



OXFAM RESEARCH REPORT

THE WEAK LINK

THE ROLE OF LOCAL INSTITUTIONS
IN ACCOUNTABLE NATURAL
RESOURCE MANAGEMENT

PERU



OXFAM
America

*COVER: Area near Tintaya Copper Mine (Espinar),
Cusco.*

Chris Hufstader / Oxfam America

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EXECUTIVE SUMMARY

Peru's mining sector is well established and has contributed significantly to the country's economic growth. The country has likewise made significant gains in terms of addressing both income-based inequality and poverty. Despite these gains, however, more than seven million Peruvians persist in a state of poverty while levels of inequality remain stark. As such, despite the positive outcomes that have been produced by the country's natural resource wealth, it appears that there is more that could be achieved with these riches in terms of addressing human development.

This research is inspired by the desire to improve the extent to which natural resource wealth contributes to poverty alleviation. The focus of the work is on exploring the possibilities for (i) increasing the quantity of revenues that remain in Peru as a result of the exploitation of their natural resources, and (ii) making sure that the revenues which flow from extractive industries are effectively allocated towards fighting poverty. To these ends the report is focused on understanding the political economy of revenue sharing agreements, budget processes and oversight institutions.

Peru's extractive sector includes both petroleum and minerals. Despite this, due to the dominance of the mining sector in the country's economy this work focuses only on mining.

Peru's ability to capture revenues from the mineral sector has been shaped most prominently by the fact that the sector was reformed under conditions of radical structural adjustment. Within this process the mining sector was identified as the spearhead of efforts to attract foreign investment to the country and salvage the foundering economy. As such the terms offered to companies operating in the sector have historically been generous.

Since then, the extractive industry revenues in Peru have been contested. In general, these contests have included popular demand for the state to receive a greater portion of the revenues from extractive industries, an executive tolerance for neo-liberal economics focused on attracting investment, and a mining lobby focused on ensuring that agreements and regulations in the sector remained minimal and that those revenues which were collected were oriented towards the populations in affected areas—in order to create favorable conditions for extraction.

Over time, and with the boom in commodity prices, the Peruvian state has been able to wrest back control over the revenues raised from the sector and partially improve the terms for revenue collection so that they are more favorable towards the state. Illustrative of this has been the creation of royalties for mining companies, the renegotiation and amendment of fiscal stability agreements in the mining sector, the creation of the voluntary mining fund, and the establishment of a special mining tax. Despite these changes, the fiscal terms contained in Peru's mining laws are still thought to be relatively generous towards companies, especially given the country's attractiveness in terms of its mineral potential.

Revenues from Peru's extractive industries are allocated through the "canon system," by which fifty percent of the value of the mineral resources are transferred back to subnational governments in producing regions. The remaining fifty percent of the natural resource revenues enter the national budget.

Although the canon was introduced in the 1970s as part of the means to manage the revenues from oil production, it was translated to the mining sector in the 1990s as a means to provide subnational governments with a share of the income collected from the mining sector. The canon was retained in the 2000s as a means to fund decentralization in the country. Today the canon is largely understood as a compensation mechanism for dealing with the impacts of mining in production areas. Notably, although there has been significant national debate over the generosity of the agreements between the government and mining companies, historically the issue of how revenues are allocated through the canon has been more contentious.

Despite the large sums of money contained in the canon, its developmental outcomes have been somewhat disappointing. Significant differences in the flow of resources between producing and non-producing areas has created inequality in the country. Similarly, because local level government budgets are determined by the participatory budgeting process, and this process is susceptible to dominance by urban elites, the spending of canon revenues has benefited urban centers more than rural areas. In addition, problems of maladministration at the local level have created problems for the effective use of canon revenues.

In general, there is no specialized accountability mechanism monitoring revenues from the mining sector and revenues are audited under the existing administrative systems. There are, however, laws covering the transparent use of natural resources in Peru.

Despite these allowances oversight of the sector suffers from significant constraints. The capacity of the state to audit companies has historically been limited, as the tax authority has been unable to verify production volumes, costs and transaction prices; and there are no rules in place to assess mineral volumes

and values. Likewise, the country has historically shown little political will to audit its own budget process (including the canon).

The result is that the effectiveness of transparency legislation in the country is limited by the fact that resources are only open to public scrutiny once they are in the system of public finances. The points at which they leave and enter the system are not thought to experience suitable oversight, and this is where the largest leakages are thought to occur. In addition, even those transparency laws that do exist are compromised by the fact that they lack any sort of enforcement mechanism, and exclude much company data. Finally, the data which is made publicly available is thought to be too technical to be understood by the lay public.

