



# Report: Gender Justice in consultation processes for extractives industries in Bolivia, Ecuador and Peru





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Gerardo Castillo Guzmán  
Laura Soria Torres



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This report was coordinate by Extractive Industries Team:  
Javier Aroca, Rocio Ávila, Cecilia Niezen, Adelaida Alayza  
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## THE AUTHORS

Gerardo Castillo is an anthropologist, with a Masters' Degrees in International Development from the University of Bath and Geography from the University of Oklahoma. He is a professor in the Pontifical Catholic University of Peru's diploma program on Extractive Industries: Oversight and Sustainable Development. He is a senior consultant on social development and extractive industries, with more than 10 years experience in the sector and working with peasant and indigenous communities. He is the director of *Societas Consultora de Análisis Social*.

Laura Soria is anthropologist with a degree from the Pontifical Catholic University of Peru and a Master's candidate in Gender, Sexuality and Public Policy at the San Marcos National University. She has understanding and experience in managing local development projects with a gender focus for non-profit and non-governmental organizations. She has experience with technical assistance in citizen participation processes for consensus-based planning and participatory budgets, as well as creating spaces for links between the public sector (local governments) and the private sector (civil society, associations and companies).

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<sup>1</sup> Exports from extractive industries account for an estimated 60 to 75 percent of total exports of Bolivia, Ecuador and Peru.

<sup>2</sup> In Peru, for example, the number of socio-environmental conflicts reported by the Ombudsman's Office went from less than 200 in 2005 to close to 1,500 in 2009.

<sup>3</sup> Specifically by the Extractive Industries Program of the Oxfam International Confederation in South America.





# PRESENTATION

South American countries are home to mining and oil/gas companies, which play a significant role in the economies of these countries.<sup>1</sup> Nevertheless, these companies often have conflictive relationships with the communities where they operate.<sup>2</sup> These conflicts are expressed through disputes over natural resources and growing processes of inequality and exclusion of the local population, particularly women.

Mechanisms for consultation and participation are alternatives proposed by states through which populations impacted by extractive industries can access information and express their points of view. Despite these mechanisms, communities still do not have the opportunity of make decisions together with the state concerning the viability of extractive industries.

In addition, these mechanisms have not been properly developed and in many cases lead to an exclusion of communities from the benefits produced by the extractive industry, as well as creating greater social and environmental impacts. This situation is made even worse by gender inequality present in state policies and within affected communities, civil society organizations and even within the outside organizations that provide support. This gender inequality increases the vulnerability of women, children and the elderly.

It is necessary, as such, to work on a gender focus with the objective of overcoming these conditions of inequality. This is particularly important at the level of states, where there are not enough norms implemented to foster greater levels of agency among women.

Given the focus of Gender Justice worked on in OXFAM, economic justice is not possible if rights, processes, mechanisms and legislation regarding consultation, consent and participation do not consider men and women in an equal and equitable way. This needs to be guaranteed by the state, implying access to and control over resources.

It is necessary, as such, to review what kind of progress has been made by South American nations, specifically Bolivia, Ecuador and Peru in the Andean Region, regarding legislation that incorporates a gender focus in consultation processes in extractive industries. This review is a first step in a proposal from civil society for more inclusive frameworks in our nations.

Societas Consultora de Análisis Social, at the request of Oxfam,<sup>3</sup> has prepared the following assessment of gender justice in consultation processes involving extractive projects in Bolivia, Ecuador and Peru.

The assessment is divided into three chapters. The first describes the normative frameworks under which participatory processes are carried out – including civil society in general and women in particular – in the three countries in the study. The second chapter explains and analyzes three emblematic cases of local populations confronting or negotiating with companies and the state regarding extractive projects. These cases include the Sarayaku community in Ecuador, Charagua Norte in Bolivia and Tintaya in Peru. The final section presents the main conclusions, as well as a series of recommendations for different stakeholders (states, private companies and civil society), with the goal of improving and fostering women's participation in processes of citizen participation in extractive projects. The report begins with an executive summary.

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Given time and budget limitations, the analysis of legal norms and cases was done primarily through an exhaustive review of secondary sources. To enrich the analysis, however, a series of interviews were conducted with several key stakeholders in civil society and companies related to the processes described in the countries studied.

The authors would like to thank all the people and institutions who graciously contributed to this study. Special thanks go to Adelaida Alayza, Javier Aroca and Rocío Ávila, of Oxfam in Peru, for their institutional support through the work; to Julia Cuadros, Emma Gómez and Giselle Salazar, of CooperAcción, for sharing their experiences on the Tintaya case; to Bernie Ward for his opinions offered on the impacts of mining on women in Peru; Sandra González-Orbegoso, of Rio Tinto, for her generous time explaining the challenges of gender in the development of the La Granja project; and Ariel Pérez Castellón, head of Oxfam's Extractive Industries Program in Bolivia, and Verónica Burneo and Vinicio Villalba, of Oxfam in Ecuador, for their sharp comments and clarifications in the document. Finally, our special recognition to Máximo Gallo for his analysis of the legal frameworks in the Andean countries.

Gerardo Castillo Guzmán  
Laura Soria Torres

Lima, October 2010

## EXECUTIVE SUMMARY

The Gender Justice focus adopted by OXFAM is aimed at bringing about full equality and equity between men and women in all spheres of life. This includes adopting a gender perspective in the definition and application of civil, political, economic and social rights. From this focus, it is understood that economic justice cannot be achieved if rights, processes, mechanisms and legislation regarding consultation, consent and participation do not consider men and women in an equal and equitable way. This needs to be guaranteed by the state, implying access to and control over resources.

Understanding the progress made by South American states, specifically Bolivia, Ecuador and Peru in the Andean region, regarding legislation that incorporates a gender focus in consultation processes in extractive industries is one of the first steps in a proposal from civil society for more inclusive frameworks.

Given this, the general objective of this assessment is to explore how the processes and mechanisms for citizen consultation of extractive projects being implemented in Bolivia, Ecuador and Peru can contribute to identifying and properly addressing gender inequalities.

The information contained in this document stems from a review and analysis of a specialized bibliography on the issue in each of the countries and information provided through interviews with key stakeholders in the selected cases.

Analysis of legal norms regarding citizen participation and extractive industries in the three countries led to the following conclusions:

- 1. THE CONSTITUTION AS A GUARANTEE OF THE RIGHT TO PARTICIPATION.** The constitutional framework is extremely important to guarantee citizens the right to participation, because it reduces the possibility of altering rights that have already been gained. Nevertheless, this is not enough and this right runs the risk of becoming only window dressing. It is necessary to pass legislation and regulations to guarantee effective exercise of this right.

The new constitutions in Bolivia and Ecuador have consecrated the right to gender equality and citizen participation. Nevertheless, both countries still need to pass legislation implementing the constitutional articles in question for these rights to become effective.

In the Peruvian case, there are no specific constitutional rights regarding the participation with respect to extractive industries. A broad, if still insufficient, legislative framework has been drafted. This is due to the recommendations of multilateral development agencies and pressure from civil society.

- 2. ROLE OF THE STATE REGARDING EXTRACTIVE INDUSTRIES.** In countries that are open to greater private investment in extractive industries, the state has limited its participation in the productive area and centered its role on monitoring extractive industries. This is the case in Peru. On the other hand, when the state takes on a strong role participating in the production of extractive industries, as is the case in Ecuador and Bolivia, there is little incentive for monitoring and fostering adequate processes for citizen participation and oversight. There is a great deal of tension between the state's business role as player in the extractive sector and its role as guarantor of rights. In this last case, the state uses the argument that it is the representative of the interests of all citizens.

3. **REGULATION CONCERNING CITIZEN PARTICIPATION AND CONSULTATION IN EXTRACTIVE INDUSTRIES.** The need to prepare procedures and guarantee regulation of the rights to participation and consultation responds to three central issues: (i) Strategy for reducing social conflicts; (ii) Pressure from transnational companies, international organizations and multilateral banks to respond to international standards; and (iii) Demands and advocacy from indigenous and peasant organizations. In this sense, in some cases business practices are more demanding than those required by the state.
4. **POLICIES FOR GENDER EQUALITY AND ORGANIZATIONAL STRUCTURE.** The roles, resources and authority afforded to state agencies linked to the promotion and oversight of women's rights are an element to evaluate the scope of the actions of these agencies and their capacity to implement and monitor a cross-cutting focus on gender in public policies, particularly regarding extractive industries. Peru has created a specific ministry to foster the rights of women. This is not the case in Ecuador and Bolivia.
5. **CITIZEN PARTICIPATION AND CONSULTATION AND EXTRACTIVE INDUSTRIES.** The three countries have made significant progress regarding the right to political participation (accountability, recall and legislative initiatives, among others). With respect to extractive industries, Bolivia and Ecuador include prior consultation as a constitutional right. This is not the case in Peru. However, in none of these cases does prior consultation include veto power.
6. **CENTRALIZATION OF AUTHORITY AND FUNCTIONS REGARDING EXTRACTIVE INDUSTRIES.** The authority of sub-national governments in the three countries is lacking when it comes to extractive industries. The central government has decision-making power over extractive sectors, which are considered strategic. In Peru, sub-national governments only have authority over small-scale mining.
7. **ENVIRONMENTAL REGULATION.** There are much broader processes for citizen participation in this area, which opens the possibility for important opportunities for citizens to be involved, specifically organized women's groups.
8. **PARTICIPATION OF WOMEN IN THE LEGISLATIVE FRAMEWORK OF EXTRACTIVE INDUSTRIES.** Despite constitutional declarations proclaiming gender equality in Bolivia and Ecuador, both countries lack legislative and normative development in this area. Peru, which does not specify this in the constitution, has passed legislation and adopted regulations and procedures that promote and regulate citizen participation in all stages of extractive projects. In the specific case of women, the three countries mention guarantees for non-discrimination, but they do not have policies for inclusion and promotion that are based on gender equity or have a gender focus.

With respect to specific legislation and norms for the extractive sector, environmental impact studies – the central instruments for monitoring potential environmental and social impacts of extractive projects – do not have a gender focus or tools for gender evaluation in any of the stages in any country in the region.

In this way, it is possible to state that the interests of women and the impacts extractive industries have on them are not properly considered by regulatory agencies in the three countries under review.

This normative vacuum is produced in situations where women, particularly women in rural zones where extractive industries operate, face socio-economic, cultural, educational and linguistic conditions less than favorable than those of men when it comes to exercising their rights in processes that affect their lives and the lives of their families.

It is important to stress, however, that while normative frameworks do not guarantee the participation of women and the possibility of them making their voices heard, this does not mean that organized women have not had a role in specific processes and spaces, which can be seen in the cases analyzed below.

The following conclusions were drawn from the review of the cases selected in the three countries:

9. **ACCESS TO PROPERTY ON THE PART OF WOMEN.** The existing literature and review of cases, especially the Tintaya case, indicate that women have less access to holding property titles in indigenous and peasant communities. This seriously limits their capacity to have a voice and vote in community assemblies and other in forms of collective decision-making. This unequal access to land is due in large measure to existing power relations that continue to follow gender lines within peasant communities and among indigenous peoples.
10. **DIFFERENTIATED MODELS OF LOCAL DEVELOPMENT.** The cases reviewed demonstrate social and economic development models that do not always coincide with those of the state. The Sarayaku case reveals a development model that is opposed to oil extraction. The Charagua Norte case shows an option adopted by Guaraní people to demand that companies and the state comply with social and environmental obligations required by law. The Tintaya case presents a model of negotiations involving local residents to obtain better conditions and benefits from a mining project.
11. **DIFFERENTIATED LOCAL ORGANIZATION.** The Charagua Norte case reflects a process of political maturity that has strengthened Guaraní identity and built a unified front – the communities of the Assembly of Guaraní People of Charagua Norte and the National Assembly of Guaraní People (APG)– that includes women’s organizations. The consultation process of the APG Charagua Norte (June 2010) has contributed to strengthening the indigenous organization internally and as a political stakeholder. Since 2008, the APG Charagua Norte has been strengthening its capacities for socio-environmental monitoring of oil/gas activities. In addition, an indigenous group has been able to link together around different territories. The Sarayaku case involves Kichwa indigenous people located on one territory who created a governing council that included women and young people. The Tintaya case involves a dialogue roundtable that was not based on ethnic identity but territorial principles – communities located within the influence of a mining Project – and citizenship. In this case, women were able to create a space, although limited, due more to pressure from external stakeholders, including Oxfam Australia’s ombudsman for extractive industries, than internal processes.
12. **POLITICAL NETWORKS AND LEADERSHIP.** The cases reveal differences in the process of building political networks and leadership. In the Sarayaku case, a relatively small indigenous group confronted the state and an oil company by forging international alliances. For this to happen, the capacities demanded of leaders are knowledge of English and links to much broader networks. The case of Charagua Norte is similar, with fluid knowledge of Spanish and personal networks indispensable for someone to become a leader. The APG Charagua Norte over the past few years has developed important links with lowland and highland indigenous organizations, which has strengthened its capacity for developing proposals and mediating with state and private stakeholders. In the case of Tintaya, the requirements were less explicit but equally valid. As a result, women in the three cases have had limited access to the political capacities needed for leadership. Given this, one of the demands of women in Tintaya has been training to improve their leadership and oratory skills.
13. **DIFFERENTIATED SPACES FOR DIALOGUE.** There are different experiences involving the construction of spaces for dialogue between local populations, extractive companies and the

state. These spaces do not exist in the Sarayaku case. In the Charagua Norte case, Guaraní residents do not reject the spaces and opportunities for participation opened by the state, such as the process for creating autonomies, and seek to establish indigenous socio-environmental monitoring and the right to consultation in dialogue with the state. The Tintaya case reflects a greater institutionalization of dialogue mechanisms that were forged directly between the population and the company. This was facilitated by NGOs without the participation of the state. However, recent changes have exposed limitations to the established dialogue roundtable and the context created by the expansion of the Antapaccay project.

- 14. INVISIBILITY OF WOMEN.** On a negative level, the three cases show the lack of attention in existing literature to the interests and specific actions of women. The few studies that exist overlook the demands and processes followed by women, and create fictional and homogenous collective image.

While geared primarily toward modifying consultation processes, the recommendations from this assessment establish guidelines so that different stakeholders can incorporate appropriate practices that guarantee the participation of better informed women in the complete project cycle of extractive industries.

**For the state:**

- *Incorporation of a gender focus in environmental impact studies (EIS).*

The states, through regulatory agencies, must demand a gender focus in the EISs. Recent studies show that the impact of extractive projects affect men and women in different ways. In order to safeguard in an effective way the rights of women and men, as well as properly address these impacts, the state needs to require the incorporation of indicators broken down by gender in the different social aspects that comprise the EISs in the exploratory, production and post-production phases. These aspects include access to and tenure of land and other assets, income, collective decision making, distribution of political positions, sexual division of labor, work load, educational levels, literacy, alcohol consumption, prostitution, and domestic violence, etc.

State agencies in charge of guaranteeing equal rights (the Ministry of Women's Issues and Social Development in Peru) can become the stakeholders in charge of transmitting capacities and tools so that government agencies in the mining and oil/gas sectors incorporate a gender focus and protocols.

It is true that demanding from above the incorporation of standards, indicators, guidelines and protocols for gender equality is not enough. There is the danger that these norms become simple checklists for companies to follow. It is also necessary, as a result, to carry out advocacy work with the companies so that they voluntarily adopt internal policies and procedures with a gender focus.

- *Access to property by women*

The review of the case studies and existing literature suggests that a crucial aspect in the exclusion of women from collective decision making is due to restrictions in access to property titles.

In many cases, being a property owner is a requirement for being an active member of a community or indigenous assembly with voice and vote. With exceptions like being a widow, traditional forms generally exclude women from owning land. As a result, the rights of women in family and collective decisions regarding participatory processes and negotiations in the different phases of extractive projects are seriously restricted.

National legislation and norms should ensure equal access to property, even when this collides with traditional collective systems that mask gender inequalities.

This recommendation is likely to be controversial and create doubts around the existence of a conflict between individual rights (demanded by women) and collective rights (demanded by indigenous and peasant communities). This is just one more reason that makes debate necessary.

One aspect intimately related to this is the need for the state to guarantee that all people, especially women, possess national identification documents. This is not only a requirement for all processes formalizing land ownership, but a demand of the majority of work programs implemented by extractive companies.

- *Guarantee the active participation of women in collective decision-making mechanisms*

The state, through sectoral and decentralized levels, must foster and ensure the active participation of women in processes links to extractive industries. This active participation of women must occur in the spaces for citizen participation demanded by law in each phase of extractive projects (for example, informational workshops and public hearings), in voluntary mechanisms (participatory environmental monitoring) and direct negotiations between the population and company (agreements on distribution of benefits or creation of temporary work programs, for example).

The decisions adopted in these spaces directly impact the lives of women and are reflected in changes in habitat, forms of production, families, education of their children, etc. For this reason, they have the right to be informed about impacts and agreements – positive and negative – that can affect their lives so they can freely decide.

- *Guarantee citizen rights regardless of ethnic or class considerations*

Fostering and ensuring the free, active and informed participation of men and women in processes initiated by extractive projects is a right that must be enjoyed by all the citizens of the state

It is obvious that some populations, especially indigenous and peasant groups, have experienced and continue to experience restricted exercise of their rights. This is why it is necessary in many cases to design and implement mechanisms for positive discrimination. Nevertheless, the right to participate in processes and decisions regarding extractive industries cannot be restricted to specific groups, but must explicitly include all citizens regardless of ethnic, class, gender, religious or other social considerations.

- *Strengthen the state's capacities regarding gender focus*

Together with the design and implementation of policies and norms, the state must foster the capacities of its organizations, authorities and personnel working on the promotion and regulation of extractive industries to apply a gender focus. The development of capacities can include issues such as preparing EISs with indicators broken down by gender, differentiated impacts based on gender of the impacts of extractive projects, and experiences promoting the participation of women in extractive projects, among others.

### **For private companies**

- *Explicit recognition of differentiated impacts based on gender*

Private companies should recognize that their impacts, both positive and negative, have an influence on heterogeneous populations and, as such, are going to produce differentiated results. The divisions based on gender are going to produce one of these differentiated results, with the activities of extractive industries impacting in an unequal way along these divisions and in many cases broadening existing gaps.

The actions of extractive projects are not gender neutral. They produce changes in the lives of men and women, in families, in inter-family dynamics, and productive activities, among others. When companies are aware of this they can think it terms of differentiated actions. As such, promoting appropriate participation of women from local communities in the project cycle implies designing differentiated strategies that recognize specific interests and demands, such as schedules, meeting places, meeting formats and language, among other points.

- *Design and implementation of corporate gender policies*

Recognition of differentiated impacts in extractive operations should be reflected in specific policies, standards, procedures and programs that extractive companies should design and implement with the explicit objective of mitigating negative impacts and broadening positive impacts for women, as well as other vulnerable groups, such as children and the elderly.

These corporation policies can result in baseline studies, environmental impact studies, risk evaluations, development plans and other tools that take into account the situation of women and do not see the community or location as a simple unit.

- *Creation of value through management of diversity*

The incorporation of a gender focus and awareness in the cycle of operations of extractive companies should not only be understood as some abstract issue of justice. The incorporation of policies and procedures sensitive to gender divisions will help create better social contexts, allow for the creation of cooperative alliances with important groups in society and foster, in a sustainable way, the positive reputation of companies.

In this way, the corporate social responsibility indices and rankings of companies should not only reflect management of gender diversity – among other forms of diversity – within the company but also in its social context throughout the cycle of production, as well as incorporating its different suppliers and contract companies.

In summary, the incorporation of a gender focus in an extractive project's cycle of operations helps with the construction of long-term relations with local populations and consciously helps avoid undesired impacts and conflicts within the area of operations. Both objectives will be reflected in improved social and financial performance of projects and a better bottom line for the company.

- *Gender awareness within the company*

While necessary, policies and tools with a gender focus are not enough to guarantee proper management of the impact of external factors of a company's operations on women and men. It is fundamental for the company to systematically and continuously raise awareness of the importance of a gender focus in all the areas and among all its employees.

This implies the creation of gender teams or standard bearers with sufficient capacities and competencies so that the opinions can be reflected in a company's different decisions and process, and not only those referring to community relations.

