case of agents of capture dictating the terms of legislation. We should remember that aside from the MEF, the MINEM is also intimately linked to extractive industries. In August of 2014, Mayorga, who came from the private sector (another prominent use of the revolving door) enthusiastically joined the movement to end "permitology"; this term was coined by the IPE, and even the President himself mentioned it as an urgent national problem to be resolved. According to Mayorga, the MINEM wanted to "deal organically with permitology... and with the state bureaucracy that holds up private investment". Before the first reactivation reform bill was presented, the minister announced, without going into detail, that his ministry was preparing a "new set of environmental regulations", and was hopeful that projects such as Conga and others could move forward. According to the press, and thanks to research done by the NGO *Ojo Público*: "Petrolera Karoon worked as a consultant to justify legislation in its own favor". Worried by this development, Minister Pulgar Vidal sent a warning to Mayorga and Cornejo by email on March 6, saying:

We must be careful in this process and make sure it isn't an oil company (Karoon) that presents the technical basis for the regulations, as they did today for MINAM staff at the MINEM offices.<sup>72</sup>

Mayorga's MINEM not only commissioned a private oil company to design regulations, but also the company presented these regulations to a state agency, blurring the borders between public and private roles. In response to Pulgar Vidal, Mayorga wrote that "the companies and their technicians are the ones who can explain their operations and impacts the best". According to reports, "two months later, Karoon received a positive force majeure

72 "Las cinco claves para entender los Cornejo leaks", El Comercio, agosto 14, 2014, <http://elcomercio.pe/politica/gobierno/cinco-claves-entender-cornejo-leaks-noticia-1749842> (Accessed November 20, 2015).

declaration in the case of Lot Z38, waiving penalties against the company for non-compliance with timelines". Once the "Cornejoleaks" scandal exploded, Mayorga was eventually called to appear before congress (where he sought to cast himself as a regulator) to discuss the conflict of interests between public and private actions during his administration. Mayorga was not removed from office, but his prestige was seriously damaged and he ended up resigning some months later.

Another case of lobbying that appeared in "Cornejoleaks" was the case of Cecilia Blume, the co-director of the Castilla & Blume consulting company. The other director was the sister of Minister Castilla, and the company was known for shadow lobbying. Experts considered Blume to be one of the most important "interest managers" (that is, lobbyists) in the country.<sup>73</sup> Ms. Blume also is a notable example of the "revolving door", as she alternated between positions at private law firms and the MEF over the 1990s, in addition to working as a columnist for *El Comercio* and frequently appearing on television interviews. In an email in early 2014, Blume took a friendly tone with Cornejo to request a "favor": accelerating the processes to extend the legal fishing season. This "interest management" was done as at the same time that Blume participated on the board of directors of Exalmar, an important fishing company owned by Grupo Matta. The Blume case was also widely discussed in the media.

Once Law 30230 was passed, and after the storm unleashed by the lobbying scandals had subsided, the first organized reactions from civil society began to appear. In one notable case, a network of nine NGOs spoke out critically against Law 30230, with the following conclusions: a) The tax provisions benefit mining companies without truly stimulating short-term economic recovery; b) the law weakens environmental institutions and norms, curtailing the role of the state as a guarantor and putting fundamental rights, natural heritage and the environment at risk; c) the oversight capacity of the state is diminished, despite the need for an active state to ensure "adequate sustainable and inclusive development in a climate of respect for rights and social peace"; d) the MINAM is also weakened, despite its "technical role to ensure environmental management and conservation... and the associated values and rights, such as those of indigenous peoples and rural settlements that depend on their environment for survival", as a result, limiting the functions

73 "La Thatcher de PPK", *5to Poder* (September 4, 2005), pp. 34-35. In: <http://www.5topoder.com/Php/DetalleArticulo.php?NumRevista=18&NumSeccion=2&NumArticulo=1> (Accessed December 28, 2015).

of these institutions would "have negative repercussions for the environment, delay the establishment of rules for investment, and foster environmental impunity"; e) the law would "lead to poor review processes for EIAs and thus softening the measures required of companies and exposing public officials to fines if the assessments are not approved on time"; f) with these measures "a sense of impunity could be produced among the population as a result of unpunished environmental damages, elevating the risk of social conflict, and; g) the "process of resolving legal ownership issues for land plots to benefit large-scale investment projects in rural areas represents a threat for the land rights of rural and native communities, as well as other rural land owners in the direct or indirect areas of influence of these projects."<sup>74</sup>

Different organizations waged a legal battle, appealing to the People's Defense Office, which supported their claims and demonstrated the importance of having institutional state accountability mechanisms independent from the executive branch. In June, 2014, once the text of the project was released, the People's Defense Office offered declarations expressing concern that the OEFA would "not be able to fully perform its role of oversight and sanctions", arguing that any norm should consider these possible impacts. The People's Defense Office concluded its arguments by saying:

We are convinced, Mr. President of Congress, that domestic and foreign investments must uphold standards for social and environmental protection, and in this way contribute to the development of the country...<sup>75</sup>

One year later the People's Defense Office, whose opinions had been ignored by the congress, issued a report on the status of state management of environmental liabilities from mining and hydrocarbons. This report, published in June, 2015, pushed for a repeal of Article 19 of Law 30230. The report referenced an IPE study that argued that the social conflicts were the principal problem for the industry, leading to millions of dollars in losses in the country due to investments blocked. The People's Defense Office sought to call attention to this pro-private sector bias. The office reported that the environmental

74 CEPES, CONADES, Cooperación, ANC, Dar, Forum Social, Red Muqui and Coordinadora Nacional de Derechos Humanos, "Impactos e intereses de la Ley 30230", Lima, 2015. See also the document from: Red Muqui, Grufides and Coordinadora Nacional de Derechos Humanos, "Paquetes normativos del 2013-2015 y su impacto en los derechos fundamentales en el Perú", Lima, October, 2015.