The budget process, and the process of resource distribution which takes place through it, is dominated by the Ministry of the Economy and Finance (MEF) which was empowered as a result of the structural adjustment reforms which took place in the country. At the subnational level, budget priorities are set through the participatory budget. Due to the costs involved in participating in this institution, however, the participatory budget tends to be dominated by urban interests. In addition, the process of approving the participatory budget still places the process under the control of the MEF.

Budget oversight principally falls to Congress who has to formally approve the budget; however, Congress is unable to effectively carry out this function due to capacity and incentive problems. At the same time, internal oversight mechanisms, in the form of the Internal Control Entities, are insufficient.

The outcome of executive control over the budget is that budget allocations are driven by a competition between president and the MEF, with the former generally pushing to increase social expenditure, while the latter maintains a relatively austere approach to social expenditure.

The specific accountability failings regarding the budget and extractive revenues in Peru are related to the broader institutions of accountability which operate in the country more generally. In this respect failings of oversight regarding extractive revenues are related to problems in the Congress, the media and the judiciary. All of these institutions are thought to have failed to recover from the Fujimori regime under which power was centralized within the executive, the independence of the media was compromised, and the autonomy of oversight functions was compromised.

Today, problems with the Congress persist as a result of the general public's mistrust of the established political parties, which means that it is difficult for any issue to achieve consensus in Congress. In addition, this lack of trust drives a high rate of turnover in elected officials which means that those officials have limited incentives to act in fidelity with their election promises. The result is that

issues of maladministration are hard to pursue, while the structural changes needed to address these problems cannot get political traction. At the same time, the media has become an important channel for shaping popular opinion, being generally sympathetic to a neoliberal agenda.

Within this context civil society's ability to undertake effective audits of government expenditure, based on information published under the country's transparency legislation, has been limited. Successes have largely been confined to cases focusing on budget transfers, however, when trying to audit actual expenditures, efforts are often frustrated by the fact that access to information requests are frequently ignored. Likewise, problems of record keeping at the local level prove an important hurdle to effective social auditing.

ACRONYMS USED IN THIS REPORT

APRA: party—American Popular Revolutionary Alliance

CCL: Local Coordination Councils

CCR: Regional Coordination Councils

CGR: Comptroller General of Peru

CSR: Corporate Social Responsibility

DD: *Dignidad y Democracia*

DIGESA: Department of Environmental Health

DNPP: National Directorate of the Public Budget

FONCODES: Cooperation for Development Fund

FONCOMUN: Municipal Compensation Fund

ICSID: International Center for the Settlement of Investment Disputes

IEM: Special Mining Tax

MEF: Ministry of Economy and Finance

MIDIS: Ministry of Development and Social Inclusion

MIMP: Ministry for Women and Vulnerable Populations

MINEM: The Ministry of Energy and Mining

OCI: Internal Control Entities

OECD: Organization for Economic Co-operation and Development

PCM: Prime Minister's Office

RLIE: Latin American Network on the Extractive Industries

SIAF: Comprehensive Financial Administration System

SNIP: National Public Investment System

SNMPE: National Society for Mining, Oil and Energy

This report was commissioned by Oxfam America, and produced by Laura Soria at *Societas Consultora de Analisis Social*. Collaborators on the report included Augusto Navarro, who reviewed the details of the law governing the extractive industries since the 1990s; Patricia Fuertes analyzed the country's economic and institutional evolution and described the public budgeting system; Beatriz Soria and Máximo Gallo carried out the interviews with the specialists from various sectors; Marilyn Ishikawa helped collate the qualitative and quantitative information. Gerardo Castillo offered comments on the report's content. After production the report was then edited into a final edition by Oxfam America staff.

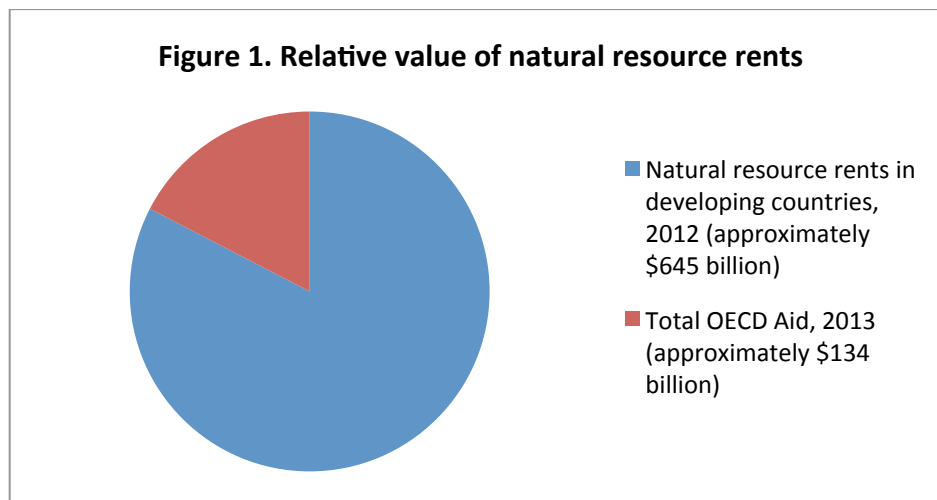
The report forms part of a larger study, funded by the Gates Foundation, looking at the role of local institutions in the management of extractive industry revenues.