In addition, and this is particularly important in extractive industries, it is necessary to foster changes in a culture that remains exceedingly male oriented. Encouraging the incorporation, permanence and promotion of women employees in all areas of a company, and not only in administrative areas, is a step that needs to be explored. This means promoting training for professional women in universities – through direct scholarships, for example – creation and expansion of codes of conduct that include gender issues, and designing and implementing facilities and camps that are women-friendly, among other things.



## For civil society

- *Advocacy in the preparation of public policies for gender*

An essential part of the work of civil society is fostering changes in public policies to bring about the incorporation of a gender focus in citizen participation in extractive industries.

This advocacy work should be done with different stakeholders: i) The state, its sectoral agencies and sub-national governments; ii) Multilateral development banks so that they prepare and adopt policies, standards and guidelines for gender inclusion in their investment portfolios for extractive industries; iii) Extractive companies so that they design and apply strategies that recognize gender in their operation cycles; and iv) grassroots organizations, including involving men, women or mixed, to identify in a shared way the differentiated impacts experienced by men and women, and to collaborate on the construction of more sustainable and equitable development mechanisms.

The actions of civil society cannot be restricted to extractive industries. The constitutional and legal framework in the three Andean countries allow for preparation of strategies for action and promotion of gender equality and citizen participation from much broader contexts and with other stakeholders (ombudsman's offices, constitutional tribunals, human rights organizations, etc.).

- *Training for developing gender awareness and tools*

Another central task that can and should be taken on by civil society is providing tools, methodologies and experiences for gender inclusion.

Through collaborative relations with state agencies, extractive companies and grassroots organizations, development organizations and research and training centers can contribute with long accumulated experience regarding gender differentiation on which societies, especially rural societies, are built. In addition, they should analyze in a joint way the impacts that specific extractive projects are having on men and women and the best way to stimulate effective participation by women to incorporate their interests and demands.

- *Oversight of women's inclusion in citizen participation processes in extractive industries*

Finally, but not less important, is the work civil society can do to oversee promotion of active participation of women in citizen participation processes involving extractive industries. This implies monitoring compliance with national and international policies, standards and norms; verifying free, active and informed consent of women in citizen participation processes involving extractive industries whether promoted by the state, companies or local population; guaranteeing the inclusion of women's voices in the agreements reached between companies and local populations; and propose the inclusion of gender components in indicators for corporate responsibility and project performance, among other actions.



# Chapter 1.

## Legal framework: Gender justice and consultation processes in extractive industries in Bolivia, Ecuador and Peru<sup>4</sup>

This chapter analyzes the legal and political framework in which the economic and social process of extractive industries unfold in Bolivia, Ecuador and Peru. This will clarify the position of women and their organizations in the three countries in the study. This analysis is the foundation for planning the implementation of measures that create favorable conditions for women's participation, as well as programs that foster gender equity in the extractive sector.

### 1.1. Political and constitutional context

#### State structure and economic system

The past two decades have seen substantial changes in the Andean countries included in the study, redefining the role of the state regarding the exploitation and use of natural resources and the role of citizens in this relationship. These changes have been expressed in the current political constitutions of Bolivia, Ecuador and Peru.

The Bolivian state recuperated control over gas and oil production at the wellhead, exercising control through a state company. Nevertheless, this centralization and nationalization process has been marked by increasing conflicts with diverse stakeholders in different territories that would control part of the economic benefits obtained.

The process in Ecuador is just as complex. After more than a decade of successive political crises the country approved a new political constitution that represents a series of important changes at the political and economic levels to bring about a more active role on the part of the state in controlling natural resources, primarily oil. It is important to mention that the new constitution places special emphasis on gender equality and citizen participation and oversight processes, and gives the state the dominant role in economic management.

The constitutional change in Peru in the 1990s and the continuity of economic policies has strengthened an economic model based on attracting private investment with little state presence in the direct exploitation of minerals, gas and oil. Since the 1990s, Peru has seen increased private investment and production in its extractive sector. This increase, however, has been accompanied by rising social conflicts.

The following chart summarizes and compares the principal features of state organization and constitutional institutions directly linked to the central issue of this assessment as contained in each country's respective constitution:

**CHART 1:  
PRINCIPAL CHARACTERISTICS OF THE STATE**

Issues	Bolivia	Ecuador	Peru
<b>Definition of the state</b>	<b>Plurinational state.</b> Defined as a system that combines representative, participatory, direct and communitarian forms of democracy.	<b>Constitutional state of rights and social justice, democratic, sovereign, independent, united, intercultural, plurinational and lay.</b> It is organized as a republic and governed in a decentralized manner.	<b>Democratic, social, independent and sovereign democratic republic with an indivisible state.</b> A united, representative and decentralized government organized around a separation of powers.
<b>Territorial organization (system of autonomies)</b>	It has three levels of sub-national government with similar constitutional rank: departmental, municipal and indigenous.	It recognizes four common sub-national levels (regional, communal, canton and rural parishes) and three special regimens (autonomous metropolitan areas, indigenous territories and the galápagos province).	It recognizes three levels of sub-national government: regions, provinces and districts. It does not recognize indigenous communities as government, but does recognize them as having legal status, organizational autonomy and with free use over territories.
<b>Economic system</b>	Plural economic system. Recognizes, respects and protects private initiative, but with a marked social emphasis and priority state and community presence.	Recognizes diverse forms of production and property, promotes those that <b>“ensure good life”</b> and demands that they carry out a social and environmental function.	Focused on a social market economy. Recognizes economic pluralism. <b>The state only intervenes entrepreneurially</b> in exceptional cases and in a subsidiary way if allowed by law.
<b>Treatment of natural resources</b>	The bolivian people as owners. The state is the administrator of resources, with the possibility of taking part in the productive chain <sup>9</sup> and with the possibility of exercising direct control over strategic sectors. <sup>10</sup>  The state controls and directs exploration, exploitation, industrialization, transportation and commercialization of strategic natural resources through public, cooperative or communitarian entities.	Belong to the state's inalienable and imprescriptible heritage <b>they are strategic resources.</b>  The state has exclusive decision and control over resources. It accepts private participation, but with majority control by the state.  It can delegate exploitation of resources to private companies on exceptional basis. <sup>11</sup>	They are part of the nation's heritage and the state is sovereign regarding their use. The organic law establishes conditions for the use of resources and they are granted to private enterprises through concessions.

<sup>9</sup> Article 309 of the Bolivian Constitution.

<sup>10</sup> Article 316.3 of the Bolivian Constitution.

<sup>11</sup> Article 316 of the Ecuadorian Constitution.

Issues	Bolivia	Ecuador	Peru
<b>Benefits obtained through use of natural resources</b>	<p>Original indigenous peasants peoples will be the primary beneficiaries in territories where resources are located.</p> <p>In the case of oil/gas resources, the department where they are will receive an 11 percent royalty from production.</p> <p>Original peoples and nations will have exclusive right to the economic exploration of renewable natural resources located on their territories.<sup>12</sup></p>	<p>Recognizes the right of indigenous peoples to participate in the benefits of non-renewable resources exploited on their territories for commercialization. There is also recognition of participation of sub-national governments in revenue earned.<sup>13</sup></p>	<p>Municipalities and regions where natural resources are exploited receive a percentage of taxes and royalties paid to the central government (system known as the canon).<sup>14</sup></p>
<b>Citizen consultation and extractive industries</b>	<p>Establishes free, prior and informed consent for populations affected by exploitation of natural resources in determined areas and guarantees citizen participation in environmental management.</p> <p>When dealing with original indigenous peasant peoples or nations the consultation will respect their norms and procedures.<sup>15</sup></p>	<p>Explicit recognition of prior consultation only at communal, community, indigenous peoples and nationalities and prohibits all extractive activities on territories of peoples living in voluntary isolation.<sup>16</sup></p>	<p>There is no direct constitutional recognition.</p>
<b>Constitutional level of guarantees of gender equity</b>	<p>There is an explicit reference to gender equality and the constitution was drafted taking into account a focus on gender.</p> <p>Diverse constitutional articles recognize the right to gender equality in political participation, parties, candidacies, employment and access to property.</p>	<p>There is explicit recognition of a gender focus and special state organization for compliance with participation of representatives of civil society.</p> <p>Explicit declaration of right rights and opportunities for women's access to property.</p> <p>Fosters specific policies for eradication inequality and discrimination against women in access to factors of production.</p>	<p>In addition to generic declarations of the rights of citizens not to be discriminated against on the basis of sex, also recognizes the right to participation in regional and municipal councils.<sup>17</sup></p>

<sup>12</sup> Article 403.I of the Bolivian Constitution.

<sup>13</sup> Articles 56 and 274 of the Ecuadorian Constitution.

<sup>14</sup> Articles 77, 193, and 196 of the Peruvian Constitution.

<sup>15</sup> Article 352 of the Bolivian Constitution.

<sup>16</sup> Article 56 of the Ecuadorian Constitution, expresses in a) Respect for property over lands: (i) conserve imprescriptibility of property; (ii) participate in use, lease, administration and conservation of renewable natural resources found on territories through free and informed prior consultation for plans and programs for prospecting, exploitation and commercialization of non-renewable resources, participate in the benefits generated by these projects and receive compensation for damages inflicted; (iii) do not be displaced from ancestral lands; (iv) all extractive activity is void on territories of people living in voluntary isolation; and b) Respect for participation: (i) participate through representatives in official organisms established by law; (ii) be consulted before the passage of legislation that could affect any of their collective rights.

<sup>17</sup> Article 193 of the Peruvian Constitution.

An essential point is that the Peruvian state, unlike the Ecuadorian and Bolivian states, does not recognize peasant or indigenous communities as a level of government, but does recognize their legal existence, organizational autonomy and free use of lands in an unrestricted manner. Adhering to its liberal doctrine, the Peruvian state has a minimal level of participation in the exploitation of resources and does not offer any special constitutional regulation regarding mining or oil/gas.

### Participation and citizen consultation

The weakening of the system of political parties in these countries, combined with a greater presence of traditionally excluded sectors in the formal institutions and spaces for political representation, has led to the promotion of direct citizen participation. This has been enshrined in the constitutions passed in Bolivia and Ecuador, and in the laws passed in Peru within the framework of the decentralization process.

In the case of Bolivia, citizen participation has been strengthened, primarily at the municipal level. The law allows citizens and their organizations<sup>18</sup> to present candidates in the electoral processes on the same footing as political parties.<sup>19</sup> In addition, the constitution guarantees a series of mechanisms for participation, including: (i) proposing **legislative initiatives** and convoking a process for constitutional reform; (ii) **recalling** elected authorities; and (iii) **filing observations to nominees for public positions**.

With respect to extractive industries, the constitution recognizes the rights to participation and citizen oversight. Explicit rights include: (i) Participation in **environmental management**; (ii) social control; and (iii) **Information and prior consultation** on decisions that could affect the environment.<sup>20</sup> It is important to mention, however, that the Bolivian Constitution does not recognize the right to veto for indigenous organizations regarding exploration and use of natural resources on their territories.<sup>21</sup> As a result, the national state has the final say on issues involving oil/gas exploration and production.

Ecuador, in addition to the typical political rights of representative democracies, has a model with a high level of participation. This is seen through different norms, including: (i) Establishment of the **public function of transparency and social control**<sup>22</sup> regarding state entities and agencies; (ii) Creation of the Citizen Participation and Social Control Council<sup>23</sup> that promotes the exercise of the rights of citizen participation and social control mechanisms; and (iii) Development of components of direct democracy such as **citizen legislative initiative, grassroots consultation, and recall of elected authorities**,<sup>24</sup> among others.

Regarding extractive industries, unlike other sectors there are few constitutional references to citizen participation. There is a generic reference to the participation of indigenous peoples, nationalities and communities in the plans and programs for prospecting, production and

<sup>18</sup> Citizen and indigenous groups.

<sup>19</sup> Article 209 of the Bolivian Constitution.

<sup>20</sup> Articles 241II, 343 and 345, respectively, of the Bolivian Constitution.

<sup>21</sup> The Bolivian state, having ratified ILO Convention 169 and the U.N. Declaration on the Rights of Indigenous Peoples, has granted indigenous peoples supra-legal hierarchy, according to the 2009 constitution. While both instruments require prior consent and are aimed at reaching agreements and consent, this is not interpreted as the right to veto. Resolutions handed down by the Bolivian Constitutional Tribunal have established legal precedent on this issue. Along the same lines, the Hydrocarbon Law (Law 3058) states in Article 116, referring to state responsibility:

The resolutions and consensus registered by the competent authorities as a result of consultation process in its two phases are valid for hydrocarbon activities of the project that was subject to the consultation. In the case that the consultation, as recognized in Article 115, is negative, the state will promote a conciliatory process in view of the state's best interests.

<sup>22</sup> Article 204.

<sup>23</sup> Article 207.

<sup>24</sup> Article 103 and subsequent articles.

commercialization of non-renewable resources that are found on their lands and could affect them,<sup>25</sup> but there is no explicit reference to the rights to direct participation linked to extractive industries.

With respect to **prior consultation** established for indigenous organizations, it is important to highlight the constitution **does not include the possibility of veto** on the part of citizens in general or indigenous communities in particular. It states that the final decision will be made by the authority indicated by law.<sup>26</sup>

In the case of Peru, citizen participation in the constitution refers primarily to political representation and participation, above all at the regional and local levels. The constitution recognizes the right to citizen participation in (i) naming and recalling judges; (ii) Local development and preparation of municipal and regional budgets; (iii) Institutions for direct democracy, such as accountability, removing or recalling authorities, legislative initiatives and referendums. In addition, citizen participation is promoted by the legal framework that regulates the political and economic decentralization process.

The Peruvian Constitution does not define the rights to citizen participation, particularly in the case of extractive industries. Nevertheless, given that Peru has ratified ILO Convention 169,<sup>27</sup> the content of the convention is part of the country's national legal structure and must be applied. This norm includes free, prior and informed consent of indigenous peoples and the duty of the state to achieve consent regarding decisions that affect indigenous peoples.<sup>28</sup> Similar to its Andean neighbors, the Peruvian state does not recognize as binding prior consultation or permit veto power.

### State authority and extractive industries

Regarding the authority of government agencies to regulate, manage and supervise the activities of extractive industries, the Bolivian Constitution has established a structure that assigns sole, exclusive, shared and concurrent authority.<sup>29</sup> In the case of oil and gas, the authority is **exclusive to the central government**, and the legislative, normal and executive function is centralized and cannot be delegated or transferred to another autonomous territorial entity.<sup>30</sup>

The constitution recognizes that departmental and municipal governments have the right to participate with the national entities in the sector in the management of companies that industrialize, distribute and sell oil/gas in their territory. They do not have authority regarding regulation.<sup>31</sup> Curiously, in the case of original indigenous peasant autonomies there is no recognition of authority to participate in the oil/gas business, but the constitution does recognize **exclusive authority in control and socio-environmental monitoring of hydrocarbon and mining activities undertaken in their jurisdiction, in addition to participating, preparing and implementing mechanisms for free and informed prior consent relative to the application of legislative, executive and administrative measures that affect them.**<sup>32</sup>

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<sup>25</sup> Article 57.7 mentions free, prior and informed consent within a reasonable period; the benefits reported and compensation for damage they cause.

<sup>26</sup> Article 398.

<sup>27</sup> Approved by Legislative Resolution 26253, December 2, 1993, and ratified on February 2, 1994.

<sup>28</sup> A recent bill to regulate this right received special attention in Congress which, after a long debate, approved legislation that did not meet all expectations but improved the current situation. That bill was vetoed by the president and returned to Congress with recommendations that are a setback to the original bill that was passed.

<sup>29</sup> Defined as: (i) Sole. Cannot be transferred or delegated; (ii) Exclusive. Only can be exercised by one entity, but the function, regulation and implementation can be transferred; (iii) Shared. An entity legislates and another regulates and implements; and (iv) Concurrent. The legislation corresponds to the Plurinational Legislative Assembly and a territorial autonomy can also legislate the development, regulation and implementation. An entity exercises some functions and another other functions involving the same level of authority.

<sup>30</sup> Article 298.18.

<sup>31</sup> Articles 300.33 and 302.43.

<sup>32</sup> Articles 304.II.9 and 304.II.21, respectively.

With respect to mining activities, the Bolivian Constitution centralizes solely for the executive the “substantive and attributive codification,” but allows for exclusive authority regarding strategic natural resources, including minerals. In other words, ***the functions for regulation and implementation on mining issues can be transferred to territorial autonomies.***<sup>33</sup>

While the Bolivian Constitution recognizes concurrent authorities at the national and sub-national levels to ***protect, conserve and contribute to environmental protection***, it should be noted that the ***concurrent authority for socio-environmental control and monitoring*** of oil/gas and mining activities is recognized only in terms of indigenous autonomies and not at other sub-national government levels.<sup>34</sup>

Article 299, for example, states that there is concurrent authority between the central government and autonomous territories to protect, conserve and contribute to environmental protection and wildlife, maintaining ecological equilibrium and control of environmental contamination.

This new scenario is an important improvement in the recognition of the rights of indigenous populations. Nevertheless, given that it has not been extended to all citizens it could indicate that the legislation is favoring the rights of indigenous peoples over citizens in general.

In the case of Ecuador, unlike in other sectors, there is little mention of participation regarding exploitation of non-renewable resources or the activities of extractive industries. However, the legislation reviewed does mention participation in revenue for autonomous governments<sup>35</sup> and the participation of indigenous peoples, nationalities and communities in prospecting, production and commercialization of non-renewable resources found on their lands and that could affect them.<sup>36</sup> There are no constitutional norms that expressly state the right to participation directly linked to extractive industries.

In the case of Ecuador, the constitution provides exclusive authority to the central government regarding:

- Natural protected areas and natural resources (Article 7);
- Energy resources; minerals, hydrocarbons, water, biodiversity and forestry resources (Article 11);
- Control and administration of national public companies (Article 12);
- Elimination of the prohibition of extractive industries in protected areas and intangible zone only at the petition of the president of the republic and after prior declaration of national interest by the National Assembly (Article 407).

The law that defines distribution and shared authorities should have been approved 360 days after the new constitution came into force. The Organic Code for Territorial Organization, Autonomy and Decentralization (COOTAD) was approved on Aug. 11 2010, establishing the national system of authority for each autonomous government. Nevertheless, the legislation had not been signed by the president when this assessment was completed.

In Peru, state authority over economic activities within the free-market economic framework is limited to regulation, supervision and oversight of activities undertaken by the private sector. In this context, the levels of decentralization regarding extractive industries are restricted to the regional level in a very general way and to promotion and regulation of services. A special law has been promised to regulate the scope of the decentralization.

<sup>33</sup> Article 298.II.4.

<sup>34</sup> Article 302.III.9

<sup>35</sup> Article 274.

<sup>36</sup> Art. 57.7. mentions free, prior and informed consent within a reasonable period; benefits are reported and compensation paid for damaged inflicted.



The decentralization law indicates shared authority between the central government and regional governments in terms of promoting, managing and regulating the economic activities of diverse sectors, among them energy, hydrocarbons and mining, in addition to the environment.” This formula is also established in the Organic Law of Regional Governments.

Today, the Ministry of Energy and Mines shares the following authority with regional energy and mines offices, including citizen participation: (i) Supervise the activities of small-scale and individual mining and exploration of mineral resources in the region in accordance with the law; (ii) Award concessions for small-scale and individual mining with a regional scope; and (iii) Approve and supervise Environmental Management and Mitigation Programs (PAMAs), implementing corrective actions and imposing sanctions when required.

### **Environmental regulations**

The constitutional treatment of environmental issues is the basis for providing greater possibilities for participation in extractive industries for citizens and organizations, both indigenous and non-indigenous.

The Bolivian Constitution only establishes sole authority for the central government regarding the environment and biodiversity at the level of general policies, and as a block when addressing the issue of hydrocarbons.<sup>37</sup> The constitution provides opportunities in all other areas of environmental management for participatory processes tangentially linked to extractive industries at sub-national levels.

The system for strategic natural resources, biodiversity, etc., is the exclusive authority of the central government and, as such, the functions of regulation and implementation can be delegated.<sup>38</sup> The constitution establishes as concurrent authority and, as such the participation of autonomies, in different important environmental aspects.<sup>39</sup> The territorial autonomies directly involved with this level of authority are departments, municipalities and original indigenous-peasant autonomies.<sup>40</sup> This definition of authority is important when it comes to evaluating the possibility of activating mechanisms for citizen participation and control at the sub-national level.