75 Carta de la Defensoría del Pueblo al Congreso, Oficio No. 0286-2014-DP, June 24, 2014.

problems were very serious and had been generated during the period of the boom in extractives and low regulation, with a total balance in the country of:

6,618 environmental damage sites... and 6,065 poorly closed wells, demonstrating the magnitude of this tragedy that has not been provoked by investments blocked due to conflict, rather by irresponsible mining or hydrocarbon extraction activities.

The report argued that Law 30230 would exacerbate the environmental situation in the country by truncating the powers of the OEFA and forgiving the debts of companies that had been fined, which we will review in further detail below. By this account, the office urged congress to repeal Article 19.

In November, 2015, the Inter-Ethnic Association for Development of the Peruvian Jungle, the National Agrarian Confederation, the National Human Rights Coordinator, and the National Organization of Andean and Amazon Indigenous Women in Peru issued a statement on the claims of unconstitutionality of several articles of the law that had been filed with the Constitutional Tribunal in April of that year. Seven months had gone by since the filing, and the claim had yet to be admitted and heard in court. These organizations argued that by law, claims of unconstitutionality must be admitted by the court in a period no greater than 10 days.<sup>76</sup>

The *Convoca* team, which specializes in investigative journalism and reporting, researched and analyzed another dimension of the impacts of this law and produced a clearer damage assessment. In their analysis of the official data on the concrete effects of the law on regulation and environmental oversight, the NGO considered that the government had opened the door to harmful amnesty for offending companies

The Ollanta Humala administration has declared a sort of environmental amnesty through Law 30230: it refrained from collecting 30.9 million Soles (nearly 11 million US dollars) in fines for environmental infractions that had been ratified by the OEFA tribunal and recognized by the companies themselves.<sup>77</sup>

76 "Pronunciamiento contra demora injustificada del Tribunal Constitucional de admitir demanda de inconstitucionalidad contra la Ley 30230". AIDSESP, CNA, ONAMIAP y CNDH (November 11, 2015).

77 "Los S/. 30 millones que no cobró el gobierno en multas mineras". In: <http://www.convoca.pe/investigaciones/los-s-30-millones-que-no-cobro-el-gobierno-en-multas-mineras> (Accessed November 14, 2015).

The effects of the enforcement of Article 19 in Law 30230 on the performance of the OEFA was evaluated as follows:

After the enactment of the law, the Department for Oversight, Sanction, and Incentives (DFSAI) in the OEFA refrained from fining companies over the next three years, opting instead to order corrective measures. For the processes that reached the hands of the second-tier tribunal, fines also fell by 50%. Law 30230, which began to be enforced in July, 2014, suspended the increase of incremental fines that OEFA was set to implement in the beginning of that year.

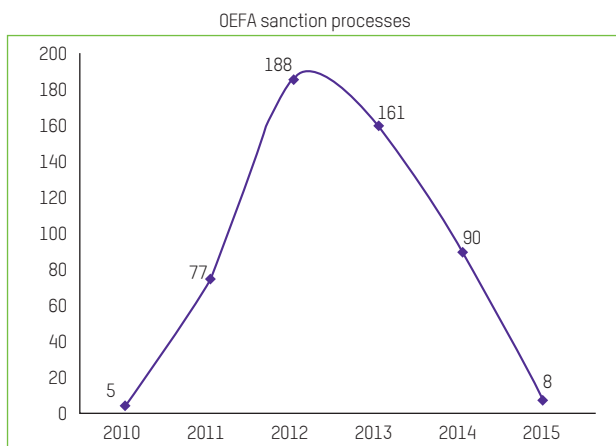
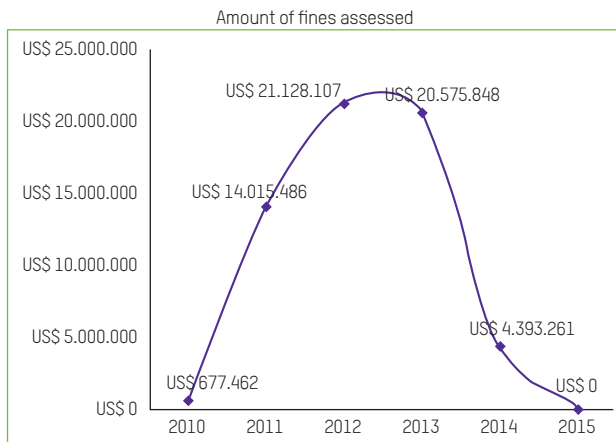
80% of these processes correspond to infractions detected in 2010 and 2011, that is, four years prior to the enactment of Law 30230, which ended up suspending the fines despite the fact that many of these cases were for serious or very serious infractions. With this norm, the OEFA replaced economic penalties with corrective measures for the infractions already committed.