The report was commissioned with the intention of creating a space for critical reflection on the part of Oxfam America regarding their engagement with efforts to improve natural resource management through empowering citizens to hold their governments to account. The views expressed in this report do not represent the formal views of Oxfam America.

We would like to thank Sharon Flynn, Cynthia Sanborn and Jonathan Fox, all of whom were part of the vetting committee that reviewed early drafts of this work and provided useful input.

1. INTRODUCTION

Natural resources present a potentially significant opportunity for developing countries. In 2013, for example, the 85 least developed countries in the world, , were estimated to have produced mineral, oil, and gas commodities (or “resource rents”¹), worth a total of \$645 billion. That is a figure over 4.5 times the size of global aid budget² for the same year (see Figure 1). Despite such potential wealth, however, a number of resource-rich countries persist in a “paradox of plenty” whereby, despite this wealth, many citizens in resource-rich countries continue to eke out their lives in conditions of gross material poverty. Strikingly, many of these same countries that experience the most dramatic forms of this paradox are also mired in corruption.



Source World Bank and OECD³

This report is part of a broader study looking at the national (‘local’) institutions that shape accountability systems across four countries: Peru, Senegal, Ghana and Tanzania. These four countries represent a mix of socio-economic and political conditions, and cover a range of levels of maturity in terms of the extent to which extractive industries are established. Of the four countries Peru’s

¹ Resource rents are calculated as the price of commodities, multiplied by production values, less a “normal return of capital” (<http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS>)

² Notably this includes aid flowing to many countries which are in addition to those 85

³ Author calculations. OECD: <http://www.oecd.org/newsroom/aid-to-developing-countries-rebounds-in-2013-to-reach-an-all-time-high.htm>, World Bank: <http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS> & <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

extractive sector is the most mature. The country has a long history of mining activity, and is now one of the largest producer countries in the world, leading Latin America in terms of the production of zinc, lead, tin, and gold.⁴ Mining currently accounts for around 12% of Peru's GDP (see Figure 2) and has consistently contributed more than half the value of the country's national exports.

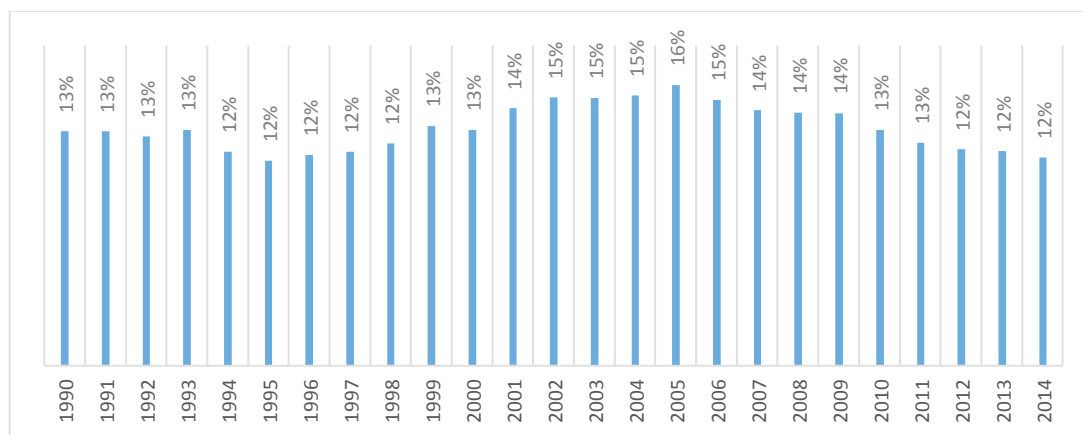


Figure 2: Showing mining's economic contribution to the economy as a percentage of GDP.⁵

Unlike the other countries in this study, Peru is a middle income country, which has seen significant declines in terms of income-based poverty and inequality.⁶ Despite this progress, high concentrations of extreme poverty persist in the country with over 7.4 million⁷ people estimated to be living in poverty in 2014. Levels of inequality also remain stark. The scope for inequality in Peru can be seen in Figure 3, where dramatic increases in economic growth since the year 2000 have not translated into equivalent improvements in HDI.