In Ecuador, unlike the centralization of the main aspects related to extractive industries, there is an explicit recognition of citizen rights to exercise participation on environmental issues. The constitution mentions that the state must guarantee the active and permanent participation of the individuals, communities, peoples and nationalities affected in the planning, implementation and control of all activities that generate environmental impacts.<sup>41</sup> As such, all state decisions or authorizations that can affect the environment must be consulted with the community, which will be properly and previously informed. In addition, provincial governments<sup>42</sup> and cantons are given environmental authority over their territories.

In Peru, the framework of the Environment Ministry (MINAM) regulates forms of citizen participation on environmental issues, including oversight. However, there is no mention of mechanisms or specific guidelines to foster greater participation of groups that face the greatest difficulties to express their opinions: indigenous groups and women, among others. It is important to note that

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<sup>37</sup> Article. 298.I 20 and 18, respectively.

<sup>38</sup> Article 299.II.6

<sup>39</sup> Article 299.II. These aspects include: (i) Protect, conserve and contribute to environmental and wildlife protection, maintaining ecological equilibrium and control of environmental contamination; (ii) conservation of soil, forestry resources and forests; (iii) industrial and toxic waste; and (iv) protection of river basins.

<sup>40</sup> Article 300.I.5

<sup>41</sup> Article 395.3 subsequent articles.

<sup>42</sup> Article 263.4 subsequent articles.

the existing norms for citizen participation in the oil/gas<sup>43</sup> and mining<sup>44</sup> subsectors have made been improved regarding specific guidelines for both groups.

The following comparative chart outlines environmental and citizen participation legislation in each country.

**CHART 1:  
PRINCIPAL CHARACTERISTICS OF THE STATE**

Bolivia	Ecuador	Peru
<ul style="list-style-type: none"> <li>• <b>Environmental law.</b><sup>45</sup> Regarding citizen participation, it recognizes the following rights: (i) Actively participate in environmental management in an individual and collective manner; (ii) Be informed correctly, opportunistly, and sufficiently on issues related to the environment; (iii) Files petitions or initiatives; and (iv) exercise civil action for compensation for any harm inflicted on the environment.</li> <li>• <b>Environmental management regulations.</b> Lists a series of citizen's rights and important state responsibilities for participation actions; Right to information, petition, initiative, public hearings,<sup>46</sup> etc.</li> <li>• <b>Environmental prevention and control regulations.</b> Lists the state responsibilities for environmental evaluation and control.<sup>47</sup> And participation?</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Environmental management law.</b> Principal environmental norm that establishes environmental principles and directives. Determines the obligations, responsibilities and levels of public and private participation in environmental management, and establishes maximum permissible limits, controls and sanctions. Takes into account citizen participation through obligatory representation of civil society and productive sector son the National Sustainable Development Council. The mechanisms considered include: consultation, public hearings, initiatives, proposals and other form of association between the public and private sectors.</li> <li>• Contracts that do not follow the consultation process will be void, which is adopted from the previous constitution.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Regulation for transparency, access to public information on the environment and citizen participation and consultation on environmental issues.</b><sup>48</sup> The Environment Ministry (MINAM) is the national authority in charge of the National Environmental Management System. The regulation establishes norms for access to public information and regulates processes for citizen participation on issues with environmental content.</li> <li>• <b>Duties.</b> The regulations explicitly outline the responsibility that individuals or companies have to participate in good faith and transparently, without disrupting the normal development of any participatory process. <b>Consultation mechanisms.</b> Defines public hearings,<sup>49</sup> participatory workshops, opinion surveys, suggestion boxes, regional and local environmental commissions, technical groups and management committees.</li> <li>• <b>Participation in environmental oversight.</b> The mechanisms include citizen oversight committees, monitoring indicators for compliance with environmental norms, denouncing violations of the norm, and publication of bills, among others.</li> </ul>

## 1.2. Citizen participation in extractive industries

This section analyzes the levels and methods of citizen participation in legislation regarding extractive industries in each country in the study.

<sup>43</sup> While the regulations call for explicit attention to indigenous groups, the same thing is not true for women. However, the Guidelines for Community Relations, which are obligatory for the oil/gas sector, mention actions to promote participation of these groups, which are labeled as special.

<sup>44</sup> The regulation for this subsector mentions non-discrimination on the basis of gender and that this must be taken into account in the design of mechanisms for citizen participation.

<sup>45</sup> Law 1333, published in March 1992.

<sup>46</sup> Also defines mechanisms for direct regulation: Environmental record, environmental impact study, declaration of environmental impact, environmental manifesto, declaration of environmental mitigation and environmental audits.

<sup>47</sup> Indicates the elements that must be included in environmental impact studies (EIS), recognizing the right to access to information, obligation to hold a public consultation in the phase identifying impacts and during the public hearing process on the EIS, present a petition or initiative for public hearing and present written accusations, among other things.

<sup>48</sup> Supreme Decree 002-2009-MINAM, published in January 2009.

<sup>49</sup> Exclusively for the case of EIS and not for semi-detailed EISs, which are required when specified in the resolution for the Project or when the Citizen Participation Plan considers it necessary.

In the oil/gas subsector, the levels and methods for citizen participation in each country can be summarized as follows:

**CHART 3:  
CITIZEN PARTICIPATION IN EXTRACTIVE INDUSTRIES:  
OIL/GAS SECTOR BY COUNTRY**

Issues	Bolivia	Ecuador	Peru
<b>General treatment</b>	<p>Oil/gas activities are divided into six phases:<sup>50</sup></p> <ul style="list-style-type: none"> <li>• Exploration</li> <li>• Exploitation</li> <li>• Refining or industrialization</li> <li>• Transportation and storage</li> <li>• Commercialization</li> <li>• Distribution of natural gas through pipelines (the phase is not as important as the relationship between the state and private company).</li> </ul>	<p>There are six phases in the cycle of activities:<sup>51</sup></p> <ul style="list-style-type: none"> <li>• Exploration</li> <li>• Exploitation<sup>52</sup></li> <li>• Transportation and storage</li> <li>• Refining or industrialization</li> <li>• Storage</li> <li>• Commercialization. This activity is reserved for the Ecuadorian state (the phase is not as important as the relationship with the state and private company).</li> </ul>	<p>General norms established in relation to the methods used for contracts for private companies negotiating with the state for oil/gas exploration and production within the framework of the policy for promoting private investment.<sup>53</sup> A specialized agency, Perupetro, was created to this end. The oil/gas activities considers include:</p> <ul style="list-style-type: none"> <li>• Exploration</li> <li>• Exploitation</li> <li>• Storage</li> <li>• Refining and processing</li> <li>• Transportation, distribution and commercialization of products</li> <li>• Distribution of natural gas.</li> </ul>
<b>Recognition of the right to participation and control</b>	<p>Hydrocarbon Law 3058 explicitly recognizes rights only for <b>peasants, indigenous and original peoples</b>.<sup>54</sup></p> <p>These include the right:</p> <ul style="list-style-type: none"> <li>• To be consulted in a prior, obligatory and opportune way;</li> <li>• To be financially compensated for negative socio-environmental impact that is direct, accumulated or long term;</li> <li>• To be compensated for damages and harm;</li> <li>• To intangibility of lands;</li> <li>• To territorial compensation as a result of exceptional expropriation of lands;</li> <li>• Payment for easements;</li> <li>• To participate in socio-environmental monitoring committee at the project level and nationally.</li> </ul>	<p>Recognize rights linked to populations in areas of the extractive activity, including: priority for national workers, technical and administrative training programs, contributions to national technical education and awarding scholarships, receiving students or graduates with technical training, that exploration and production activities do not negatively impact the economic and social organization of the population, planning for new population centers.</p> <p>Right to consultation and to benefit from infrastructure built<sup>55</sup> once the project is concluded,. This is related <b>only to indigenous or Afro-Ecuadorian peoples</b>.</p>	<p>Taking into account that the hydrocarbon law is a general norm focused on promoting private investment, it does not include any specific references to the rights to participation or consultation processes for citizens or organizations.</p>

<sup>50</sup> Law 3058, Article 31.

<sup>51</sup> Indicated in the Hydrocarbon Law of Ecuador, Supreme Decree 2967, published in 1998. This law has been modified by another law published by the executive branch on July 30, 2010.

<sup>52</sup> The new Hydrocarbon Reform Law dictates that the state carry out the two initial stages in the process in a direct way through public companies. It can delegate this to national or foreign companies on an exceptional basis through association contracts, participation, services or constituting mixed companies based on a decision of the Hydrocarbon Secretariat.

<sup>53</sup> Law 26221, the Organic Law for Hydrocarbon Activities in National Territory, with the single text approved through Supreme Decree 042-2005-EM.

<sup>54</sup> In explicit adherence of ILO Convention 160, ratified by Law 1257, July 11, 1991.

<sup>55</sup> Modification contained in the reform of 2000, through Decree Law 2000-1, Law to Promote Investment and Citizen Participation.

Issues	Bolivia	Ecuador	Peru
<b>Procedures</b>	<p>The regulations for consultation and participation for oil/gas<sup>56</sup> activities consider four phases for the consultation process:</p> <ul style="list-style-type: none"> <li>• Coordination and information;</li> <li>• Organization and planning the consultation;</li> <li>• Holding the consultation;</li> <li>• Consensus building.</li> </ul> <p>These phases need to be carried out in two defined stages.</p> <p>The first stage is prior to the project and a condition for approval of a license, authorization, contract, call and approval of oil/gas projects or work.</p> <p>The second stage is prior to approval of the EIS.</p> <p>An agreement is signed at the conclusion of each stage.</p>	<p>Differentiation in the language and times for the two kinds of consultation:<sup>57</sup> Pre-license and consultation prior to the start of the project in each phase of the activity.</p>	<p>The regulations for citizen participation in oil/gas activities are aimed at strengthening citizen participation, particularly regarding indigenous peoples during the different cycles of hydrocarbon projects.<sup>58</sup> Each stage has defined procedures for participation, which range from creating spaces for public information to a Plan for Citizen Participation that is prepared by the title holder of each project. The stages include:</p> <ul style="list-style-type: none"> <li>• Contract signing;</li> <li>• Preparation and evaluation of environmental impact studies;</li> <li>• Approval of environmental impact studies.</li> </ul>

The Hydrocarbon Law of Ecuador has been modified with different amendments and additions. The fundamental changes refer to oil contracts becoming service contracts instead of participation contracts. This means that the state is the exclusive owner of oil that is extracted and pays a fee to the private companies for their production services. In addition, the state directly commercializes crude through its state company, PETROECUADOR, directly benefitting from increases in prices. While this amendment created an important change in commercial management and economic management of the revenue generated by this activity, it did not modify regulations for citizen participation processes in the different stages of oil/gas activities, which are still regulated under the old Hydrocarbon Law.

Specific norms on citizen participation processes in extractive projects have been developed as a result of constant conflicts related to extractive industries in Peru.

However, none of the articles in the Citizen Participation Regulation for hydrocarbon activities mentions special guidelines to promote the participation of women. In terms of lower-level norms, there is the *Guideline for Community Relations*,<sup>59</sup> which is obligatory for the preparation of environmental management instruments for the hydrocarbon subsector and includes steps to ensure the participation of special interest groups, such as women.

The levels and methods for citizen participation in the mining subsector in each country can be summarized as follows:

<sup>56</sup> Supreme Decree 29033, published Feb. 16, 2007.

<sup>57</sup> Executive Decree 3401. Regulation of consultation and participation for hydrocarbon activities, published Dec. 19, 2002.

<sup>58</sup> Regulation of citizen participation to carry hydrocarbon activities, approved through Supreme Decree 012-2008-EM.

<sup>59</sup> Published with Directorial Resolution 010-2001-EM/DGAA, Jan. 25, 2001.

**CHART 4:  
CITIZEN PARTICIPATION IN EXTRACTIVE INDUSTRIES:  
MINING SUBSECTOR BY COUNTRY**

Issues	Bolivia	Ecuador	Peru
<b>General treatment</b>	<p>The Mining Code dates from 1997. Mining activities are classified as follows:</p> <ul style="list-style-type: none"> <li>• Prospecting and exploration;</li> <li>• Exploitation;</li> <li>• Concentrates;</li> <li>• Smelting and refining;</li> <li>• Commercialization of minerals and metals.</li> </ul>	<p>According to the Mining Law, there are eight stages in this activity:<sup>60</sup></p> <ul style="list-style-type: none"> <li>• Prospecting;</li> <li>• Exploration;</li> <li>• Exploitation;</li> <li>• Milling;</li> <li>• Smelting;</li> <li>• Refining;</li> <li>• Commercialization;</li> <li>• Mine closing.</li> </ul>	<p>According to the Mining Law,<sup>61</sup> there are different processes related to mining activities, regulation of concessions, state procedures and roles, and guarantees to promote investment in the sector. There are few norms related to the environment<sup>62</sup> and there is no mention of social impacts, relationship to populations or recognition of the rights to citizen participation. The following mining activities are considered:</p> <ul style="list-style-type: none"> <li>• Prospecting;</li> <li>• Exploration;</li> <li>• Exploitation;</li> <li>• Refining;</li> <li>• Labor;</li> <li>• Mineral transportation;</li> <li>• Commercialization;</li> </ul>
<b>Recognition of right for participation and control</b>	<p>Does not establish any specific right for citizens – although it does invoke the Environment Law and its regulations– beyond a generic reference that those involved in mining activities should not harm neighboring populations and pay easement fees. It includes the following:</p> <ul style="list-style-type: none"> <li>• Obligation to care for the life and health of workers;</li> <li>• Prohibition of mining activities in cities, towns, cemeteries and public or private constructions;</li> <li>• Undertake work using the methods and techniques compatible with environmental protection.</li> </ul>	<p>Recognizes the rights of citizens, including:</p> <ul style="list-style-type: none"> <li>• Employ Ecuadorian personnel;</li> <li>• Support local employment and provide technical and professional training;</li> <li>• Right to royalties;</li> <li>• Right to compensation for easements;</li> </ul> <p>Regarding the rights to citizen participation:</p> <ul style="list-style-type: none"> <li>• Right to information;</li> <li>• Right to participation,</li> <li>• Right to obligatory consultation of communities, peoples and nationalities when mining affects their interests;</li> <li>• Right to denounce.</li> </ul>	<p>The work involves informing, knowing and channeling the opinions and contributions regarding mining activities and promoting dialogue, conflict prevention and consensus building.<sup>63</sup> Recognizes the rights to responsible participation, access to public information, respect for cultural diversity, principle of <b>non-discrimination</b> regarding race, ethnicity, gender, religion, culture and language, among others, citizen oversight and continual dialogue.</p> <p>In addition, it contemplates a private fund to finance activities for the population to review and evaluate observations to the environmental impact study, as well as processes for monitoring and citizen oversight of mining activities. Guidelines are defined for citizen participation in the different phases of a mining project.</p>
<b>Procedures</b>	<p>Does not establish procedures for citizen participation, invoking instead the Environment Law and its regulations.</p>	<p>Does not include a clear regulation of the procedures for consultation of citizens in general and indigenous peoples in particular.</p>	<p>The specific procedures and regulations have been prepared in a special norm,<sup>64</sup> which details the mechanisms for participation and general guidelines.</p>

<sup>60</sup> Mining Law, published Jan. 29, 2009.

<sup>61</sup> Single Ordered Text of the General Mining Law, approved through DS 014-92-EM.

<sup>62</sup> Regulation for Environmental Protection. D.S. 016-93-EM, April 28, 1993 and D.S. 038-98-EM, Nov. 25, 1998, Environmental Regulation for Mining Exploration Activities.

<sup>63</sup> In the case of the mining sector, a specific regulation has been approved for citizen participation: "Regulation for Citizen Participation in the Mining Subsector," Supreme Decree 028-2008-EM, which has been updated over the years.

<sup>64</sup> Ministerial Resolution 304-2008-MEM/DM, which regulates the process of citizen participation in the mining subsector.

As can be seen, in the case of Bolivia, despite the constitution and general norms regarding environmental protection and management that specify participation, the special laws for the mining subsector do not include any procedures for citizen participation, whether individual or collective. This situation could lead to these rights being overlooked. While it is possible to propose legal actions to demand compliance with the rights recognized in the constitution at the national and international levels, the establishment of procedure and operating mechanisms at the legal or regulatory levels are of particular importance for the full exercise of these rights.

In addition to the lack of norms recognizing the rights of third parties or citizens, which also means the inability to demand levels of participation, there is also the problem of property holders being unable to object to mining projects on their land, given that there is a procedure in place to expedite easements or expropriation in cases in which an agreement cannot be reached between the concession holder and land owner.<sup>65</sup>

In addition, the environmental regulation for *mining activity*<sup>66</sup> does not specify norms for citizen participation in any of the procedures described in the regulation. Finally, despite the fact that the ministry's guidelines<sup>67</sup> outline the steps needed to obtain the environmental permits they are mentioned useful for guaranteeing *community relations*,<sup>68</sup> but there is no procedure for community participation in the approval process.

Ecuador's mining law, unlike legislation for the hydrocarbon subsector, was approved by the executive branch after the new constitution was in place. This law responds to the government's interest in developing the sector with the private sector. However, the law has not been well received by private companies, which claim it will increase the cost of doing business, or indigenous and environmental groups, which maintain that it does not include the principles of participation and social control, or the environmental standards, enshrined in the constitution.

In the case of Ecuador, references to the right to participation are found in the regulations in each sector.<sup>69</sup> As such, the general mining regulation includes the formation of **consultative councils** to define mechanisms for participation. These spaces will be formed by representatives of autonomous governments and civil society organization, well as representatives from public sector agencies.

The regulation for small-scale and individual mining calls for the establishment of a system to manage socio-environmental conflicts in the sector. This regulation clearly expresses the possibility of developing **programs for including women who carry out tasks complementary to mining activities**, as long as their health and physical state allow for this.

In addition, the Mining Environmental Regulation indicates that environmental impact studies must include as one of the points covered the **identification and evaluation of socio-environmental impacts and development of social participation processes**. The report on the social participation process, as such, becomes a requirement of the EIS for its approval. Finally, this regulation explicitly states the kinds of environmental monitoring process that do NOT require citizen participation processes: Annual environmental monitoring, internal environmental monitoring (self-monitoring), compliance audit and monitoring of remediation programs.

<sup>65</sup> Article 146 subsequent articles.

<sup>66</sup> Supreme Decree 24782, published in July 1997.

<sup>67</sup> Guideline for obtaining a Mining Environmental License, 2001. Ministry of Economic Development. Deputy Mining and Metallurgy. Environmental Unit.

<sup>68</sup> "...The community assumes that mining activity that has an environmental license will not cause environmental problems or impact on the quality of life of the population. This reduces the possibility of unjustified accusations and in the case that these do occur, the RL has a reference document for the control of its environmental performance..."

<sup>69</sup> The following documents were reviewed: General Mining Regulation (approved by Decree 119, November 2009), Small-scale and Individual Mining (approved by Decree 120), and Mining Environmental Regulation (approved by Decree 221).

In the case of Ecuador, there is no clear regulation for consultation procedures involving the population in general and indigenous peoples in particular in the regulations mentioned above. As such, there are important gaps in the legislation that should be clarified with a more specific norm. The aspects that are not regulated in Ecuadorian legislation include participation and consultation in the prospecting phase, preparation of consultation processes, effective notification and the kinds of processes requiring consultation, results of meetings and effective application of results, and citizen participation in the monitoring process.

The norms on citizen participation in the mining subsector in Peru specifically include a mention of gender discrimination as one of the principles when defining and developing the consultation mechanism.

### 1.3. Situation of women

Over the past two decades women and indigenous peoples have made the greatest demands for a transformation of the weak democracies in Latin America. Women have demanded individual rights, while indigenous peoples have demanded recognition of collective rights.

Achieving autonomy for women, both in their private and public lives, is one of the conditions to guaranteeing effective gender equality and equal citizenship. This autonomy must correspond to three central dimensions.<sup>70</sup> The first dimension is economic autonomy, which refers to the capacity of women to generate their own income and have control over assets and resources.

On this point, recent statistics in Latin America reveal that conditions for women to meet their basic needs are growing more precarious.<sup>71</sup> Women have fewer possibilities to have their own income, do not participate in the labor market or work without pay, which creates conditions for greater economic vulnerability.<sup>72</sup>

These conditions are worsened by the increase in households headed by women, especially households living in extreme poverty. These households face deepening levels of poverty not only because women heads of households receive lower wages, but because they must also maintain the home, tend to domestic tasks and care for their children.<sup>73</sup>

The second dimension is physical autonomy, which refers to women having real control over their bodies. This body sovereignty is directly tied to the exercise of sexual and reproductive rights, and to be able to live a life free from violence. While Latin American countries in the 1990s began passing laws to prevent, eradicate and punish domestic violence, application of these laws has not always been successful. Physical and sexual violence are found throughout society, but slight declines in the incidence of violence in upper classes confirm that women are abused as a result of economic dependence.