The regulatory body refrained from collecting up to 30.9 million Soles (10.9 million USD) in 74 sanction processes already accepted by the companies and ratified by the first and second tier tribunals, calculated according to the maximum amounts on the fine scale established by OEFA officials in the sanction resolutions. Using the minimum fine amounts, the suspended or commuted fines reach 20,220,000 Soles (over 7 million USD). This calculation does not include another 20 processes still pending resolution by the tribunal, which could boost the overall amount of uncollected fines to 14.5 million dollars.

Graph No. 6, based on data from the *Convoca* report, shows the trend of reduction or elimination of fines against mining and oil companies once Law 30230 was enacted, indicating a backslide in state environmental oversight and the loss of autonomy, as fines were partially or entirely forgiven.

### Graph 6 DECLINING TREND IN MINING FINES PAID

Amounts of fines assessed in the mining sector (2010-2015)\*



\* Sources: OEFA administrative record and Convoca analysis.

Methodology: The data cover the period from November, 2010 to March, 2015. The years and amounts of the fines assessed appear according to the date of record for the resolution from the Department for Oversight, Sanctions, and Incentives (DFSAI), which is the department that initiates the sanction process. This counting only includes resolutions ratified by the second tier agency, the OEFA Environmental Oversight Tribunal, or those that were admitted by consent of the companies themselves. These factors give us a total of 529 out of 675 cases. Fines pending resolution and findings by the tribunal were not included. Amounts were converted to U.S. dollars using the average exchange rate for each year.

Source: CONVOCA "Los S/. 30 millones que no cobró el gobierno en multas mineras". Publication date: Sunday, August 2, 2015.

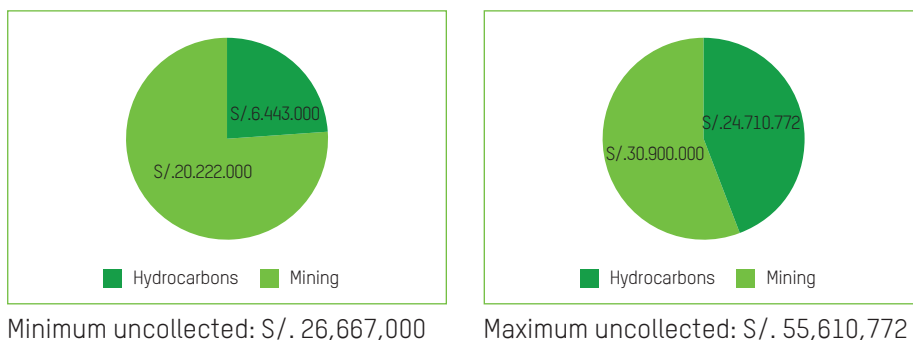
URL: <http://www.convoca.pe/investigaciones/los-s-30-millones-que-no-cobro-el-gobierno-en-multas-mineras>

Prepared by: Emilio Salcedo

Graph No. 7 estimates the possible maximum and minimum amounts of forgiven debts (depending on the final government resolution of the cases) in the mining and hydrocarbon sector, with the majority for large mining companies. Amounts are expressed in soles. Looking at the maximum figure, in accordance with the provisions of Law 30230 the state forgave fines against the mining companies for a total of 24.7 million soles, and against hydrocarbon companies for 30.9 million *soles*.

**Graph 7**

**FINES FORGIVEN IN MINING AND HYDROCARBONS**



Methodology: Only fines admitted by company consent or ratified by the OEFA Environmental Oversight Tribunal are included here. Period: July, 2014 - March, 2015.

Source: CONVOCA "Los millones perdonados a las petroleras". Publication date: Tuesday, October 27, 2015.

URL: <http://www.convoca.pe/investigaciones/los-millones-perdonados-las-petroleras>

Prepared by: Emilio Salcedo

Lastly, Graph No. 8 shows the companies with the most fines forgiven according to the minimum and maximum uncollected fine amounts, including the companies Interoil Peru and Pluspetrol Norte, responsible for severe environmental damages in the Amazon region, which produced protests that led to violent face-offs with the police in April, 2014.