The *autonomy* to make decisions, the third dimension, refers to full participation in making decisions that affects their lives and their surroundings. The empowerment of women tends to be measured by participation in political spaces and access to making decision. While countries in Latin America has adopted quotas to increase the presence of women in national congresses,

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<sup>70</sup> The *Millennium Development Goals Report*. United Nations, 2010.

<sup>71</sup> In 1990, for every 100 men living in poverty there were 118 women in the same situation. This increased in 2008: For every 100 men in poverty there were 130 women in the same situation.

<sup>72</sup> ECLAC indicates that 44 percent of women over the age of 15 living in rural areas and 32 percent of women living urban areas do not have their own income. With respect to men in this same category, the numbers are 10 percent in urban areas and 14 percent in rural zones.

<sup>73</sup> Recent surveys on the use of time that have been applied in the region reveal that women spend more time working than men, they have long work days without pay, and have to combine paid employment with work in the home without help.

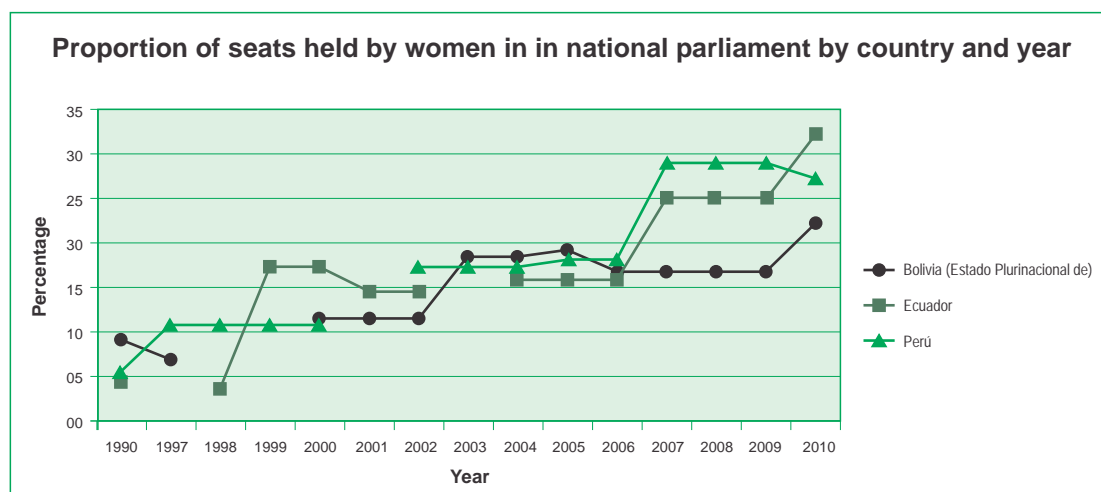
women only account for 16 percent of lawmakers, a statistic which is still low to properly represent the female population.

Measuring the participation and leadership of women in decision-making spaces exposes changes in a society that traditionally relegated women to the private sphere, leaving the public sphere for men.

It is possible to distinguish different decision-making spaces and levels in the public sphere. Statistics show that proportionately men hold positions of higher hierarchy, while for women access and permanence remain precarious. Equal participation assumes increasing insertion of women in public spaces from a perspective of equality of political and social rights.

The presence of women in spaces and events that are fundamental in the social and political lives of countries constitutes one of the key indicators to discuss change processes and the application of measures that foster women's participation.

The presence of women in the national legislatures of Bolivia, Ecuador and Peru has increased in recent years. There has been a significant increase in Ecuador, with women representing more than 30 percent of lawmakers, while the progress has been less pronounced in Bolivia.



Original design. Source: ECLAC - ECLACSTAT. Gender statistics.

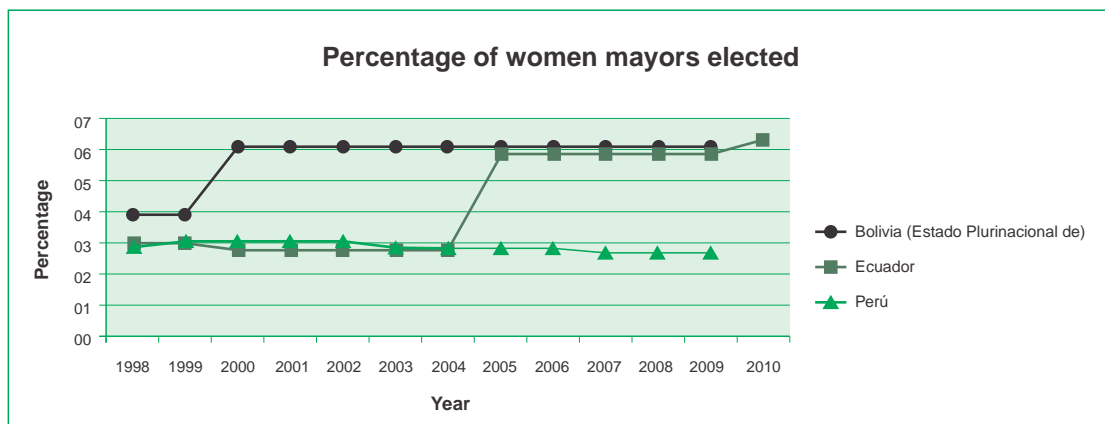
This greater presence of women in the Ecuadorian Legislative Assembly is not maintained in the Judiciary. The percentage of women in the highest courts, or Supreme Court, does not surpass 5 percent. Bolivia and Peru have witnessed increases in the number of women in the judiciary in recent years.





Note: The presence of women is calculated based on the total number of men and women judges. Original design. Source: ECLAC-ECLACSTAT. Gender statistics.

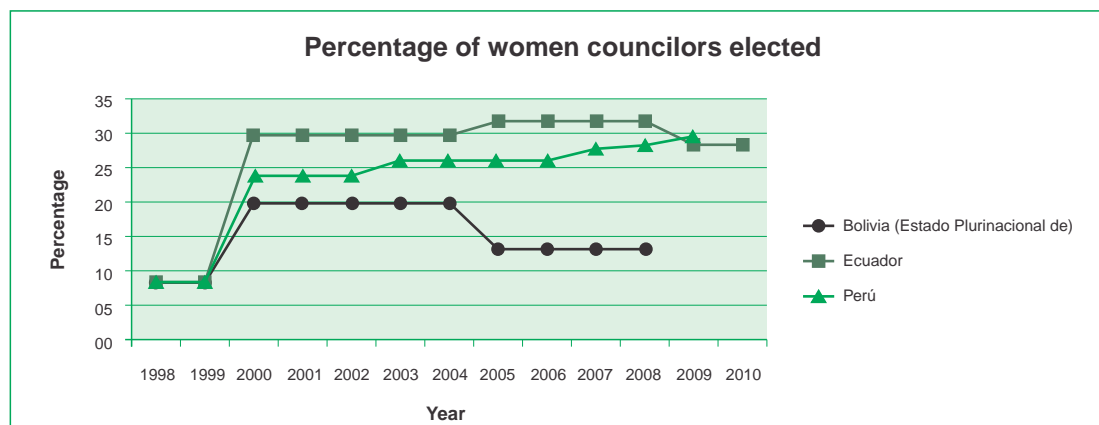
There are still low levels of women holding the maximum positions at the local level (mayors) and barely break 6 percent. Peru has the smallest number of women mayors.



Note: INSTRAW/ECLAC: Data through December 2008 was compiled by INSTRAW and validated between March and June 2009 by the National Mechanisms for the Advancement of Women with official information provided by electoral agencies or other official sources. The information for Bolivia, Honduras and Nicaragua was received from the ECLAC Questionnaire on Unpaid Work and Political Participation from 2006. Information on the most recent elections was compiled from the websites of the corresponding national election agencies.

ECLAC: Economic Commission for Latin America and the Caribbean: Data from December 2009 gathered and processed by ECLAC and validated between May and August by the National Mechanisms for the Advancement of Women with official information provided by electoral agencies or other official sources. The information for Bolivia, Honduras, Nicaragua and Panama was gathered from the websites of the corresponding national electoral agencies. Original design. Source: ECLAC-ECLACSTAT. Gender statistics.

Nevertheless, the position of women at the local of local councils is much more promising. Statistics from recent years fluctuate between 25 and 30 percent in the case of Ecuador and Peru. Bolivia is significantly behind at this level.



Original design: Source: ECLAC-ECLACSTAT. Gender statistics.

The situation in Bolivia is explained by two obstacles: First, women are included on the electoral lists primarily to comply with the demands of the political party law, quotas and electoral laws; Second, women are subject to political harassment and sexual abuse from mayors and municipal authorities in their communities.<sup>74</sup>

Beginning in the 1990s, the governments in the region began forming spaces with the objective, at least formally, of promoting public policy geared toward reducing gender inequality. These spaces depended in some cases directly on the office of the president, while in others were within ministries or deputy ministries. The location of these spaces within the state bureaucracy is a condition for their advancement or limitations regarding actions that eliminate discrimination against women and to measure the “political will” of the governments to do this.

The attributions, objectives, management, norms, institutional legitimacy, financial and human resources made available and the social position of these mechanisms vary from country to country. In addition, the mechanisms have gone through numerous restructurings and modifications over time, particularly with changes in government, economic crises and policies adopted to address these.

In 1994, Bolivia created the General Bureau for Gender Issues,<sup>75</sup> which depended directly on the Deputy Ministry for Gender, Generational and Family Issues<sup>76</sup> within the Human Development Ministry. The mission of this bureau was to *promote the conditions and strengthen the institutional foundations to design and manage national policies oriented to achieve equal opportunities between women and men in the framework of sustainable development, as well as strengthening democracy and fighting poverty and taking into account ethnic, cultural and regional diversity*. One of its responsibilities was formulating norms and policies for children, adolescents, young people, elderly people and families to integrally develop all their potentialities, supporting and supervising the implementation and institutionalization of these policies at the national, department and local levels.<sup>77</sup> The Ministry of Sustainable Development and Planning published in 1997 a supreme decree guaranteeing equal opportunities for men and women.

<sup>74</sup> According to Association of Women Council Member of Bolivia (Asociación de Concejalas de Bolivia—ACOBOL), between 2000 and 2008 there were 200 cases of abuse and harassment against councilwomen reported, five of which were sexual assault. <http://www.repem.org.uy/node/325>.

<sup>75</sup> <http://www.eclac.org/publicaciones/xml/3/4333/bolivia.htm>

<sup>76</sup> <http://www.cinterfor.org.uv/publics/spanish/region/ampro/cinterfor/temas/youth/cont/bol/ofi.org/index.htm>

<sup>77</sup> In 2007, the new State Organic Structure from 2007 includes the Deputy Ministry for Gender and Generational Issues within the Justice Ministry. See <http://www.justicia.gov.bo>

Lack of continuity has been one of the characteristics of gender policies in the Bolivian state. The bureau mentioned above was later turned into the Deputy Ministry of Women within the Ministry of Sustainable Development and Planning. In 2006, it moved to the Ministry of Justice and became the Deputy Ministry of Gender and Generational Issues. The actions carried out by these different bureaus and deputy ministries have been aimed at promoting a greater presence of women in the sphere of political participation, governance and social issues, and to a lesser extent in the economic sphere.<sup>78</sup> It is clear that these spaces allowed for the promotion and approval of normative instruments and legislation aimed at improving the situation of Bolivian women.

The *Law of Citizen Groups and Indigenous Peoples* was passed in 2004 to create opportunities for civil society groups and indigenous peoples to enter and participate in the system for political representation. This law guarantees women the same number of spots as men on candidate lists in elections. It does not guarantee, however, that women who are elected remain in their positions for their full term as a result of pressures to which they are subjected, as different research has indicated.<sup>79</sup>

The *National Plan for Gender Equity, Program to Reduce Poverty Relative to Women* and the *National Plan to Prevent and Eradicate Violence* were prepared and implemented between 2001 and 2003. During the 2003-2007 period, the government prepared the *Women Citizenship Plan* with a strategy centered on citizenship and the rights of women. In 2005, the government approved the *National Plan of Public Policies for the Full Exercise of the Rights of Women* and in 2008 launched the *National Equal Opportunities Plan (PIO)*, “*Women Building a New Bolivia to Live Well.*” In 2010, President Evo Morales’ Cabinet had an equal number of men and women ministers.

The gender parity in the PIO is a criticism of the “*internal colonial order of exclusion.*” It maintains that the country is formed by a broad cultural diversity and that it is necessary to generate a “*decolonialized gender focus.*” It affirms that the patriarchal system affects women and has a double impact on indigenous women and women from lower economic classes.<sup>80</sup> For the PIO, gender inequality has multiethnic and multicultural dimensions, an important element that is shared with a similar document approved in Ecuador. Both cases ethnic and racial issues are considered intrinsic elements to the notion of equality, a factor absent in Peru’s PIO.

Ecuador created in 1997, the National Council of Women (CONAMU), which depended directly on the office of the president.<sup>81</sup> This council worked on the creation of public policies in favor of women and promoted agreements with the state – through the central and local governments or sectors – and women’s organizations to secure the insertion of a gender focus within state programs. Women’s organizations were given an oversight function to provide continuity and strengthen programs to promote and protect the social and political participation implemented by the state.

The council worked in alliance with other state agencies and civil society organizations to guarantee the exercise of women’s rights. It established a process for institutional coordination to guarantee inclusion of specific gender policies in the social agenda and decentralization process.<sup>82</sup> The Equal Opportunities Plan for Ecuadorian Women was overseen by CONAMU. Human rights and interculturality were the principal focus of this plan. The plan insisted that an intrinsic

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<sup>78</sup> LANZA, Martha. *Bolivia: Gender Profile*. Japan International Cooperation Agency (JICA). La Paz, Bolivia. 2006.

<sup>79</sup> BAROBERRY, Oscar; SOLIZ, Lorenzo; ROJAS, Juan Carlos. 2006.

<sup>80</sup> RODRÍGUEZ GUSTÁ, Ana Laura. ¿What do the equal opportunity plans in Latin America tell us? A reflection on the textual constructions regarding gender, women’s citizenship and participation. Center for Research in Development and Territory (CEDET). School for Policy and Government, San Martín National University, Buenos Aires. s/f.

<sup>81</sup> <http://www.conamu.gov.ec>

<sup>82</sup> The National Council of Women supported institutional and legal mechanisms for equal opportunities in different ministries, five provincial governments and 19 municipalities.

dimension of gender inequality was related to situations of discrimination of indigenous and Afro-Ecuadorian women.

The council was discontinued in May 2009. Today, there is an institutional void regarding the rights of women. The National Council for Gender Equality created in the new Ecuadorian Constitution, which is supposed to safeguard the rights of women and men in the country, has yet to be established. There is currently a bill in the National Assembly for a Law of Equality between Men and Women, and People of Diverse Generic Identity, which would be a major step forward in Ecuadorian society regarding non-discrimination of women and people of diverse sexual identity, specifically members of the GLBT community.

The new constitution recognizes self-sustaining and care-giver roles as work.<sup>83</sup> The concrete mechanisms to put these constitutional mandates into action are still lacking, however. Other main challenge is complying with the constitutional mandate of parity, adopting positive actions and all the necessary legislative reforms and budget assignments required for this to happen.

One of the positive changes in Ecuador at the level of fiscal policy is considering gender a cross-cutting concept in the state's budget. The Ministry of Finance has implemented the use of the "K coefficient" (gender equality) to prepare the budget.<sup>84</sup>

In March 2010, the Ecuadorian government presented the *Policy Agenda for General Equality, which is included within the framework of the implementation of an alternative development model for living well, based on a social and solidarity economy, a inclusive, equitable and harmonious model with nature, that recognizes and values in an equal way productive and reproductive work done primarily by women.*<sup>85</sup> The document demands full exercise of the rights of Ecuadorian women to peace, a life free from violence, sexual and reproductive health with a rights, gender and intercultural focus, education, culture and interculturality, economic, environmental rights, and access to financial and non-financial resources. The document calls for gender to be a cross-cutting focus in environmental policies and for exploitation of non-renewable resources to ensure the active participation of women from the involved populations.

Peru created in 1996 the Ministry of Women's Promotion and Human Development, which is part of the executive branch. The name was changed in 2002 to the Ministry of Women and Social Development. The national plans prepared by the ministry have a cross-cutting focus on equity and inclusion, which are considered national strategies. Two plans that have been approved are of vital importance to the formulation of policy: *National Equal Opportunities Plan for Men and Women (PIO) 2006-2011* and the *National Plan Against Violence Toward Women* in 1993 (Law 26260), which was the first instrument implemented to address domestic violence. The PIO highlights participation as citizen oversight of the state, more than monitoring public policies related to gender. It mentions the need to form decentralized spaces to citizen oversight to monitor policies, actions and international agreement for gender equity signed by the government

In summary, important progress has been made in the three countries in the past few years regarding recognition of differences and rights, although not necessarily in redistributive terms: Access to resources, productive inputs, loans and land, among others.

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<sup>83</sup> Article 34 of the constitution mentions "the right to social security is an inalienable right of all people and is a primordial duty and responsibility of the state. Social security will be based on the principles of solidarity, obligation, universality, equity, efficiency, subsidiarity, sufficiency, transparency and participation, to attend to human and collective needs. The estate will guarantee and make effective the right to social security, which includes people who do unpaid work in the home, self-sustaining work in the countryside, all forms of autonomous work and those who are unemployed."

<sup>84</sup> Indicators have been formulated to evaluate budgets to contribute to the participation of women and access to justice of victims of violence. It also fosters sexual and reproductive rights, access to employment, and access to financial and non-financial resources, among others.

<sup>85</sup> *Agenda for Gender Equality Policies*. Ministry of Political Coordination. Republic of Ecuador. 2010.

## Access of women to property

Access to land is based on a system of tenure. Land tenure is the relationship, defined legally or customarily, between land and a population as individuals or groups.<sup>86</sup> These systems determine who can use what resources, over what time and under what conditions. In addition, there is a close relationship between the decision-making power of individuals and the quantity and quality of their rights to land. As such, it is essential that constitutions and national laws guarantee equal access to productive resources.

The gap between men and women regarding property in Latin America is enormous: In only a few countries do women account for one-quarter of land owners (Deere and León, 2003). This situation is produced, according to the authors, by five essential factors:

- Preference for males in inheritance;
- Privileges of males in marriage;
- Male bias in the community;
- Male bias in state programs for land distribution;
- Gender bias in the land market.

Our countries still do not have legal provisions that guarantee women rights to land independently of husbands or male relatives. In traditional or “customary” societies, direct access of women to land through purchasing or inheriting it is limited, even if they have more rights than men for its management and use. Given that women are often the principal food producers of their families, there are customary provisions that facilitate direct access to land in the form of acquired rights through family relations and in the condition as widows, mothers, sisters or daughters.

While men and women tend to acquire land in different way, **inheritance** is the principal way in which women become property owners,<sup>87</sup> while the market is the most important path for men to acquire land.<sup>88</sup> There is bias toward men in inheritance,<sup>89</sup> which is explained in part by the differentiated gender roles expressed in the division of farm labor and the invisibility of women in these activities. In addition, this practice tries to guarantee a continuity of family patrimony through a system that favors the oldest or youngest son and disinherits daughters (Deere and León, 2003).

In **peasant communities**, membership in community assemblies has traditionally been restricted to one person per family, the head of the household. The result is that men have voice and vote. Community assemblies dominated by men tend to favor inherited land passing to sons instead of widows, depriving women of any right to land if they have adult sons. Few women obtain the right to land through distribution in indigenous and peasant communities (Deere and León, 2003).

These cultural barriers at the community level are reinforced in the legal framework. Uses and customs continue to determine distribution of lands within communities in Bolivia Ecuador and Peru. In addition, women who are part of peasant and indigenous movements are willing to overlook their own demands and rights as women in favor of class and ethnic demands (Trigoso, 2007).

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<sup>86</sup> FAO. Gender issues and *Access to Land*. Studies on Land Tenure. 2003.

<sup>87</sup> Inheritance is the principal way in which women obtain property titles in Brazil, Chile, Mexico, Nicaragua and Peru, with more than half become property owners this way (Deere and León, 2003).

<sup>88</sup> Highlighting Brazil, Ecuador and Nicaragua.

<sup>89</sup> Daughters and sons inherit different things. Daughters inherit houses, animals, domestic good or Money, while land is concentrated among males.

*“While general laws favor equality between men and women, legal indecisiveness and community norms regarding individual and family rights for inheritance within communities do not facilitate clear and equitable access for people in general, men and women. Laws regarding common property of land operate “outside” communities and not “within” them, and do not regulate mechanisms for access of diverse families or people to collective land” (Diez, 2010).*

State programs for access to property are not gender neutral. Latin American women are excluded from efforts for state land distribution through agrarian reform programs due to legal, cultural and ideological reasons (Deere and León, 2003). These norms do not explicitly designate the head of a household as beneficiary, but specify that there is only one beneficiary per family. Given cultural norms, if an adult male is present in the home he would be named head of the household or family representative to take advantage of agrarian reform (Deere and León, 2003).

The land market also lacks neutrality when it comes to gender. One of the reasons has to do with income levels (and, in particular, the possibility of saving) and access to loans. In other words, failures in the labor market and access to loans reproduce failures in the land market.

When the value of land increases as a result of external pressures women are frequently marginalized from the process and run the risk of losing out on benefits.

Projects that try to modify access men and women have to land inevitably run up against tensions stemming from changes to the land tenure systems. These changes can alter the power structure within families, communities and the nation. Fostering gender equity, together with other decentralizing trends in local administration, could be in flagrant contradiction with “the traditional way of doing things.” Traditional practices will remain in place, regardless of new policies and laws passes, if the attitudes of a large segment of the population do not change.

In conclusion, there is substantial gender inequality in the distribution of assets in rural areas of Latin America. Land is generally in the hands of men and when men and women are proprietors, men tend to have access to larger and better quality parcels.

Social integration or exclusion depends on the situation of the person in relation to land in rural and urban areas – participation as a “resident” or “proprietor” of a house. As such, if legal norms do not explicitly specify gender integration regarding land tenure important sectors of society will be excluded from systems of land administration, management and development.

## Chapter 2.

# Strategies, agendas and proposals from civil society. Emblematic cases: Charagua Norte (Bolivia), Sarayaku (Ecuador) and Tintaya (Peru)

The objective of this chapter is to describe and analyze three emblematic case of citizen participation around extractive projects in the Andean countries included in this study. While limited in scope due to the lack of primary source information, the analysis will look at the participation of women in these cases, which include Charagua Norte in Bolivia, Sarayaku in Ecuador and Tintaya in Peru.<sup>90</sup>

### 2.1. Charagua Norte case (Bolivia)

#### Background

Bolivia's recent political context has been marked by agreements and disagreements over the way in which territorial management and government should be taken over by indigenous peoples. The following chart summarizes the key moments in this complex process:

**CHART 11:  
KEY MOMENTS IN THE BOLIVIAN PROCESS**

Year	Description
1989	Convention 169 of the International Labor Organization (ILO) recognizes indigenous peoples as collective subjects with territorial and cultural rights, who are self-identified and with self-government / autonomy.
1990	March for "Territory and Dignity" of eastern or lowland indigenous peoples helped make visible an indigenous reality beyond that of western or highland indigenous peoples.
1991	The Bolivian government passed Law 1257 ratifying ILO Convention 169, recognizing the rights of indigenous peoples to territory and autonomy.
1993	The category of Original Community Land ( <i>Tierra Comunitaria de Origen</i> —TCO) is incorporated into the Environment Law.
1994	The category of Original Community Land is incorporated into the constitution.
2006	A Constituent Assembly is called with broad participation of indigenous and peasant representatives.
2007	The Constituent Assembly passes the new constitution that recognizes the category of "indigenous autonomy." The new constitution is approved and enters into force in 2009.
02/08/ 2009	President Evo Morales presents in the city of Camiri the proposed Autonomies and Decentralization Law.
06/12/2009	Eleven municipalities in the departments of La Paz, Oruro, Potosí, Santa Cruz and Chuquisaca vote in favor of becoming Original Indigenous Peasant Autonomies ( <i>Autonomías Indígenas Originarias Campesinas</i> —IAOC).
July 2010	Autonomies and Decentralization Framework Law approved.

<sup>90</sup> Only in the Peruvian case was it possible to speak directly to stakeholders involved in the cases. In the case of Ecuador, the representative of Sarayaku contacted through Oxfam America did not believe it was necessary to provide information for this report. With respect to Bolivia, the representative of CEJIS – an NGO closely related to the Charagua Norte case – did not respond to requests for communication. This situation limited the description and analysis of the role of women's organizations in the participatory processes studied.

The Guaraní people in Bolivia are found in 14 TCOs in the departments of Tarija, Chuquisaca and Santa Cruz, covering an area of more than 3 million hectares.<sup>91</sup>

The Guaraní captaincies Charagua Norte and Parapitiguasu were the first to formulate plans as TCOs. This process allowed them to improve their capacities for dialogue and advocacy with other stakeholders. This is how they began negotiating with oil companies to compensate them for crude production on their territory, increasing their links to public and private organizations to finance different projects and strengthen their capacity for making proposals with respect to indigenous autonomies.<sup>92</sup>

In 1990, the Assembly of Guaraní People (APG)<sup>93</sup> prepared a legislative proposal for an Original Peoples Law. This was a fundamental step, because it addressed two central issues, according to Puerta (2010):

- Recognition of fundamental rights and self-determination of these peoples in their territorial circumscriptions within national territory;
- Development of their own forms of social organization and administration of their own or local issues based on their tradition or Original Peoples Law.

The recent process that led to the preparation of the new constitution approved recognition of the pre-existence indigenous peoples and offers them the possibility of becoming an AIOC.<sup>94</sup>

A significant step in the process came in July 2009, when four local Guaraní organizations, Charagua Norte<sup>95</sup>, Parapitiguasu, Alto Isoso and Bajo Isoso, decided to hold an autonomy referendum after the Transitory Electoral Law included the possibility of forming indigenous governments through citizen referendums at the local level.

The autonomy referendum was held Dec. 6, 2009 in 12 municipalities. More than half the registered population<sup>96</sup> (56%) voted yes<sup>97</sup> and only one municipality voted no.<sup>98</sup> The Autonomies and Decentralization Framework Law was approved on in July 2010.

It was the rural population in Charagua that decided the election in the country's largest municipality. In Charazani, eight out of every 10 voters opted for autonomy. In Chipaya, which has one of the smaller populations, one of the every nine voters opted autonomy.

<sup>91</sup> The population is very young, with 50 percent under the age of 15 and only 3 percent over the age of 65 (19.91 men and 21.02 women). Each person of working age has to maintain more than one person who is not of working age. There are 100 women for every 110 men. There is a higher number male births and a declining infant mortality rate.

<sup>92</sup> PUERTA, S.; ARANDIA, M.; ALARCÓN, J. 2010.

<sup>93</sup> The the community is the organization foundation of the Assembly of Guaraní People. The union of several communities is known as a captaincy and the principal authority is the captain or Mburubicha Guasu. An assembly of several captaincies elects an executive committee that is tasked with applying the decisions of the local assembly. The assembly is the expression of the community and the principal defined by it. The decisions generally are generally based on agreements and based on opinions expressed in the assembly. Despite the presence of capitains, priests and councilors, the assembly's power is above the indigenous power of authorities (Gavalda, s/f).

<sup>94</sup> See Article 2.

<sup>95</sup> There are over 20,000 residents, around two-third of whom (67 percent) are Guaraní. People living in the territory speak Guaraní, Spanish, Quechua, Aymara and an old German dialect (Puerta, 2010).

<sup>96</sup> 7,869 was the total registered and 94 percent (or 7,435 people) participated.

<sup>97</sup> In other words, 43,835 voters defined the future of 8 percent of the country's territory (91,112 km<sup>2</sup>). Charagua is the largest municipality in the country. Located in Santa Cruz, it covers nearly 20 percent of the department. Five municipalities in Oruro that participated in the indigenous referendum represented 22 percent of Oruro's territory.

<sup>98</sup> In Curahuara de Carangas primarily due to the urban population. On the other hand, it was the rural population in Charagua that defined the election in the country's largest municipality. In Charazani, eight out of every 10 voters opted for autonomy and in in Chipaya, with one of the smallest voting populations, nine out 10 voted for autonomy. In Huacaya, the poorest community, "yes" won by only 46 votes, meaning the community is divided. In Jesús de Machaca, a leading community in the fight for indigenous autonomy, the yes vote won with 56 percent. In Chayanta, 40 percent voted against autonomy. In Mojocoya, nearly nine out of 10 voted years, while in Pampas Aullagas, which is dominated by Aymaras, the yes vote won overwhelmingly. In Salinas de Garci Mendoza, where three out of four voted year, half the population speaks exclusively Aymara. In Tarabuco, which is the most urban area due to the proximity with Sucre, the yes vote won convincingly. Finally, in Totora, where 88 percent are Aymara, the yes vote won with 75 percent (Poder Local, 2009).



## Case description

Nearly 80 percent of Charagua Norte<sup>99</sup> was awarded in concession to three oil companies, Shamrock, Maxus and Pluspetrol.<sup>100</sup> At the end of the 1990s, Pluspetrol began exploratory work in the territory and implemented a Social Action Plan that was based primarily on providing gifts to indigenous communities and key stakeholders in the territory.

The response of Guaraní leaders was swift. They sent a letter to Pluspetrol demanding compensation based on the needs of the zone and the scope of the project, basing their demand on ILO Convention 169. They later went to the offices of Pluspetrol in Santa Cruz, where they were offered 23 radios for the district. The communities waited two years, but the radios never arrived. In addition, without any prior warning the company began working on drilling an exploratory well. The Guaraní demanded an immediate stop to the work and denounced a series of problems created by the company in the region.<sup>101</sup>

The Assembly of Guaraní Peoples (APG) denounced in 2000 the complete lack of participation or consultation in the preparation of an environmental impact study (EIS) carried out by 2000 in Pluspetrol. The APG demanded that the company finance a district development plan that consisted in the legal consolidation of the TCO and strengthening of APG Charagua Norte.

The demands were reiterated in May of that year in a march from the communities to the well with the goal of occupying it. The starting point was a meeting in the city of Camiri, the country's old oil capital.<sup>102</sup>

Today, indigenous socio-environmental monitoring<sup>103</sup> of hydrocarbon activities is conducted on their territories thanks to Regulation for Socio-Environmental Monitoring by Original Indigenous Peoples and Peasant Communities (Supreme Decree 29103, April 23, 2007).

Pluspetrol has been denounced for contaminating crops, rivers and forests.<sup>104</sup> Problems have been registered with water quality in nearly all of the sites sampled in the Bolivian Chaco.<sup>105</sup> There have also been indirect negative impacts, such as increase in alcohol consumption and appearance of brothels in the region, and a breakdown of indigenous organizations and cultural practices (Petropress, 2008).

In December 2009, the authorities in the captaincies that could have been affected by the *2D Exploratory Project in the Tacobo and Tajibo fields, San Isidro Block* met with the Ministry of Hydrocarbons and Energy (MHE). The meeting resulted in agreement to draft a preliminary proposal for prior consultation for the project.

The Guaraní proposed improvements to the methodology presented by the Pluspetrol Boliviana Corporation (PBC), calling for the consultation to be carried out according to traditional organizational and decision-making formats. The first improvement refers to the construction of consensus in each stage to reach a final agreement. This is based on the legal framework for respect for the rights of indigenous peoples. The second improvement is linked to respect for

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<sup>99</sup> Total area: 227,477 hectares. Area under concession: 223,188 hectares.

<sup>100</sup> Subsidiaries of Repsol-YPF

<sup>101</sup> Solid waste generated by Pluspetrol since February 1999 is dumped just a short distance from the principal communities in the Huacareta municipality, creating a source of contamination and infection.

<sup>102</sup> Participating in this meeting were representatives of the Deputy Energy and Hydrocarbons Ministry, Deputy Ministry of Indigenous Issues and Original Peoples, national leader of CIDOB and members of the technical team of CIPCA, a local NGO.

<sup>103</sup> Ongoing process supported by CEJIS, an NGO. There is a network of indigenous monitors and a baseline to allow for socio-environmental impacts to be recorded in a regular way (Sovereign Constituent Assembly, 2010).

<sup>104</sup> Primarily laying seismic lines that would encourage logging and increase poaching.

<sup>105</sup> Pilot study by Estudio Medicus Mundi in 2004. Cited in the report from Intermón Oxfam, 2004.

organic structures, norms and procedures, collective rights and free determination of the Guaraní people. A third improvement referred to the characteristics of the space generated: Democratic and intercultural dialogue.<sup>106</sup>

The information the Guaraní indigenous organization had to identify the possible socio-environmental impacts of from oil production in all its phases was obtained thanks to the prior work of the Socio-Environmental Monitoring Network of Charagua Norte. In addition to this was the field inspection and registry of information from socio-environmentally sensitive areas also carried out by the network (with the technical collaboration of CEJIS and the MHE (Bascopé, 2010).

In June 2010, as a result of the consultation process,<sup>107</sup> an agreement was signed between the APG Charagua Norte, MHE and Pluspetrol to carry out oil exploration (2D seismic testing<sup>108</sup>) in Charagua Norte.<sup>109</sup>

This agreement takes into account measures for preventing and mitigating socio-environmental damages, as well as specific obligation for Pluspetrol to improve its relationship with the communities of the APG Charagua Norte.

### Participation of women

The Guaraní have not taken part traditionally as voters or candidates in electoral processes. There are several factors for this, including: (i) The constitution did not accept the Guaraní as citizens until universal suffrage was adopted; and (ii) For more than 30 years,<sup>110</sup> between 1952 and 1987, Bolivia did not hold elections because it was governed by the military (Canedo, 2007). There was high absenteeism with restart of the democracy, because a majority of the Guaraní did not have national identification documents.

The information reviewed provides details on the capacity of women to organize, beginning in the 1980s. The Eity Organization of Women was formed in 1983, grouping together 17 cooperatives and five Guaraní second-tier organizations. Women had to travel more than 25 kilometers to work in the cooperative. The experience of male Guaraní leaders is linked to the relationship with traditional authorities (though family ties or other avenues), development institutions and farmer unions.<sup>111</sup> Others occupied seats in Congress and in municipalities.

The Assembly of Guaraní People (APG)<sup>112</sup> was created in 1987 with four areas that reflected the needs for development: Production, infrastructure, health and education, and land and territory. The APG consolidated as an organization at zone, regional and national levels.

In 2006, the number of women elected to leadership spots was 26 percent in communities, 23 percent in zones, and 40 percent at the regional level. The APG was the first indigenous

<sup>106</sup> Agreement to validate accords. Consultation and participation of the 2D seismic exploration Project in the Tacobo and Tajibo fields of the San Isidro blocks. Capitancies of Charagua Norte, Alto Isoso y Bajo Isoso. Assembly of Guaraní People (APG) and Ministry of Hydrocarbons and Energy. 2010.

<sup>107</sup> This consultation process included the participation of the General Socio-Environmental Bureau of the Ministry of Hydrocarbons and Energy, Minister of Water and Environment, representatives of the state oil company, YPF, Secretariat of Natural Resources and Environment of the National APG, executive board of the captaincy of APG Charagua Norte, Socio-Environmental Monitoring Network of Charagua Norte, executive board of the captaincy of the APG of Alto y Bajo Isoso, community captaincies and the technical team of CEJIS (Bascopé, 2010).

<sup>108</sup> Located in the province of Cordillera, municipality of Charagua, department of Santa Cruz, within the TCO of the Guaraní people of Charagua Norte and Isoso. Area of direct influence on 20 of the 33 communities of the TCO and a peasant territory known as Aldea Uno (Bascopé, 2010).

<sup>109</sup> Have identified and determined socio-environmental impacts concerning air, soil and flora, and social, cultural and economic components.

<sup>110</sup> Between 1952 and 1987.

<sup>111</sup> Many were part of the Single Union Confederation Peasant Workers of Bolivia (CSUTCB).

<sup>112</sup> This groups together 22 zones and more than 200 communities (Canedo, 2007).

organization at the national level to be led by women in 2003-2005 period: President Nelly Romero and Vice President Tomasa Aramayo (PIT website).

The APG has expressed its willingness to promote the participation of women within its structure, because it believes that if Guaraní women have separate organization this could weaken the assembly as a representative organism of all Guaraní and weaken the force of its demand (van Dixhoorn, 1996).

The basic organization of Guaraní society is the extended family and then the community. A third level, the zone, was consolidated after the creation of the APG. This zone is defined as a grouping of cultural, historic, ecological, economic and social elements. Canedo (2007) focuses on the members and structure of Guaraní organizations at the communal level, one of the few examples that touches on data differentiated by gender.

**CHART 12**  
**MEMBERS AND STRUCTURE OF ORGANIZATIONS AT THE COMMUNAL LEVEL**

Nature of the organization	Number of male members	Number of female members	Number of male leaders	Number of females leaders
Community	20	15	4	1
Consumption	16	4	5	1
Sports	19	1	3	0
Education	21	11	3	1
Young people	21	18	2	3
Women	1	18	2	3
OTB	11	5	3	1
PISET	41	14	3	1
Religion	20	27	4	4
Health	47	3	6	0
Services	9	2	3	0
Union	30	25	7	7
Land-Territory	38	0	5	0
Work	17	6	4	1
Various	17	0	0	0
<b>TOTAL General</b>	<b>14</b>	<b>12</b>	<b>3</b>	<b>2</b>

Source: Canedo, 2007.

Note: Many refer to more than one aspect, which is why the sum is different than the total

This information points to a lack of women in areas like land-territory and their limited presence on issues related to health, education and consumption.<sup>113</sup> On the other side, they have a significant participation in issues like religion.

Nearly 11 percent of the Guaraní population (4,937 people) lives on haciendas as peons or servants. They live in conditions that are not much different from slavery during colonial times (Canedo, 2007). This system of servitude consists basically of permanent indebtedness of workers, who are paid in kind and not in wages (idem).

<sup>113</sup> Linked to savings, having funds (Canedo, 2007).

“The solution for us is land, it is our principal demand. While there is nothing, the Guaraní will belong to the patron. Believe that buying or receiving land is one of the solutions.”

Justo Arancibia  
APG Secretary of Land

A recent assessment of the situation of the rights exercised by Guaraní women in the Chuquisaca Chaco provided central elements on the state of Guaraní women. A first element is that many of the rights of Guaraní women are violated. For example, the right not to suffer domestic violence at the hands of men, to be respected regarding uses and customs, political participations and the right to property (individual and collective), among others.

In addition, women work more hours than men and their labor is unpaid. In addition to caring for the family, women are also in charge of harvesting.

The TCO Charagua Norte recently consolidated and institutionalized socio-environmental monitoring within its organic structure. This is important for the Guaraní people and women continue taking on new responsibilities and leadership roles regarding socio-environmental problems and participation in the revenue generated by extractive industries.

An important element of socio-environmental monitoring in their territory is not only the technical process, but also an important social process with new responsibilities being taken on by young women interested in their communities.

Socio-environmental monitoring in this territory has allowed for: (i) Formation of a socio-environmental monitoring network (technical, legal, social training);<sup>114</sup> (ii) Inspection, monitoring and taking samples in the field; and (iii) Preparation of technical reports on socio-environmental conditions and the responsibilities of the companies involved.<sup>115</sup>

This process has involved young women in technical, legal and social training spaces<sup>116</sup> and in the different stages of monitoring (inspection, monitoring and sample taking). However, there are still important differentiated roles in this process with women gathering information, while men receive, register and organize it. Mostly men are involved in preparing and sharing reports. There is limited presence of women in these tasks (Oxfam Bolivia).

### Lessons learned and recommendations

The experience of the APG Charagua Norte constitutes an emblematic case for consultation that was carried out based on national legislation and the norms and procedures of the indigenous organizations involved. Through this process Bolivia has implemented the right to consultation with indigenous peoples who live in an area impacted by extractive projects as a mechanism that contributes to preventing situations that could lead to socio-environmental conflicts.

The state, private company and local community reached an agreement on the potential impacts that could be caused on this territory. While this step is important, so are those in the near future: Ensuring that the company complies with its obligations and responsibilities concerning possible harm; Guaranteeing that Bolivian authorities enforced the company's obligations through socio-environmental prevention and mitigation measures that incorporate the inputs and criteria of the Guaraní people; Continuing to strengthen politically and technically (socio-environmental

<sup>114</sup> Space validated by zone and communal authorities. A woman from the El Espino community was designated as vice president for this space.