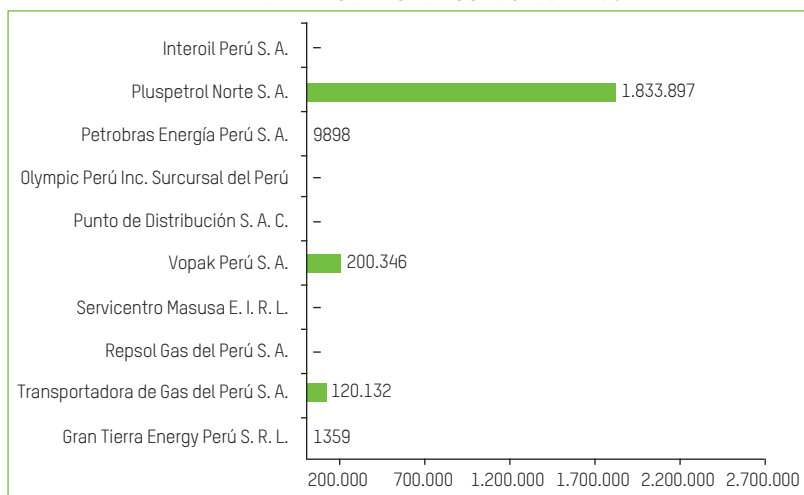
Graph 8

## COMPANIES WITH THE MOST FORGIVEN FINES

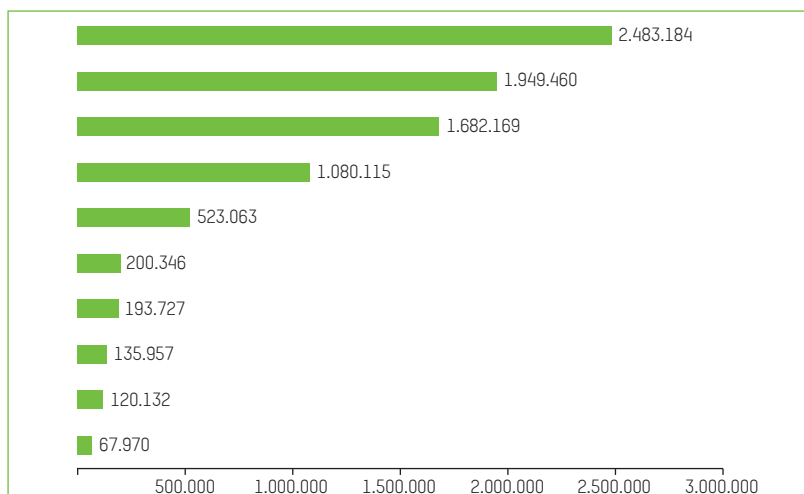
## The companies with the most forgiven fines in 2015, in US\$

Ranking of the 10 hydrocarbon companies with the greatest amount of fines frozen or reduced thanks to Law 30230\*.

## Minimum amount of uncollected fines



## Maximum amount of uncollected fines



\* Only includes fines accepted by the companies or ratified by the OEFA Environmental Oversight Tribunal between July, 2014 and March, 2015. Amounts were converted to U.S. dollars using the average exchange rate for each year.

Source: CONVOCA "Los millones perdonados a las petroleras". Publication date: Tuesday, October 27, 2015.

URL: <http://www.convoca.pe/investigaciones/los-millones-perdonados-las-petroleras>

Prepared by: Emilio Salcedo

This research reveals not only the details of the negative impacts of Law 30230 on penalties for proven environmental damages, which is important in demonstrating the effects of state capture, it also shows the importance of investigative journalism in generating accountability for civil society.

We conclude with a final note on an aspect of Law 30230 that initially did not elicit a reaction from civil society: the suspension of Norm XVI that empowered SUNAT to combat tax evasion. The lobbying efforts by CONFIEP and other groups, as well as the MEF strategy of designing broad-ranging omnibus legislation were ultimately successful in pushing this key article through unnoticed.

The main victim was the SUNAT, which was not able to make any public statements with regard to this provision. Nonetheless, with the recent Panama Papers scandal that burst onto the scene in April, 2016, citizens became increasingly aware of the practice of using offshore companies to avoid taxes. The revelations that the rich, politicians, and big businesses used tax havens to avoid paying the state began to resound around the world, and an important public debate began around this issue in Peru as well. It was with this public outcry that the magazine *Poder* began to discuss the negative effects of Law 30230 on powers to investigate tax evasion that at one point big businesses had even called "unconstitutional".

The periodical began its story by indicating that the norm was indeed constitutionally sound, and it warned of the negative effects of its suppression:

(...) when Law 30230 came into force in 2014, as part of the economic stimulus package and thanks to private sector pressure, the anti-evasion norms were suspended. The volume of taxes evaded by individuals and big businesses has never been quantified.<sup>78</sup>

This was the opportunity that the SUNAT had been waiting for to take action against tax evasion, but it faced great limitations in doing so given that the CONFIEP lobby, with the acquiescence of the MEF, had decommissioned its main tool for oversight.

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78 "¿Qué se ha hecho para combatir la elusión tributaria en el Perú?" (Poder, April 4, 2016) in <https://poder.pe/2016/04/04/01006-que-se-ha-hecho-para-combatir-la-elusion-tributaria-en-el-peru/> (Accessed April 7, 2016).

SUNAT was familiar with the information in the Panama Papers when consulted by journalists producing stories for *Ojo Público* and *Convoca*. Anticipating the discussion on the horizon, a few days before the scandal broke and as a warning to large taxpayers (both high-income individuals and companies), the SUNAT began to leak the estimated amounts of the tax evasion. On March 31, 2016, RPP News reported "SUNAT denounces millions of dollars in tax evasion on foreign money", indicating that 1.627 billion Soles from rich individuals and companies receiving income abroad had not been declared to the tax authority, representing a significant loss for state coffers.<sup>79</sup>

The full effects of the Panama Papers have yet to be seen, but at the very least the SUNAT and Attorney General's office have moved to begin investigations, in reaction to the public surprise and displeasure at the privileges enjoyed by the rich and foreign property owners.

Independent journalism outfits such as *Ojo Público*, which studied the case of Peru, disclosed in detail the identities of the potential tax evaders and how the difficulties that countries face in regulating these practices have eroded the anti-corruption mechanisms in place.<sup>80</sup> This is another important consequence of the corporate capture of the state.

79 <http://rpp.pe/economia/economia/sunat-personas-naturales-no-declaran-rentas-de-fuente-extranjera-noticia-949905> (Accessed April 7, 2016).

80 "Paraísos fiscales son una amenaza para el sistema anticorrupción", *Ojo Público* (April 5, 2016), in: <http://panamapapers.ojo-publico.com/articulo/-para-isos-fiscales-son-una-amenaza-para-el-sistema-anticorrupcion/> (Accessed April 7, 2016).