<sup>115</sup> Indigenous socio-environmental monitoring of oil/gas activities of in the Charagua Norte TCO. 2010. Page 3.

<sup>116</sup> *Idem*. One-third of the people taking part are young women, students and single women.

monitoring) the APG Charagua Norte with respect to the Bolivian state and Pluspetrol, and with a rights-based focus.

While it is important to have a plan for monitoring the socio-environmental impacts of the 2D seismic testing of the Tacobo and Tajibo fields of the San Isidro block, including water, air, flora, fauna and socio-cultural and economic aspects, it is also necessary to identify gender differentiated benefits and risks of the project. It is imperative that research and affirmative actions incorporate a gender focus in the case of indigenous communities.

## 2.2. Sarayaku Case (Ecuador)

*(...) since the time of the oil boom the Ecuadorian state has systematically denied our rights, creating parallel indigenous organizations that sign agreements and contracts that favor the oil companies, undermining in this way the representativeness of the indigenous movement in Ecuador*

Franco Viteri  
The struggle of Sarayaku

### Background

Sarayaku, a Kichwa community,<sup>117</sup> has a long history of opposition oil production,<sup>118</sup> making it a reference point for the indigenous struggle for territory in Ecuador and the rest of Latin America. The reason is simple and found in the serious environmental and social impacts the oil business has on Ecuadorian territory. A milestone of this opposition came in 1989, when the people of Sarayaku stopped ARCO from finishing exploration on their territory.<sup>119</sup>

The conflict with Argentina's Compañía General de Combustibles (CGC)<sup>120</sup> began in 1996, when an oil exploration contract was signed between the company and Ecuadorian state. Block 23<sup>121</sup> covered 200,000 hectares, the majority in Sarayaku territory. The Sarayaku people were never consulted<sup>122</sup> and were fiercely opposed to oil exploration from the start.

This struggle is similar to those that have been undertaken by other indigenous peoples in Ecuador. More than more indigenous people<sup>123</sup> have been raising their voices in protest since the 1990s, asking for recognition of their territories not only in terms of physical space, but the ability to elect their own authorities, administer justice, use their own language and decide on how their resources are used.

<sup>117</sup> Located on the Banks of the Bobonaza River, in the Pastaza province. It is 400 meters above sea level, and 65 kilometers southeast of Puyo. It is formed by five communities, Sarayaku Centro, Cali Cali, Sarayaquillo, Shiwacocha and Chontayacu. There are more than 1,000 people living on its 135,000 hectares, nearly all of which are primary Amazon forest.

<sup>118</sup> See the official website of the Sarayaku people, [www.sarayaku.com](http://www.sarayaku.com), and the official website of the Territorio Autónomo de la Nación Originaria del Pueblo Kichwa de Sarayaku (TAYJA-SARUTA).

<sup>119</sup> A result of the protest was signing the "Sarayaku Agreement," between the community, indigenous organizations and the Ecuadorian government. The agreement called for recognition of property titles and a 15-year moratorium on oil exploration. The agreement, however, was violated by the Ecuadorian government, according to one of the indigenous leaders, José Gualinga (De Castro Sánchez, 2009).

<sup>120</sup> The investment group Southern Cross holds 81 percent of the shares in CGC, while the remaining 19 percent belong to the Soldati family.

<sup>121</sup> Among the shareholders in Block 23 is U.S.-based Burlington Resources.

<sup>122</sup> The Ecuadorian state ratified ILO Convention 169, which requires it to consult with indigenous populations prior to any any to exploration or exploitation of natural resources on their territories in order to define the kind of exploitation, possible benefits and compensation if there will be damages.

<sup>123</sup> In 1992 the Organization of Indigenous Peoples of Pastaza (OPIP) called a march under the banner, "For land and life, Rise up!" to demand recognition of indigenous rights and territories. The 350-kilometer march attracted more than 15,000 people. The march resulted in the government handing over property titles to more than 1 million hectares, including Sarayaku's 135,000 hectares.

Sarayaku sources consulted indicate that women played a central role in this process. Women were organized primarily around the issue of contamination from oil companies. One of the reasons for the staunch opposition from women was in response to the attitude of many men, who were willing to negotiate with the company. Women will not willing to accept threats to the environment.

### Case description

*In this way the company violated one of the rules of the Ministry of Mines and Petroleum, which is prior, free and informed consultation in the territories. This entire process has served as an instrument to file a case with the Inter-American Court (of Human Rights), because at the time (2003) the government did not offer guarantees so we had to turn to international arenas.*

Franklin Toala<sup>124</sup>  
Kichwa leader

At the start of the decade the Ecuadorian state consolidated its efforts to provide incentives for investment in the oil sector.<sup>125</sup> In response to the opposition of the Sarayaku people, the government militarized the zone and emitted arrest warrants for some community leaders.

The company, for its part, launched a community relations strategy based on establishing links to other Kichwas community, creating conditions for a conflict between these communities and the Sarayaku people. The situation reached such a point that neighboring communities blocked access to people trying to get to Sarayaku.<sup>126</sup> The results of this process led to an agreement allowing seismic testing in the zone. The agreement was signed by the communities of Canelos, Pacayaku and Jatun Molino. It was not approved by the Sarayaku community or Achuar communities.<sup>127</sup>

The Tayjasaruta-Sarayaku Governing Council responded quickly. The president at the time, Francisco Viteri, sent a letter to Texaco-Chevron,<sup>128</sup> of which CGC was part. The letter reiterated opposition to the community's natural resources being exploited by the company, indicated that the current legislation in Ecuador did not guarantee the economic, environmental, social or health security of indigenous peoples, the benefits from oil exploration never reached the communities, and the so-called "mechanisms for consultation and participation" were strategies that only created a web of corruption and weakened communities and their organizations. At the same time, the council demanded recognition of Kichwa territories in Pastaza, respect for their own forms of development, based on balanced management of Amazon biodiversity, and the immediate withdraw of the company from their ancestral territories.

The confrontations between the company and the Sarayaku continued throughout the decade. The Sarayaku have filed international suits,<sup>129</sup> the majority which still have not been settled, and maintain strong opposition in the face of continued pressure from the company.

The following chart summarizes the principal characteristics of the each of the stakeholders in this conflict:

<sup>124</sup> Interview published in: <http://opsur.wordpress.com/2009/11/11/sarayaku-cuando-el-pueblo-dice-no/>

<sup>125</sup> This policy is contained in the document "Openness 2000" undertaken by the government of then-President Jamil Mahuad (Melo, 2004).

<sup>126</sup> De Castro Sánchez, 2009.

<sup>127</sup> Melo, 2004.

<sup>128</sup> Remitted June 5, 2002.

<sup>129</sup> At the start of 2003, the Sarayaku request protection measures from the Inter-American Court of Human Rights (IACHR). In the second half of that year, the IACHR adopted measures aimed at preventing further violations of human rights. In addition, it demanded security and protection against any human rights violation and called on the Ecuadorian government to guarantee that the companies comply with human rights norms (De J. Pandama, 2004).

**CHART 13:  
PRINCIPAL STAKEHOLDERS IN THE SARAYAKU CONFLICT**

Stakeholder	Characteristics
Sarayaku community	It has an important organizational unity. Tayjasaruta <sup>131</sup> (the Sarayaku Governing Council) is an organization stimulated and maintained by a generation of young people and leaders with ties to the outside through study, work and family. The coordination they have with the kurakas and barayos is strong. <sup>132</sup>
Organization of indigenous peoples of pastaza (OPIP)	The Sarayaku community is a member. Both disagree with oil production on ancestral lands and aspire to other sustainable activities, which will not destroy their natural environment, for their economic and social development.
Organizations that agree with oil exploration and production	The Federation of Kichwa Nationalities of Pastaza (FENAKIPA), Evangelical Indigenous Association of Peoples of the Amazon Region (AIEPRA), Federation for Peasant Development of Pastaza (FEDECAP), Federation of Shuar Nationalities of Pastaza (FENASH).
State stakeholders	Ombudsman's office, Armed Forces, Energy and Mines Ministry, which agrees with the concession of Block 23 held by CGC.
Companies	Compañía General de Combustibles (CGC), Burlington Resources Inc.
ngos	Ecological Action, Center for Economic and Social Rights (CDES) <sup>3</sup> , Pachamama Foundation, Human Rights Commission, all of which support the indigenous organizations in the struggle to defend the environment.

What is in dispute here are two development models. This is seen clearly in the public documents released by the Tayjasaruta Sarayaku Governing Council in the first few years of this decade.<sup>134</sup> *One manifesto states: Faced with a project of death and destruction, we propose life and well-being not only for our people, but for all people in the province of Pastaza, Amazon region, country and humanity. This manifesto declares our territory as autonomous and of biological, historical and cultural interest.*

“As a strategy, as a defense and as a strength it has been very important in our case, as a community, to have written and prepared a plan for life, for development, based on our vision of the world, science, biodiversity that we have on our territories, which kept us from falling into the hands of the companies that came here offering us crumbs.”

Franklin Toala  
Kichwa leader

They state that the life plan<sup>135</sup> contains important guidelines for self-management, economic production, balanced use of biological resources, creation of tourism companies and transportation in the region, as well as establishing proper health and intercultural education system that guarantee a harmonious life. This affirmation goes hand in hand with the statement that oil production offers no benefits to the region. The association has title to collective property.

<sup>130</sup> “Sarayaku is like a lock on the center-southern Amazon so that oil companies do not move in,” said Marlon Santi (De Castro Sánchez, 2009).

<sup>131</sup> They are the acronym of “tayac yuyutac jataichic Sarayaku runa tandanacui,” which means “organization of the people of Sarayaku to revitalize the way of thinking of the Tayaks” (Chávez and otros, 2005).

<sup>132</sup> De J. Pandama, 2004.

<sup>133</sup> Provided legal support. After deciding on the need to turn to the Inter-American system, AI CEJIL, an organization based in Washington DC and a specialisation in litigating before the IACHR, is incorporated into the legal team.

<sup>134</sup> See Manifesto to the Public, October 24, 2003 and May 19, 2004.

<sup>135</sup> In the Book of Life of Sarayaku, which describes the three central pillars of their philosophy: (i) Sumak Allpa, refers to and without evil, which is the territory that they defend; (ii) Sacha Runa Yachay, knowledge of the Amazon man and woman; and (iii) Sumak Kawsay, which is living well of living in fullness.

According to the *Book of Life* prepared by the Sarayaku, the community's notion of development involves consolidation of its autonomy and self-determination, *based on recognition of our territories with political-administrative rank*, which does not mean denying the organic political-administrative structure of the state, but establishing a new category.

While Ecuadorian governments have changed over the years, the idea that oil production is the priority activity of the Ecuadorian state has remained the same. This activities provides more revenue to the state than most other activities combined (Lara, 2008). As such, the demands of indigenous peoples are expected to be subordinate to the national need for oil production.

The Inter-American Court of Human Rights has been ratifying measures in favor of the Sarayaku,<sup>136</sup> indicating that the state continues to violate the rights of this community: Its residents are not allowed to travel along the Bombonaza River, the traditional way the community has communicated with the provincial capital. Its residents have suffered aggression, including with firearms, when they have tried to use the river.

The Sarayaku people have maintained horizontal political practices. The organizational structure includes the Tayjasaruta Governing Council, a space to discuss and vote on issues that directly affect the community. According to its statutes, decisions are made by consensus. Unfortunately, it is not possible to verify if these horizontal practices are inclusive of women.

A new stakeholder, the Italian oil company AGIP, has entered the fray in recent years. It is supposedly behind the creation of a community that would support exploitation of Block 10.<sup>137</sup> In addition, the Ecuadorian government has the intention of building a highway to Sarayaku. The lack of trust is such that the assumption is the project is supported by logging with high-level contacts in the government.<sup>138</sup>

The following chart summarizes the system of authorities and decision-making mechanisms with the Sarayaku community:

**CHART 14:  
SYSTEM OF AUTHORITY AND DECISION-MAKING IN SARAYAKU<sup>139</sup>**

Position	Description
<b>Kuraka or varayuc</b>	<p>Traditional leaders. Family patriarchs who were at the same time warriors, or yachaks. They make decisions regarding their extended family together with other kurakas. They organized, for example, wars against the Shuar for kidnapping their women. With the arrival of the Catholic missions, the Dominican priests grouped families together, questioning the role of the kurakas, naming them and introducing the custom of using a staff. Together with the kuraka was the likuati or caspi, a kind of assistant who accompanied the kuraka in all of his activities.</p> <p>Today, the kuraka organizes people living in his sector for public project, calls meeting, participates in the Tayjasaruta and reports to his sector about decisions adopted. He has a role in resolving minor issues, acting as an intermediary in fights between young people or husbands and wives.</p> <p>The kuraka must be married and have a farm with cassava planted. The female activity of cultivating cassava is tied to the construction of family prestige. This prestige is both personal and collective, and involves the extended family (ayllu). Cassava is used to prepare chicha, a drink that is indispensable in any Kichwa house and forms part of all aspects of socialization.</p>

<sup>136</sup> Resolution emitted June 17, 2005.

<sup>137</sup> De Castro Sánchez, 2009.

<sup>138</sup> Idem.

<sup>139</sup> Chávez and others, 2005.



Position	Description
Assembly	<p>The most important decision-making body. All the members of the association take part. To be a member one must be born in Sarayaku or have family ties to the community. These ties can be established through marriage and they can be re-established (in the case of someone returning to the community after being absent for many years).</p> <p>Once accepted, members must conform to the way of life of the community, collaborate in public works project, be a kuraka as some point (if a man), participate in assemblies, accept decisions, and participate in fiestas or <i>chichadas</i>.</p> <p>Assemblies are called to elect authorities, present the results of a leader's period, make decisions concerning the community and resolve internal conflicts.</p>
Tayjasaruta	<p>Formed by: a) Leaders of the Sarayaku Association (president, vice president, secretary, treasurer, and secretaries of land, education, health, foreign relations), and b) the kuraka, yachaks and representatives of internal organizations, such as the group of young people and women's association.</p> <p>Invited members: Government representatives, parish board, priest (on occasions).</p> <p>The council is presided over by the president of the Sarayaku Association.</p> <p>To be president, the person must have received training outside the community and have the capacity to dialogue with other stakeholders.<sup>140</sup></p>

## Participation of women

*One of the processes in Sarayaku, which we should highlight, was the magnificent support of women. The relationship between women and the communities is much stronger.*

Franklin Toala  
Kichwa leader

Women have always been present in the struggle of the Sarayaku people against CGC. As Franco Viteri, a Sarayaku leader, states: *There was a complementarity between men and women in the struggle of Sarayaku that is based on the leadership of older women. In the resistance of 2003, there were six older women who guided the actions, told us what needed to be done and they are always consulted. They are the ones who said that the concept of development of the oil company is only profit, our objective is not money, but well-being* (Chávez and others, 2005).

The Governing Council, or Tayjasaruta, is formed by traditional leaders, community leaders, former leaders, mayors, shamans, and a group of advisors and technocrats from the community. The Governing Council and the president make the majority of the decisions, but the highest decision-making body is the General Assembly.<sup>141</sup> As such, the decisions regarding the conflict with CGC are made by the General Assembly.

<sup>140</sup> "the president has to be upright, know the two ways of culture, have the capacity to act on the outside and defend his people ... He is named by consensus, but consulted, the same process is followed to elect the kuraka... There needs to be interest, capacity, preparation, at least having finished high school. This is demanded, because he has exposure to the outside," José Gualinga (Chávez and, 2005: 69).

*"I lived in the city not because I wanted to, but because I wanted to research, to learn. I learned that one man owned 32 haciendas, which is why no one can say and indigenous person is greedy, because no indigenous person owns 32 haciendas. I could not live calmly in the city, it is not safe for children. I could not stand the smell of the city, it was not life for me. Sarayaku is a paradise where you live safely. In the city you need money, and have schedule."*

Hilda Santi<sup>142</sup>

Midway through the last decade, a woman took over the presidency of the Tayjasaruta Governing Council.<sup>143</sup> Her name is Hilda Santi Gualinga and she was elected with 85 percent of the votes cast by delegates. She was elected in the context of the II Congress of the Autonomous Territory of the Kichwa Original People of Sarayaku that included 250 official delegates from the communities.<sup>144</sup> The mandate she received was to defend territory and strengthen external alliances. Her term was organized around: (i) Continuity and following the struggle against oil production, and territorial reordering and demarcation; (ii) implementation of infrastructure and productive projects; (iii) improving the quality of intercultural, bilingual educations through training and with the participation of women and men with ancestral wisdom; and (iv) strengthening and development ancestral wisdom in health and linking this to the official health system.

The Association of Indigenous Women of Sarayaku (AMIS) has maintained constant support for the struggle of Sarayaku to defend its ancestral territory. In addition, they have embraced the life philosophy of the Kichwa people (Sumak Kausai). During one incursion by Ecuadorian troops, women raised their voices in protest,<sup>145</sup> reaffirming the fact that the fight they are leading is for an alternative way of development that is the decision of all the Kichwa community in OPIP. Part of the discourse of the communities is that *the children and young people of Sarayaku never become peons or slaves of the large oil companies.*<sup>146</sup>

Women in Sarayaku work the land and make pottery. The men hunt, fish and work on products using wood and palm fibers from the jungle. The principal exchange between men and women is chicha, a cassava-based drink, which is the principal product from farms. Chicha is traded for meat, which is the principal product men retrieve from the forest. Farm equals feminine, jungle equals masculine.

The traditional leaders of the Sarayaku were the kurakas, family patriarchs who were at the same time yachaks and warriors (Chávez and others, 2005). They made decisions concerning their extended family and, together with other kurakas, made decisions for all the families (they organized wars against other communities that would kidnap their women). Things changed with the arrival of Catholic missions, with the Dominican priests choosing the kurakas and given them a staff, creating the alternative name of *varayuc*. The kurakas were accompanied in all their activities by the likuati or caspi, who were a kind of assistant designated by the priests.

Today the kurakas helped resolve minor disputes, acting as intermediaries in fights between young men or married couples, trying to get them to reconcile. The kuraka must be married or could

<sup>141</sup> Chávez and, 2005.

<sup>142</sup> Idem.

<sup>143</sup> The council has 24 positions, including the president and vice president. The work areas are related to women, education, community development, sports and culture, young people, international relations, natural resources and one called, "the wise ones." Added to them are the kurakas Chuntayaku, Kali Kali, Sarayakillu and Shiwakucha, who are elected for one-year periods, and likuati (warriors with the ability to use spears and arrows).

<sup>144</sup> See: [www.sarayaku.com](http://www.sarayaku.com)

<sup>145</sup> In : [http://www.oilwatch.org/index.php?option=com\\_content&task=view&id=40&Itemid=225&limit=1&limitstart=11&lang=es](http://www.oilwatch.org/index.php?option=com_content&task=view&id=40&Itemid=225&limit=1&limitstart=11&lang=es). Ecuador, 2002.

<sup>146</sup> Idem.

assume the role with the help of his mother. His family must have a farm and they must grow cassava. Women have been asking why they cannot be kurakas. The selection of the kurakas is in February, during the festival known as Jista. However, due to the conflict with CGC it has not been possible to celebrate this fiesta, so the General Assembly has been designating the kurakas.

It is important to stress that territorial defense and identify represent the principal concern of Sarayaku (Chávez and others, 2005). The actions of authorities, both inside and outside the community, are geared toward this objective.

### Lessons learned and recommendations

According to Melo (2004), the reasons this case became emblematic are found in the resistance of organized peoples to the interest of the government and private companies to exploration and produce crude in the Amazon jungle. The spaces for dialogue between the local population, company and state were eliminated in this case in 2002, when the legal strategy moved to denounce the Ecuadorian state for human rights abuses before the Inter-American Commission of Human Rights. The commission has dictated protection in the case and demanded that the Ecuadorian state guarantee the physical, psychological and moral integrity of the people of the Sarayaku people, as well as “adopt measures necessary to protect the special relationship between the Sarayaku community and its territory” (Melo, 2004: 48).

An important element in the case is the capacity of the Sarayaku community to form alliances not only within the indigenous movement, but with environmental and human rights groups at the national and international levels. These alliances have become its principal strength to face the pressure from external stakeholders.

## 2.3. Tintaya case (Peru)

Women, nevertheless, were not included in the processes for internal consultation and making decisions, and when the mining companies negotiated, which they have done, it has only been with the men in the communities.

Julia Cuadros

*Impacts of mining on the lives of men and women in the southern Andes.*

### Background

While mining operations at Tintaya date back many years, they were not too important until 1990, when a sustained increase in production began.

The historic capacity of Tintaya processing plant was close to 8,000MT/day (Vector Peru, 2006). Daily production in 1998 increased to an average 13,246MT at the concentrating plant and in 2006 reached 18,500MT/day.<sup>147</sup> In less than five years, mineral production nearly doubled, from 2,856,280 in 1994 to 5,261,645 in 1999.

The area where the mine is located is marked by wet and dry seasons. The rainy season is between November and April, and the dry season between May and October. Tintaya is located 3,915 meters above sea level in the Espinar province, in the extreme south of the Cusco region.<sup>148</sup>

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<sup>147</sup> Idem.

<sup>148</sup> The districts include Alto Pichigua, Condorama, Caporaque, Espinar, Ocoruro, Pallpata, Pichigua and Suykutambo.

Espinar is home to approximately 60,000 people, the majority of whom (63 percent) live in rural areas. The most important city is Yauri, the provincial capital, which is home to more than one-third the population.<sup>149</sup> Tintaya is located in strategic economic corridor Cusco, Sicuani and Arequipa.

Mining activity in the area began in the early 20th century, when Andes Exploration of Mines drilled for four holes and opened several short tunnels. Midway through the century the Cerro de Pasco Corporation purchased the property. The mining rights and deposit were nationalized by the military government headed by General Juan Velasco.

The feasibility studies and basic mining engineering done by Minero Perú forecast production at 8,000MT/day in an open pit mine.<sup>150</sup> In 1980, Minero Perú created the Empresa Minera Asociada Tintaya S.A (EMATINSA). Production of copper concentrates formally began in 1985, averaging with 4,000MT/day.

The company was privatized in the mid-1990s and acquired by Magma Copper Company / Global Magma Limited (United States). It was subsequently purchased by Australia's Broken Hill Proprietary (BHP). BHP would later merge with Britain's Billiton and the mine would be renamed BHP Billiton Tintaya SA. It was sold again in 2006, this time to Switzerland's Xstrata Copper. It is now called Xstrata Tintaya SA.

### Case description

The history of this copper mine also involved expropriation of land from peasant communities,<sup>151</sup> dismemberment of community annexes,<sup>152</sup> formation of new communities around the mining operation – to facilitate the purchase of additional lands – among other issues. The situation exploded in 1990, when more than 25,000 people from Yauri took over mining installations. As a result of this action, the company provided funds for the electrification of Yauri and other infrastructure projects.

These actions focused more on urban areas and peasant communities resented the fact that they were left out of the economic support provided by the mining company.<sup>153</sup>

*“This has been confirmed by different community leader, who stated that during the time when the mine was state run the company did not listen to the affected communities, systematically marginalizing them and even violating their human rights. In addition, they said that during this period the possession of community lands and impact of the mine on the environment was notorious, as was the inability of the communities to address the problems.” (Camacho and Lossio, 2007:170).*

Urban and rural stakeholders had different demands. Urban interests focused on air and water pollution caused by the mine,<sup>154</sup> as well as the minimal economic contribution to Espinar. The demands of rural communities focused on the expropriation and purchase of lands. A climate of confrontation between the community and the company existed for many years.

<sup>149</sup> 29,285 residents.

<sup>150</sup> Idem.

<sup>151</sup> Through Directorate Resolution of the Ministry of Energy and Mines, the government expropriated 2,368 hectares from the Antaycama community in 1985, which were broken down as follows: 2,019 hectares from the Tintaya Marquiri annex; 151.77 hectares from the Bajo Huancané annex and 196.37 hectares from the Alto Huancané annex.

<sup>152</sup> Between 1982 and 1990, the company dismembered 17 annexes that were part of the Antaycama community (Cuadros, 2010).

<sup>153</sup> Cuadros, 2010.

<sup>154</sup> This was aggravated by the construction of a copper oxides plant and new tailings dam at the headwaters of the Ccañipia River basin.

“...the parties in conflict, the company and communities, did not see each other as equals: There was a clear resistance on the part of the company to accept the communities as counterparts in a dialogue process, which reinforced the rejection of the company in the communities. (Camacho y Lossio, 2007:172).

The presence of a new owner and purchase of additional lands to expand the mine were seen as key moment from civic organizations to restart negotiations. However, not all the demands were accepted and the voices of women were not heard:

“The principal demands were that the mine integrate economically into the province’s development, address the complaints of communities due to expropriation of their lands and build infrastructure and other basic services. The needs and opinions of women were not taken into account at the time. The negotiations were only with leaders, authorities and company representatives” (Cuadros, 2010:38).

The new century began with complaints by the communities directly affected by the mine<sup>155</sup> to the mining ombudsman’s office in Oxfam Australia to review the purchase of land. As result of this action, Ombudsman Ingrid Macdonald travelled to Peru and recommended the creation of a dialogue table, which was installed in 2002.<sup>156</sup>

**CHART 15:  
STAKEHOLDER IN THE DIALOGUE ROUNDTABLE<sup>157</sup>**

Stakeholders	Description
<b>Representatives of the five affected communities.</b>	Tintaya Marquiri, Alto Huancané, Bajo Huancané, Huano Huano and Alto Huarca. It is possible to group the demands under three broad headings: <ul style="list-style-type: none"> <li>Expropriation of lands and later acquisition by the company, when dates back to when the company was state owned;</li> <li>Sexual violence, arbitrary evictions, among others;</li> <li>Social and environmental impacts: Contamination, changes in ways of life, lack of employment, among others.</li> </ul>
<b>BHP Billiton Tintaya S.A.</b>	The company initially tried to avoid bad publicity that would impact negatively on its finances at the international level. It changed its approach to the creation of a space for dialogue.
<b>Supporting organizations</b>	<ul style="list-style-type: none"> <li>Oxfam America, with a growing participation in the issue of regulation of extractive industries in Andean countries (Bolivia, Ecuador and Peru).</li> <li>The National Confederation of Communities Affected by Mining (CONACAMI). The local chapters are known as Corecamis.<sup>158</sup> The objective is to safeguard natural resources that could be affected by extractive industries and contribute to the sustainable development of communities.</li> <li>Corecami-cuzco formed with the help of CooperAcción. Undertook actions and assessment of in communities affected by the presence of the Tintaya mine.</li> <li>CooperAcción was invited in 1998 by the mayor of Espinar to prepare an assessment of the communities affected by mining. His has provided technical and legal assistance to the Dialogue Roundtable.</li> <li>Mining Ombudsman began in 2000 at the initiative of Oxfam Community Aid Abroad as a result of the increasing participation of Australian mining company in developing regions in Africa, Latin American and some parts of Asia, and the accompanying complaints of human rights violations and environmental destruction.</li> </ul>

<sup>155</sup> Tintaya Marquiri, Alto Huancané, Bajo Huancané, Huano Huano and Alto Huarca.

<sup>156</sup> The Dialogue Roundtable was not the only negotiation space created. Second roundtable was established for the company to dialogue with different landowners in the Ccañipia River basin where tailings dam was built. Another negotiation was with authorities and civil society organizations in the province. This was not an institutional space, but there was constant interaction between the parties (Camacho y Lossio, 2007).

<sup>157</sup> Based on the characterization prepared by Camacho and Lossio, 2007.

<sup>158</sup> Regional Coordinating Committee of Communities Affected by Mining.

The participants agreed not to include representatives of the Peruvian state in the dialogue space.

In 2004, representatives of the mining company, five communities, Oxfam America and CoopeAcción signed the Consolidation Agreement recognizing the progress made in the Dialogue Roundtable. The Roundtable's agenda allowed for the formation of four working commissions: (i) Land; (ii) Environment; (iii) Human rights; and (iv) Sustainable development. The agreement included:

**CHART 16:  
AGREEMENTS REACHED IN THE TINTAYA DIALOGUE ROUNDTABLE**

<ul style="list-style-type: none"> <li>• Recognition that the communities had been affected and their rights violated by the acquisition of land starting with the formation of the state company up through management by Magma and BHP Billiton.</li> </ul>
<ul style="list-style-type: none"> <li>• Return by the company of the same amount of land, acquiring property in agreement with the affected communities.<sup>159</sup></li> </ul>
<ul style="list-style-type: none"> <li>• Recognition that human rights violations, including the death of four peasants, were committed. In addition, recognition that sexual violence was committed against women in the communities.</li> </ul>
<ul style="list-style-type: none"> <li>• Start of reparations and compensation for identified victims.</li> </ul>
<ul style="list-style-type: none"> <li>• Environmental audit to determine the situation of the environment and resources. In addition, establishment of joint environmental monitoring, with agreed on protocols and procedures. This was organized by the environmental commission.</li> </ul>

The roundtable was conceived as a space to resolve conflicts, where the communities and the company could present complaints. The complaints would be discussed and resolved by the specific commissions. After the issues are debated, the results of the process are reported to the affected community for debate in an assembly. The Dialogue Roundtable implements the agreements.

*“The idea is that any person who wants an issue addressed in this space can do so without problems, channeling his/her concerns or allegations in verbal or written format through any representative participating on the roundtable” (Camacho y Lossio, 2007:197).*

The Dialogue Roundtable's commissions continued to operate after the mine was acquired by Xstrata PLC.<sup>160</sup> The new company committed to agreements reached by BHP and maintained the dialogue and consensus space. However, it does not have a specific policy regarding gender equity. The assessment in its Social Relations and Involvement Plan (PRIS) does not contemplate differences between men and women, with the exception of maternal-infant mortality (Cuadros, 2010:47).

Something similar is found in its community relations programs and projects. For example, while more than one-third of the temporary jobs are filled by women (Cuadros, 2010), this is not a result of a company policy. Rotation of jobs is decided in community assemblies, which chooses which families will work.

*“Providing employment to women does to correspond to a policy of gender equity in the company, which only indicates the number of jobs for each community and the community decides in an assembly which families will work and it is usually the men who decide who will work, whether men or women. The decisions are based on practical criteria to guarantee that the position is not wasted” (Cuadros, 2010:47).*

<sup>159</sup> The communities will receive lands near their community, either in the community, in the province of Espinar or possibly in another province equivalent to the land that was expropriated in 1982 or purchased by the company in the 1990s, as well as additional land between 15 and 50 percent of the original extension of land (Camacho y Lossio, 2007:203)

<sup>160</sup> A company with principally Swiss capital, with a minority British stake. The company was awarded the Las Bambas concession in 2004 and in 2006 purchased Tintaya. The operations follow the same ore deposit and are geographically close to each other. The idea is to create a mining corridor between the provinces of Cotabambas (Apurímac), Chumbivilcas and Espinar (Cusco), with minerals transported through Arequipa and to port facilities in that region (Cuadros, 2010).

One of the principal stakeholders was the provincial mayor elected in 1998. The support the mayor provided to the affected communities was an important element in creating a correlation of forces with the company. His approach was much different than other mayors, who favored the demands of urban sectors over those of rural areas with respect to the mining company (Camacho y Lossio, 2007).

The Tintaya experience, even though exemplary in terms of building a space for dialogue, faced limits in terms of the inability of the existing institutional framework to channel conflicts between mining companies and communities through dialogue processes. Participation continues to be limited and mechanisms for conflict resolution once production is underway have not been introduced. As a result, new private spaces to resolve socio-environmental conflicts have been created (Camacho and Lossio, 2007).

### Participation of women

There are few studies in Peru concerning the participation of women in extractive industries, specifically in the mining sector, despite the fact that the presence of women in the struggle for access to and exercise of rights has been of vital importance.

The presence of women in extractive industries has witnessed different stages. In the 1960s, women – wives and partners of miners – organized in so-called Housewife Committees in mining camps. Their demands revolved around basic services, such as health and education.

The National Central of Mining Women<sup>161</sup> was started in the 1990s, with women supporting the struggles of miners in marches and strikes, preparing food and taking part in confrontations related primarily to the privatization of companies, etc. (Cuadros, 2010:25).

The women's central collapsed at the end of the 1990s and was reorganized in 2002, when it gained autonomy from the mining unions and federations (Cuadros, 2010:25).

The lack of organized women was noticed when the Dialogue Roundtable was formed. Strengthening the presence of women in this space was a process that took four years, after which they decided to organize and formalize their participation.<sup>162</sup> With the support of CooperAcción and Corecami, women held four meetings that led to the formation of the Association of Women Affected by the Activities of the Tintaya Mine.

Today, the women of Tintaya have developed, with the collaboration of the CooperAcción team, the *Women's Agenda*.<sup>163</sup> It is a negotiation mechanism that includes the principal problems identified, solutions and the parties responsible for actions. The following chart summarizes the principal issues/problems contained in the Women's Agenda:

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<sup>161</sup> Part of the National Federation of Mining, Metallurgical and Steel Workers of Peru.

<sup>162</sup> Interviews with the team at CooperAcción, including Julia Cuadros, Emma Gómez and Giselle Salazar.

<sup>163</sup> A very useful tool for empowering women. The process included: (i) Start with life experience, what have your experiences with mining activities been like?; (ii) Participatory identification of: principal problems that women believe affect them, alternative solutions and "in whose hands does the solution fall" and, finally, who makes sure that the solutions work; and (iii) Process for organizing and prioritizing issues/problems validated by them in spaces for consensus-building. A similar experience developed in the urban areas, where it is possible to corroborate the positive effects of this constructive process identifying the collective demands of women. See the Political Agenda of Women of Southern Lima. Desco Urban Program. 2008.

### CHART 17 ISSUES IN THE WOMEN'S AGENDA

Areas	Summary of issues addressed
Rights and inclusion of women	<ul style="list-style-type: none"> <li>• They are victims of marginalization and discrimination by society because of macho attitudes;</li> <li>• Abuse of power by authorities;</li> <li>• Psychological abuse by mine workers;</li> <li>• Discrimination in assemblies by leaders, humiliated by authorities;</li> <li>• Need to raise awareness that their rights must be respected;</li> <li>• Need to strengthen their capacity on issues of human rights and citizenship;</li> <li>• Excessive work as wives, mothers and in the work place.</li> </ul>
Labor opportunities for women	<ul style="list-style-type: none"> <li>• Lack of jobs for them;</li> <li>• No work in farming.</li> </ul>
Education, illiteracy affects women to a greater degree	<ul style="list-style-type: none"> <li>• Female illiteracy;</li> <li>• Schools are not properly equipped;</li> <li>• Teachers are not doing their jobs (poor quality of education).</li> </ul>
Health	<ul style="list-style-type: none"> <li>• Poor attention in health centers;</li> <li>• Health centers poorly equipped;</li> <li>• Appearance of different illnesses in people and animals;</li> <li>• Aliments, including bone aches, vision, cough, pimples and spots on the face;</li> <li>• Unknown illnesses in women.</li> </ul>
Water and sanitation	<ul style="list-style-type: none"> <li>• Lack of potable water for human and animals consumption;</li> <li>• Water pollution.</li> </ul>
public services	<ul style="list-style-type: none"> <li>• Electrification;</li> <li>• Transportation problems, abuse of passengers.</li> </ul>
Democracy and participation	<ul style="list-style-type: none"> <li>• Consider a special percentage of the budget for women's organizations in the participatory budget process;</li> <li>• Corruption among authorities;</li> <li>• Women do not participate in communal assemblies;</li> <li>• Women do not participate in decision-making spaces;</li> <li>• Lack of awareness of rights;</li> <li>• Some community boards do not support/criticize women's organizations.</li> </ul>

This process has strengthened the organizational capacity of women in the Espinar province, specifically in the area of influence around the mine. A recent example is the negotiation process between the company and the Mothers' Club. The Mother's Club is located in a strategic area for Xstrata's new Antapaccay project. Over the past year the different stakeholders have been negotiating the best price for the land. The women have secured significant economic benefits: Productive projects for women in Espinar; exchange of their land for a locale in Espinar; and 1 million nuevos soles for the property, among other things.<sup>164</sup> The weakness of this process was that it was done outside the Dialogue Roundtable, because it corresponded to a different extractive project.

<sup>164</sup> Interview with the CooperAccion's team, including Julia Cuadros, Emma Gómez and Giselle Salazar.



This long process of capacity-building has also meant important changes in the lives of women. They are not always able to balance their roles as leaders with domestic responsibilities and in some cases their have been conflicts, with spouses claiming that they are “neglecting the home.” In other cases, they have opted to exercise roles typical of male leaders<sup>165</sup> so as not to be ridiculed and to gain legitimacy among male leaders.

They have also had to deal with pressures from the community itself, which has tried to stop them from mobilizing to participate in the dialogue spaces. This is due to the fact that the presence of women in public spaces tends to transform and re-establish the rules of the game.

*“They say that the company has a campaign, saying that CooperAccion is dividing the community because it works with women. There is the case of women in Tintaya Marquiri who did not participate in the workshops, because they were not given permission to attend meetings. We found out about this one day because a women leader showed up at the meeting and she told that she had come without the community's permission. They face social pressures. The company's interest is found in the fact that there are more changes to corrupt men. The women have denounced this and they are not going to keep quiet. They demand what they believe is fair. The women want solutions that they consider just and that are not line with the company's proposals.”<sup>166</sup>*

This public space, however, demands that they follow certain rules: Greater exposure of their ideas and better understanding of the issues address, etc. They are required to take on new and greater responsibilities. It should not be forgotten that these women experience racism and discrimination not only because they are women, but also because they are Quechua-speaking peasant and poor (Cuadros, 2010).

*“The men make fun of them when they participate. When we began working we had to offer training in public speaking. They asked the part of the training be in Spanish instead of Quechua so they could negotiate. This was against out methodology for intercultural training, but it is what they wanted. It was important, because the people they negotiate with are not Quechua speakers.”<sup>167</sup>*

Another issue that limits the participation of women in assemblies is the fact that those with voice and voter are landowners, mainly men. There are only a few women who own land and can participate. As a result, decisions affecting them are made by men. As Cuadros (2010) states, the peasant communities and the mining companies have not consulted women or considered their needs. Decisions continue to be made without women's participation.

*“Land in the vision of women constitutes a network of protecting from possible situations of abandonment, family violence and poverty. However, women's access to property is limited by cultural and legal reasons, give that men are legally considered registered peasants. (...) There is no formal impediment for women to own or possess private or communally held land, but men are openly opposed. In the case of inheritance, it is male siblings who block women from having access to a parcel of land. In the case of death of a registered community member, the first priority is his male son and in many cases it has been brothers or brothers-in-law who have been recognized by the community. There are only a few exceptions in which a widow has been put in charge and assumed the role of a registered peasant” (Cuadros, 2010; pp.59).*

<sup>165</sup> Interview with the CooperAccion's team, including Julia Cuadros, Emma Gómez and Giselle Salazar.

<sup>166</sup> Interview with the CooperAccion's team, including Julia Cuadros, Emma Gómez and Giselle Salazar.

<sup>167</sup> Interview with the CooperAccion's team, including Julia Cuadros, Emma Gómez and Giselle Salazar.

Finally, it is necessary to highlight that the demand for participation of women is not only act of justice, but responds to a community's vision of the future. Women are the ones in spaces for participation who demand attention to education, communication, health care, etc., while men have a more short-sighted vision, generally demanding things related to production (water, seeds, etc.).

### **Lessons learned and recommendations**

Mining activities have different impacts on men and women. For women, they significantly change access to resources, such as water and land, add new domestic and community chores, and increase school drop-out rates, which primarily affect girls, among others. Even though it is aware of these conditions, the Peruvian state has done little to guarantee the presence of women in decision-making spaces that affect their lives.

The Tintaya experience shows that women have to overcome many barriers to ensure full participation, and several of these barriers are created by their male counterparts. Men fear that they will be displaced from responsibilities they have traditionally held. This masks the idea that the “natural” condition of women is to be subordinate, as Cuardos (2010) states.

The presence of the mining company in an area is an important factor for change in economic and political terms. The actions undertaken in territories tend to have a differentiated impact on men and women, benefitting primarily men and generating new situations of risk for women.<sup>168</sup>

It is the state's responsibility to monitor this situation and avoid a widening of inequality gap between men and women, specifically in territories influenced by extractive industries. The state must guarantee equitable participation of women.