## FINAL REFLECTIONS

This report has identified the structural and contextual factors (systems and processes) to explain the phenomenon of corporate capture of the state, and studied its effects in a case in which corporations, the main economic elite, maintain their material and instrumental powers (economic and political), with support from the media.

The corporate capture of the state is directly related to the concentration of economic power. It is with these highly concentrated material resources that the economic elite can muscle into a porous and discretionary state apparatus, and take advantage of the weaknesses in civil society. These elites were fortified by the free market policies applied without interruption since the 1990s, and today they continue to be favored by state policies that prioritize the promotion of private investments. In Peru under Humala, we have seen that the main agents of capture are large domestic and foreign corporations (in particular extractive industries) whose material powers have continued to grow. They are able to use these powers to wield excessive influence.

The case of the Humala administration is important for studies on corporate capture in that it gives researchers a view of how the capture system is built, especially highlighting the direct and indirect influence of the economic elite on appointments to key positions in the economic apparatus of the state. These influences generate a series of advantages, emphasizing the importance of the mechanism known as the "revolving door", for which there is greater information than in the case of lobbying and campaign finance. The study of the first sequence of events reveals the details of the mechanics of the capture, and how it impacted the general orientation of the new administration and the stance it took in extractive conflicts.

In this context of influence, we have seen how the MEF legislated "from the top-down", relying on tradition and executive decrees to impose their will

upon the rest of the state ministries and agencies, and send legislation to congress for fast-tracked or urgent consideration. These bills were then passed through expedited processes with limited debate. Although this report has focused on the capture of the executive branch and the MEF, given the way the norms demanded by the corporate economic elite are eventually approved, it is reasonable to see how a similar level of influence can be exercised on the legislative branch, unless social protests emerge and are able to neutralize this legislative maneuvering. The claims filed with the Constitutional Tribunal by organizations demanding the repeal of Law 30230 on the basis that it contains several unconstitutional articles, along with the weakening of the environmental management system and the regulatory and mediating power of the state, suggest that the capture system acts strongly on judicial powers as well.

The economic elites also exert direct influence thanks to the support of the corporate media, where the El Comercio group and corporate-linked think tanks such as the IPE stand out. We find this super-concentrated media power in the two sequences analyzed (the capture of Humala in 2011 and Law 30230 in 2014), where it allows the economic elite with whom it is socially and economically involved to set the national agenda from outside the state apparatus and put pressure on state authorities or justify legislative changes. At the same time, this media power is underpinned by specialized reports produced by think tanks, indicating a dense web of relationships acting in concert at key moments. In this sense, our study confirms Fairfield's hypothesis that the media (communications) component of the economic elite plays a key role in influencing political processes in modern societies.

The power of the economic elite is thus strong, diverse, and well-organized enough to impact all of the branches of the state; this is an advantage that no other social group can claim. Nonetheless, the excessive influence of the corporate economic elite is not limited to the state; Global Witness suggests that as this influence weakens the state, social groups and the civil society are left without adequate protections.

The actions by the agents of capture and the lack of state and media neutrality produce or contribute to material inequalities. These actions affect human rights as the state legislates largely in favor of extractive and

financial groups, thus reinforcing their market power and granting them added revenue by releasing them from their obligations and duties under existing regulations. As Law 30230 demonstrates, a captured state tends to enact measures that condone business debts of all kinds, especially tax obligations, pension payments, and contributions to the health care system. The state may even reach the extreme of forgiving or reducing debts imposed after verifying environmental damages caused by mining and hydrocarbon companies.

Law 30230 also has concerning anti-bureaucratic features. We should remember that this law was passed under the assumption that bureaucracy arbitrarily limits investments using "perverse incentives". This is an assumption that has gone unproven, as no studies were done to explore the so-called "permitology"; this is not to deny that bureaucracy may be an important problem in general. Nonetheless, it was based on this precarious argument that arbitrary norms were passed after being fast-tracked without due deliberation, approving a series of permissions to favor extractive investments, hurrying processes, and escalating the risk of environmental damages. The law punished officials who did not meet the established timelines, while at the same time ignoring property rights and the rights to consultation and indigenous territory. These norms are directly contradictory to binding treaties such as ILO Convention 169, signed in 1995, which is frequently ignored. Lastly the law truncated the powers of the OEFA, a new organization that emerged as a result of advances in environmental legislation established through the signing of the free trade agreement with the United States, when the U.S. Congress demanded institutional progress as a condition to signing the agreement. Law 30230 was considered unconstitutional and triggered outcry from NGOs and national and foreign social organizations. It is worth noting that these complaints were heard by the People's Defense Office, one of the few remaining viable mechanisms for accountability.