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<sup>168</sup> A situation that is not properly monitored, according to the experience of the CooperAccion team, is the social breakdown in the community and family, which increases levels of conflictivity in the territory

## Chapter 3.

# Conclusions, recommendations and roadmap

### 3.1. Conclusions

The review of the constitutional and normative frameworks on the three countries allows for the following conclusions:

- 1. THE CONSTITUTION AS A GUARANTEE FOR THE RIGHTS TO PARTICIPATION.** The constitutional framework is of utmost importance for guaranteeing the rights to participation of citizens, with participation reducing the possibility that rights are violated. Nevertheless, it is not a sufficient condition and could be merely declarative. It is necessary to prepare laws and regulations so that the exercise of this right is truly effective. In addition, a broad regulatory framework that is not within the constitution could lead to political action that undermines what has been achieved. This refers to “government policy” instead of “state policy.”

The new constitutions in Bolivia and Ecuador have enshrined the rights to gender equity and citizen participation. However, in both cases there still needs to be legislation passed to regulate the constitutional articles that make these rights effective.

In the case of Peru, there are no specific constitutional rights regarding participation linked to extractive industries. However, there is a broad – if insufficient – legal and normative framework. This is due to the recommendations provided by multilateral development organizations and pressure exerted on the state by civil society in recent years.

- 2. ROLE OF THE STATE IN EXTRACTIVE INDUSTRIES.** A review of norms shows that in countries with a greater openness to private investment in extractive industries, the role of the state is focused on supervision and monitoring, while its role in production is limited. This is the case in Peru. On the other hand, when the state plays a strong role in the production of extractive industries, which is the case in Ecuador and Bolivia, there are few incentives for its to take on an oversight role and create proper mechanisms for participation and citizen control. There is a strong tension between extractive participation of the state and its role as a guarantor of rights. In this final case, the state relies on political arguments that it is representing the interests of all citizens.
- 3. REGULATION OF CITIZEN PARTICIPATION IN EXTRACTIVE INDUSTRIES.** The need for clear procedures with respect to regulations responds to three central elements: (i) A strategy to reduce social conflicts; (ii) Pressure from transnational companies and multilateral banks to respond to international standards; and (iii) Demands and advocacy from indigenous and peasant organizations.<sup>169</sup> As such, in many cases corporate practices are more demanding than what is demanded by the state.
- 4. POLICIES FOR GENDER EQUALITY AND ORGANIZATIONAL STRUCTURE.** The roles, resources and authority given to state agencies in charge of promoting and overseeing the rights of women is an element to evaluate the scope of actions undertaken by these agencies and their capacity to implement and oversee gender as a cross-cutting focus of public

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<sup>169</sup> In the case of Bolivia, for example, the regulation for consultation and participation, and the regulation for socio-environmental monitoring of oil/gas activities stem from pressures from civic organizations based on the Hydrocarbon Law (Law 3058), which recognizes the right to consultation and socio-environmental monitoring.

policies, specifically in reference to extractive industries. Peru has a ministry to women's issues, which is not the case in Ecuador and Bolivia.

5. **CITIZEN PARTICIPATION AND EXTRACTIVE INDUSTRIES.** The three countries have made significant progress with respect to the right to political participation (accountability, recall and legislative initiative, among others). With respect to extractive industries, both Bolivia and Ecuador include prior consultation as a constitutional prerogative, but this is not the case in Peru. However, in none of these cases does prior consultation include veto power.
6. **CENTRALIZATION OF AUTHORITY AND FUNCTIONS REGARDING EXTRACTIVE INDUSTRIES.** The authority of sub-national governments in the three countries is lacking when it comes to extractive industries. The central government has decision-making power over extractive sectors, which are considered strategic. In Peru, sub-national governments only have authority over small-scale mining
7. **ENVIRONMENTAL REGULATION.** There are much broader processes for citizen participation in this area, which opens the possibility for important opportunities for citizens to be involved, specifically organized women's groups.
8. **PARTICIPATION OF WOMEN IN THE LEGISLATIVE FRAMEWORK OF EXTRACTIVE INDUSTRIES.** Despite constitutional declarations proclaiming gender equality in Bolivia and Ecuador, both countries lack legislative and normative development in this area. Peru, which does not specify this in the constitution, has passed legislation and adopted regulations and procedures that promote and regulate citizen participation in all stages of extractive projects. In the specific case of women, the three countries mention guarantees for non-discrimination, but they do not have policies for inclusion and promotion that are based on gender equity or have a gender focus.

With respect to specific legislation and norms for the extractive sector, environmental impact studies – the central instruments for monitoring potential environmental and social impacts of extractive projects – do not have a gender focus or tools for gender evaluation in any of the stages in any country in the region.

In this way, it is possible to state that the interests of women and the impacts extractive industries have on them are not properly considered by regulatory agencies in the three countries under review.

This normative vacuum is produced in situations where women, particularly women in rural zones where extractive industries operate, face socio-economic, cultural, educational and linguistic conditions less than favorable than those of men when it comes to exercising their rights in processes that affect their lives and the lives of their families.

It is important to stress, however, that while normative frameworks do not guarantee the participation of women and the possibility of them making their voices heard, this does not mean that organized women have not had a role in specific processes and spaces, which can be seen in the cases analyzed below.

The following conclusions were drawn from the review of the cases selected in the three countries:

9. **ACCESS TO PROPERTY ON THE PART OF WOMEN.** The existing literature and review of cases, especially the Tintaya case, indicate that women have less access to holding property titles in indigenous and peasant communities. This seriously limits their capacity to have a voice and vote in community assemblies and other in forms of collective decision-making. This unequal access to land is due in large measure to existing power relations that continue to follow gender lines within peasant communities and among indigenous peoples.

- 10. DIFFERENTIATED MODELS OF LOCAL DEVELOPMENT.** The cases reviewed demonstrate social and economic development models that do not always coincide with those of the state. The Sarayaku case reveals a development model that is opposed to oil extraction. The Charagua Norte case shows an option adopted by Guarani people to demand that companies and the state comply with social and environmental obligations required by law. The Tintaya case presents a model of negotiations involving local residents to obtain better conditions and benefits from a mining project.
- 11. DIFFERENTIATED LOCAL ORGANIZATION.** The Charagua Norte case reflects a process of political maturity that has strengthened Guarani identity and built a unified front – the communities of the Assembly of Guarani People of Charagua Norte and the National Assembly of Guarani People (APG)– that includes women’s organizations. The consultation process of the APG Charagua Norte (June 2010) has contributed to strengthening the indigenous organization internally and as a political stakeholder. Since 2008, the APG Charagua Norte has been strengthening its capacities for socio-environmental monitoring of oil/gas activities. In addition, an indigenous group has been able to link together around different territories. The Sarayaku case involves Kichwa indigenous people located on one territory who created a governing council that included women and young people. The Tintaya case involves a dialogue roundtable that was not based on ethnic identity but territorial principles – communities located within the influence of a mining Project – and citizenship. In this case, women were able to create a space, although limited, due more to pressure from external stakeholders, including Oxfam Australia’s ombudsman for extractive industries, than internal processes.
- 12. POLITICAL NETWORKS AND LEADERSHIP.** The cases reveal differences in the process of building political networks and leadership. In the Sarayaku case, a relatively small indigenous group confronted the state and an oil company by forging international alliances. For this to happen, the capacities demanded of leaders are knowledge of English and links to much broader networks. The case of Charagua Norte is similar, with fluid knowledge of Spanish and personal networks indispensable for someone to become a leader. The APG Charagua Norte over the past few years has developed important links with lowland and highland indigenous organizations, which has strengthened its capacity for developing proposals and mediating with state and private stakeholders. In the case of Tintaya, the requirements were less explicit but equally valid. As a result, women in the three cases have had limited access to the political capacities needed for leadership. Given this, one of the demands of women in Tintaya has been training to improve their leadership and oratory skills.
- 13. DIFFERENTIATED SPACES FOR DIALOGUE.** There are different experiences involving the construction of spaces for dialogue between local populations, extractive companies and the state. These spaces do not exist in the Sarayaku case. In the Charagua Norte case, Guarani residents do not reject the spaces and opportunities for participation opened by the state, such as the process for creating autonomies, and seek to establish indigenous socio-environmental monitoring and the right to consultation in dialogue with the state.<sup>170</sup> The Tintaya case reflects a greater institutionalization of dialogue mechanisms that were forged directly between the population and the company. This was facilitated by NGOs without the participation of the state. However, recent changes have exposed limitations to the established dialogue roundtable and the context created by the expansion of the Antapaccay project.

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<sup>170</sup> Recently, the productive dialogue space between the APG Charagua Norte and that state led to the signing of an agreement with the Ministry of Hydrocarbons and Energy regarding seismic exploration by Pluspetro. In July 2010, the oil company agreed to monetarily compensate APG Charagua Norte.

- 14. INVISIBILITY OF WOMEN.** On a negative level, the three cases show the lack of attention in existing literature to the interests and specific actions of women. The few studies that exist overlook the demands and processes followed by women, and create fictional and homogenous collective image.

In a more general sense, it is important to see the conclusions in framework of the current processes underway in Latin America. It is possible to show that there are three models for regulating extractive industries: The liberal model in place in Colombia and Peru, the statist model in place in Venezuela, Bolivia and Ecuador, and mixed model in place in Brazil and Chile. In addition, hand-in-hand with these models are two other opposing processes, one for administrative and financial decentralization, which is promoted by multilateral agencies, and the other which is centralizing. It is within the context of these processes that citizen participation in general, and women's participation in particular, need to be understood. Understand, for example, how the role of the state as owner of extractive industries seriously affects the role of citizen participation and oversight of these processes.

### 3.2. Recommendations

While geared primarily toward modifying consultation processes, the recommendations from this assessment establish guidelines so that different stakeholders can incorporate appropriate practices that guarantee the participation of better informed women in the complete project cycle of extractive industries.

#### For the state:

- *Incorporation of a gender focus in environmental impact studies (EIS).*

The states, through regulatory agencies, must demand a gender focus in the EISs. Detailed studies show that the impact of extractive projects affect men and women in different ways (Cuadros 2010; Ward 2008).

In order to safeguard in an effective way the rights of women and men, as well as properly address these impacts, the state needs to require the incorporation of indicators broken down by gender in the different social aspects that comprise the EISs in the exploratory, production and post-production phases. These aspects include access to and tenure of land and other assets, income, collective decision making, distribution of political positions, sexual division of labor, work load, educational levels, literacy, alcohol consumption, prostitution, and domestic violence, etc.

State agencies in charge of guaranteeing equal rights (the Ministry of Women's Issues and Social Development in Peru) can become the stakeholders in charge of transmitting capacities and tools so that government agencies in the mining and oil/gas sectors incorporate a gender focus and protocols.

It is true that demanding from above the incorporation of standards, indicators, guidelines and protocols for gender equality is not enough. There is the danger that these norms become simple checklists for companies to follow. It is also necessary, as a result, to carry out advocacy work with the companies so that they voluntarily adopt internal policies and procedures with a gender focus.

- *Access to property by women*

The review of the case studies and existing literature<sup>171</sup> suggests that a crucial aspect in the exclusion of women from collective decision making is due to restrictions in access to property titles.

<sup>171</sup> Deere and León 2003; Trigos 2007.

In many cases, being a property owner is a requirement for being an active member of a community or indigenous assembly with voice and vote. With exceptions like being a widow, traditional forms generally exclude women from owning land. As a result, the rights of women in family and collective decisions regarding participatory processes and negotiations in the different phases of extractive projects are seriously restricted.

National legislation and norms should ensure equal access to property, even when this collides with traditional collective systems that mask gender inequalities.

This recommendation is likely to be controversial and create doubts around the existence of a conflict between individual rights (demanded by women) and collective rights (demanded by indigenous and peasant communities). This is just one more reason that makes debate necessary.

One aspect intimately related to this is the need for the state to guarantee that all people, especially women, possess national identification documents. This is not only a requirement for all processes formalizing land ownership, but a demand of the majority of work programs implemented by extractive companies.

- *Guarantee the active participation of women in collective decision-making mechanisms*

As with the two previous recommendations, the state, through sectoral and decentralized levels, must foster and ensure the active participation of women in processes linked to extractive industries.

This active participation of women must occur in the spaces for citizen participation demanded by law in each phase of extractive projects (for example, informational workshops and public hearings), in voluntary mechanisms (participatory environmental monitoring) and direct negotiations between the population and company (agreements on distribution of benefits or creation of temporary work programs, for example).

The decisions adopted in these spaces directly impact the lives of women and are reflected in changes in habitat, forms of production, families, education of their children, etc. For this reason, they have the right to be informed about impacts and agreements – positive and negative – that can affect their lives so they can freely decide.

- *Guarantee citizen rights regardless of ethnic or class considerations*

Fostering and ensuring the free, active and informed participation of men and women in processes initiated by extractive projects is a right that must be enjoyed by all the citizens of the state

It is obvious that some populations, especially indigenous and peasant groups, have experienced and continue to experience restricted exercise of their rights. This is why it is necessary in many cases to design and implement mechanisms for positive discrimination. Nevertheless, the right to participate in processes and decisions regarding extractive industries cannot be restricted to specific groups, but must explicitly include all citizens regardless of ethnic, class, gender, religious or other social considerations.

- *Strengthen the state's capacities regarding gender focus*

Together with the design and implementation of policies and norms, the state must foster the capacities of its organizations, authorities and personnel working on the promotion and regulation of extractive industries to apply a gender focus. The development of capacities can include issues such as preparing EISs with indicators broken down by gender, differentiated impacts based on gender of the impacts of extractive projects, and experiences promoting the participation of women in extractive projects, among others.

### For private companies

- *Explicit recognition of differentiated impacts based on gender*

Private companies should recognize that their impacts, both positive and negative, have an influence on heterogeneous populations and, as such, are going to produce differentiated results. The divisions based on gender are going to produce one of these differentiated results, with the activities of extractive industries impacting in an unequal way along these divisions and in many cases broadening existing gaps.

The actions of extractive projects are not gender neutral. They produce changes in the lives of men and women, in families, in inter-family dynamics, and productive activities, among others. When companies are aware of this they can think it terms of differentiated actions.

As such, promoting appropriate participation of women from local communities in the project cycle implies designing differentiated strategies that are recognize specific interests and demands, such as schedules, meeting places, meeting formats and language, among other points.

- *Design and implementation of corporate gender policies*

Recognition of differentiated impacts in extractive operations should be reflected in specific policies, standards, procedures and programs that extractive companies should design and implement with the explicit objective of mitigating negative impacts and broadening positive impacts for women, as well as other vulnerable groups, such as children and the elderly.

These corporate policies can result in baseline studies, environmental impact studies, risk evaluations, development plans and other tools that take into account the situation of women and do not see the community or location as a simple unit.

There are experiences underway by private companies that have designed policies and created tools to incorporate and ensure a gender focus in the full cycle of their operations.<sup>172</sup>

- *Creation of value through management of diversity*

The incorporation of a gender focus and awareness in the cycle of operations of extractive companies should not only be understood as some abstract issue of justice. The incorporation of policies and procedures sensitive to gender divisions will help create better social contexts, allow for the creation of cooperative alliances with important groups in society and foster, in a sustainable way, the positive reputation of companies.

In this way, the corporate social responsibility indices and rankings of companies should not only reflect management of gender diversity – among other forms of diversity – within the company but also in its social context throughout the cycle of production, as well as incorporating its different suppliers and contract companies.

In summary, the incorporation of a gender focus in an extractive project's cycle of operations helps with the construction of long-term relations with local populations and consciously helps avoid undesired impacts and conflicts within the area of operations. Both objectives will be reflected in improved social and financial performance of projects and a better bottom line for the company.

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<sup>172</sup> This is the case with Australia's Río Tinto (2009).



- *Gender awareness within the company*

While necessary, policies and tools with a gender focus are not enough to guarantee proper management of the impact of external factors of a company's operations on women and men. It is fundamental for the company to systematically and continuously raise awareness of the importance of a gender focus in all the areas and among all its employees.

This implies the creation of gender teams or standard bearers with sufficient capacities and competencies so that the opinions can be reflected in a company's different decisions and process, and not only those referring to community relations.

In addition, and this is particularly important in extractive industries, it is necessary to foster changes in a culture that remains exceedingly male oriented. Encouraging the incorporation, permanence and promotion of women employees in all areas of a company, and not only in administrative areas, is a step that needs to be explored. This means promoting training for professional women in universities – through direct scholarships, for example – creation and expansion of codes of conduct that include gender issues, and designing and implementing facilities and camps that are women-friendly, among other things.

### **For civil society**

- *Advocacy in the preparation of public policies for gender*

An essential part of the work of civil society is fostering changes in public policies to bring about the incorporation of a gender focus in citizen participation in extractive industries.

This advocacy work should be done with different stakeholders: i) The state, its sectoral agencies and sub-national governments; ii) Multilateral development banks (the World Bank, International Financial Corporation, Inter-American Development Bank, Andean Development Corporation) so that they prepare and adopt policies, standards and guidelines for gender inclusion in their investment portfolios for extractive industries;<sup>173</sup> iii) Extractive companies so that they design and apply strategies that recognize gender in their operation cycles;<sup>174</sup> and iv) grassroots organizations, including men, women and mixed, to identify in a shared way the differentiated impacts experienced by men and women, and to collaborate on the construction of more sustainable and equitable development mechanisms. With respect to this final point, specific emphasis should be placed on advocacy in the organizations that form part of the women's movement in each country for them to include the issue of extractive industries on their agendas. They are allies to bring about broader policy advocacy strategies.

The actions of civil society cannot be restricted to extractive industries. The constitutional and legal frameworks in the three Andean countries allow for preparation of strategies for action and promotion of gender equality and citizen participation from much broader contexts and with other stakeholders (ombudsman's offices, constitutional tribunals, human rights organizations, etc.).

- *Training for developing gender awareness and tools*

Another central task that can and should be taken on by civil society is providing tools, methodologies and experiences for gender inclusion.

Through collaborative relations with state agencies, extractive companies and grassroots organizations, development organizations and research and training centers can contribute with

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<sup>173</sup> Pressure could be applied so that international financial standard, such as the Equator Principles, include gender in their declarations.

<sup>174</sup> Including the world association of mining companies, the International Council of Minerals and Metals.

long accumulated experience regarding gender differentiation on which societies, especially rural societies, are built. In addition, they should analyze in a joint way the impacts that specific extractive projects are having on men and women and the best way to stimulate effective participation by women to incorporate their interests and demands.

- *Oversight of women's inclusion in citizen participation processes in extractive industries*

Finally, but not less important, is the work civil society can do to oversee promotion of active participation of women in citizen participation processes involving extractive industries. This implies monitoring compliance with national and international policies, standards and norms; verifying free, active and informed consent of women in citizen participation processes involving extractive industries whether promoted by the state, companies or local population; guaranteeing the inclusion of women's voices in the agreements reached between companies and local populations; and propose the inclusion of gender components in indicators for corporate responsibility and project performance, among other actions.

**CHART 18:  
SUMMARY OF THE RECOMMENDATIONS BY STAKEHOLDER**

State	Company	Civil society
Incorporate a gender focus in EISs.	Recognize that there are different impacts based on gender.	Advocacy for gender focus in public policies.
Ensure women's access to property.	Design and implement corporate gender policies.	Training on gender focus and tools.
Ensure the participation of women in collective decision-makings	Create value through management of diversity.	Monitor inclusion of women in citizen participation processes.
Ensure citizen rights independently of ethnicity or class	Raise gender awareness within the company.	
Strengthen states capacities regarding a gender focus		

### 3.1. Roadmap

This assessment provides suggestions for possible actions that could be taken by Oxfam, its allies and partner organizations:

- **Studies and systematization of experiences with a gender focus.** Given the limited amount of specialized information on gender and extractive industries, it would be extremely important to foster the preparation of studies, assessments and systematization that examine this relationship in the three countries where Oxfam operates.
- **Tool box to incorporate a gender focus in extractive industries.** These tools should be oriented to promoting the incorporation of a gender focus in civil society organization, private businesses, including environmental consulting firms, and the state at it different levels.
- **Studies on access to land in peasant and indigenous communities.** Promote studies on the capacity of women to access, use and have property title to land in territories that are under the influence of extractive industries.
- **Advocacy actions on public policy in the mining sector to generate protocols with a gender focus.** These actions could be aimed in a priority manner at state agencies that deal with women's issues, those that regulate extractive industries and ombudsman's offices.

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