The norms also affected the regulatory and oversight powers of the SUNAT to deal with tax evasion frequently practiced by domestic and foreign conglomerates owning multiple subsidiaries in the country as well as abroad. These conglomerates could manipulate the "transfer prices" and thus reduce their tax burden, reporting higher costs and hiding revenue. The consequence of these measures is to force the state to depend more heavily on a regressive tax system that mainly affects the poor. After the

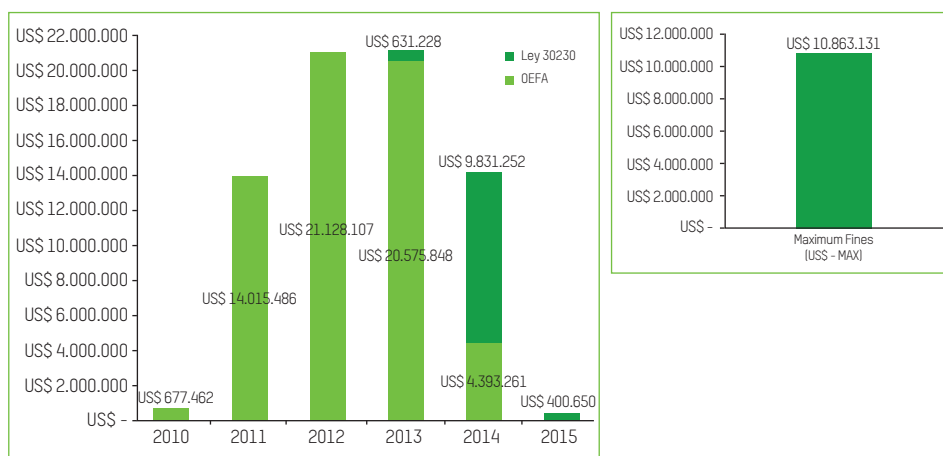
passage of Law 30230, following the same economic stimulus logic from the Reactivation Reforms, the Humala administration lowered income taxes and further accentuated the regressive nature of the system.

In all, the phenomenon of state political capture has favored and strengthened the economic elite, harmed vulnerable social groups, weakened the neutrality and regulatory capacity of the state, eroded state legitimacy, concentrated and fortified political powers, blocked congress from playing a proactive legislative role, limited democratic deliberation, and reduced access to material resources and opportunities for poor people. We conclude by noting that a society can avoid these dangers by reducing concentration of wealth, improving balance of power, providing alternative access to the media, and promoting greater organizational vitality and civil society capacity.

# ANNEX 1. DETAIL OF THE EFFECTS OF LAW 30230 IN THE CASE OF COMPANIES FINED BY OEFA

## Annex 1.1 "FIRM" FINES BEFORE AND AFTER LAW 30230

Fines assessed before and after Law 30230\*  
Amount of economic sanctions collected by OEFA without Law 30230 (in blue) versus the maximum amount uncollected due to the polemic law (in red)



\* Sources: OEFA Administrative Report Record, sanction resolutions and analysis prepared by Convoca.  
Methodology: The data cover the period from November, 2010 to March, 2015. The years and amounts of the fines assessed appear according to the date of record for the resolution from the Department for Oversight, Sanctions, and Incentives (DFSAI), which is the department that initiates the sanction process. This counting only includes resolutions ratified by the second tier agency, the OEFA Environmental Oversight Tribunal, or those that were admitted by consent of the companies themselves. These factors give us a total of 529 out of 675 cases. Fines pending resolution and findings by the tribunal were not included. Data for the cases after the enactment of law 30230 considers the minimum and maximum amounts of frozen and reduced fines as they appear in sanction resolutions from first and second circuit administrative courts. Amounts were converted to U.S. dollars using the average exchange rate for each year.

Source: CONVOCA "Los S/. 30 millones que no cobró el gobierno en multas mineras". Publication date: Sunday, August 2, 2015. <http://www.convoca.pe/investigaciones/los-s-30-millones-que-no-cobro-el-gobierno-en-multas-mineras> (Accessed November 14, 2015). Prepared by: Emilio Salcedo

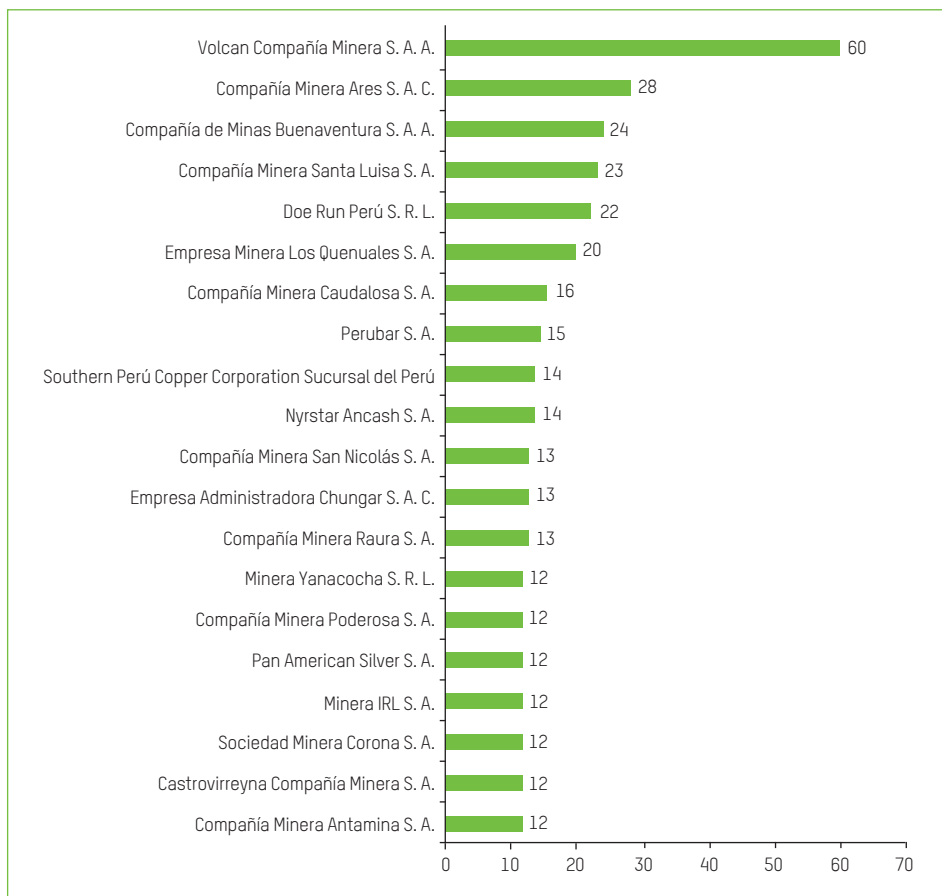


## Annex 1.2

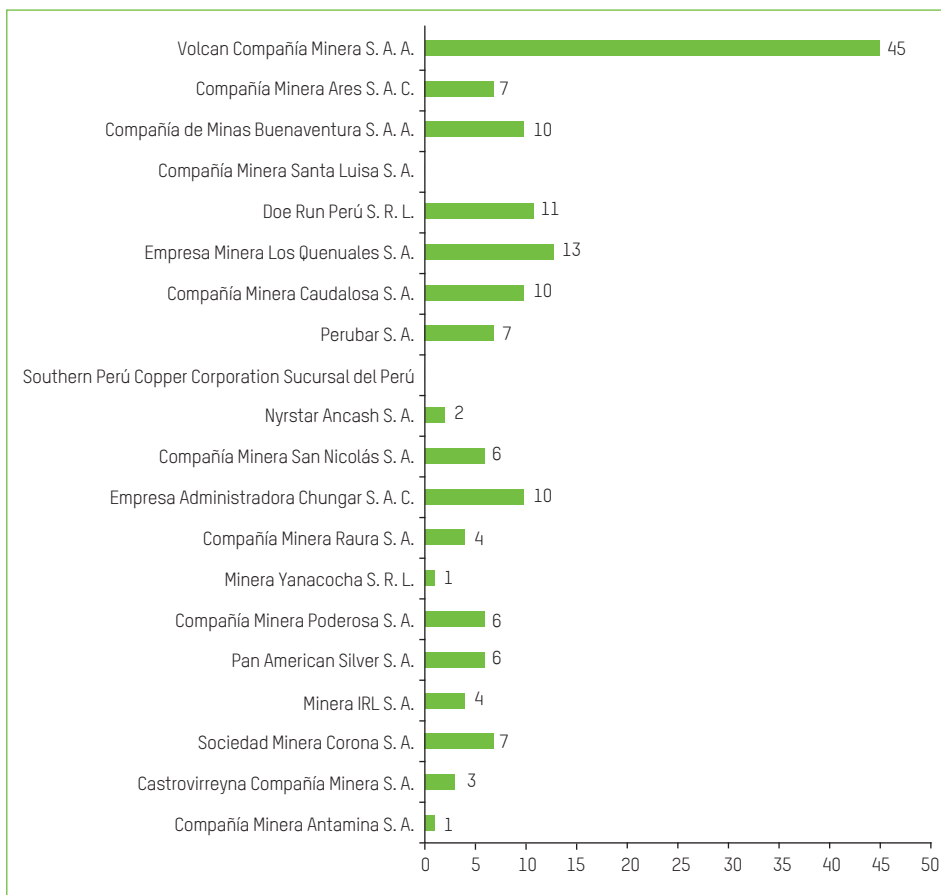
### NUMBER OF SANCTIONS PRESENTED IN THE JUDICIAL SYSTEM

How many sanctions were processed through the judicial system?  
Number of sanctions that the 20 most-fined companies appealed to the judicial system through September, 2014

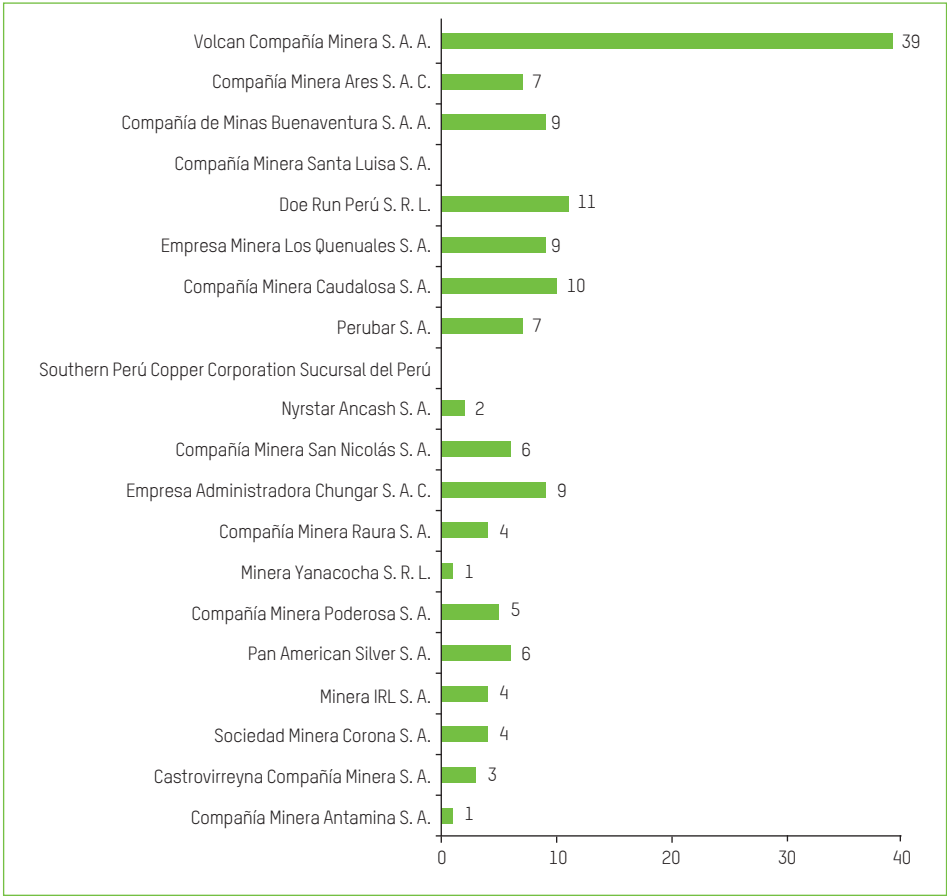
#### Total sanctions \*



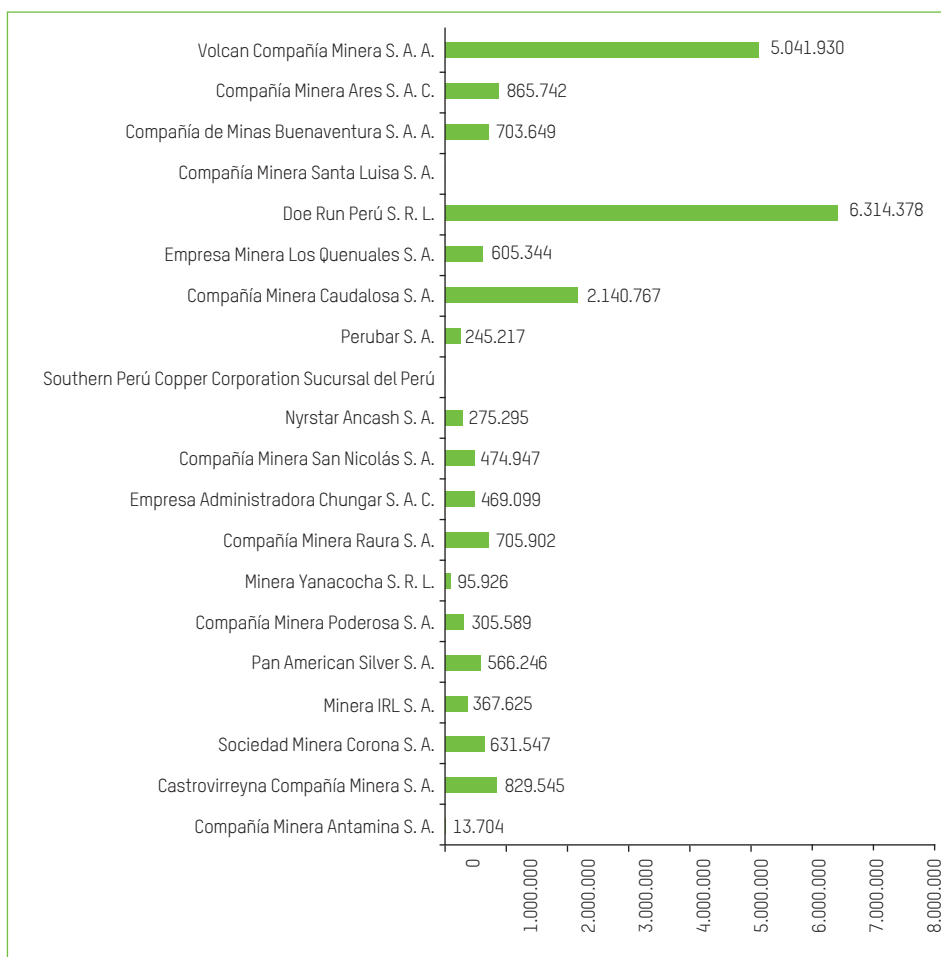
### Total sanctions appealed to judicial branch



Sanctions frozen by the judicial branch\*\*



### Total amount frozen in judicial branch (USD)\*\*\*



\*Refers to the total number of sanction processes initiated by OEFA.

\*\*Sanctions that cannot be executed by OEFA due to appeals to the judicial system prior to August 22, 2013, publication date of

Supreme Decree No. 008-2013-MINAM, which requires mining companies to pay a collateral guarantee if they wish to freeze their fines through precautionary measures.

\*\*\*Fine amounts were calculated based on the Taxation Units (UIT) and exchange rates for the year that the fine was applied.

Source: CONVOCA "El círculo minero de la infracción". Publication date: Wednesday, March 25, 2015

URL: <http://www.convoca.pe/investigaciones/el-circulo-minero-de-la-infraccion>

Prepared by: Emilio Salcedo

Specialists suggest, however, that it may ultimately be positive that this is the norm; if evasion cases were more specifically identified, companies could easily create new evasion methods and schemes in addition to the mechanisms discussed thus far, to continue to evade taxes in the future.

As we discussed previously in PODER, the constitutionality of Norm XVI was also upheld. Nonetheless, once Law 30230 came into force in 2014 with the economic stimulus packages, and thanks to private sector practice, the anti-evasion norm was suspended. The volume of taxes evaded by individuals and big business has never been quantified".