⁴ Ministerio de Energía y Minas, Lima. Recuperado el 12 de febrero de 2015, de <http://www.minem.gob.pe/publicacionesDownload.php?idPublicacion=282?rihoakbclgttdnza>

⁵ Source Formulation: *Societas Consultora de Análisis Social*. Source: *Banco Central de Reserva del Perú*, 2015

⁶ World Bank Peru country overview (<http://www.worldbank.org/en/country/peru/overview>)

⁷ Source: The World Bank estimates the national population at 30,973,148, with a poverty headcount ratio at 24% of the population (<http://databank.worldbank.org/data/reports.aspx?source=2&country=PER&series=&period=>)

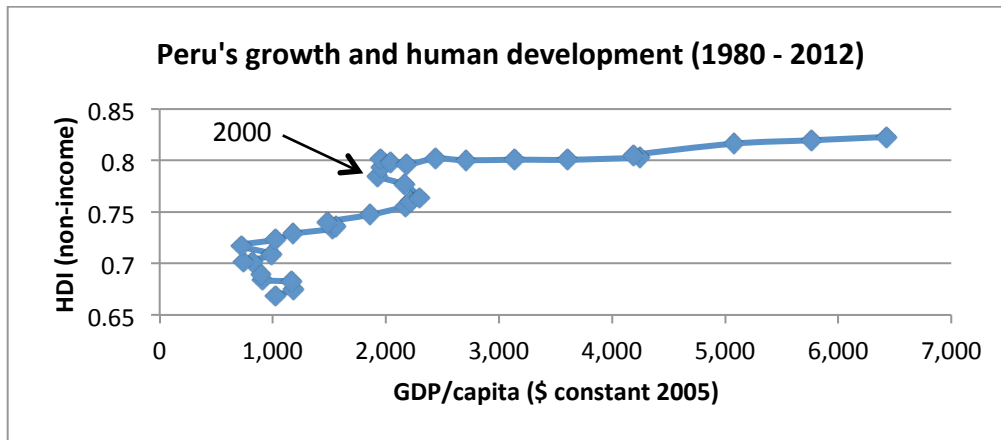


Figure 3: Showing Peru's trajectory in terms of per capita growth and human development. Each dot on the chart represents a year. Note the year 2000 when economic growth begins to increase rapidly without a commensurate increase in (non-income) HDI.

Considering the above, this research is concerned with understanding how to ensure that wealth from extractive industries is channeled into investments which reduce poverty. The motivation for this research comes from the desire to achieve three objectives:

1. Increase the proportion of revenues from extractive industries that remain in the country in which those resources are located.
2. Increase the proportion of those revenues being allocated to the sorts of pro-poor investments that will best address human development.
3. Make sure that the money which is claimed to be directed into a country, as well as that which is allocated for expenditure in the budget, actually correspond to real resource transfers, that reach those points of expenditure for which they are intended.

To this end the work is focused on (i) understanding how rules for revenue collection from extractives industries are set, as well as (ii) how budget spending is prioritized. In the case of the former, the intention is to understand what opportunities there might be to increase the proportion of revenues being captured by the state. In the case of the latter, it is to understand how budget priorities might be influenced so that an increased portion of those revenues are spent on goods and services that are accessed by poor, rural agriculturalists, and which have been shown to yield the greatest returns in terms of poverty reduction.⁸

⁸Croppenstedt, A., B. Carisma, S. Lowder, T. Raney, and E. Wielezynski. 2013. *The State of Food and Agriculture 2013*. The State of Food and Agriculture. Rome: Food and Agriculture Organisation.

Increasing the revenue collected by developing countries and better orienting it towards expenditure that meets human development goals is, however, only part of the challenge. There are also issues around how well those rules are followed and whether or not those budgets are effectively executed. As such, this work is similarly concerned with (iii) understanding the extent to which decision-makers in Peru can be considered accountable or not, and what dynamics shape that accountability (or the lack thereof).

AN OVERVIEW OF EXTRACTION

Following internal political violence and economic collapse in the 1980s, Peru was in a state of crisis. In the early nineties the country implemented some of the most radical economic reforms in Latin America, replacing its previously state-centric model of development with one that stressed the recommendations of the “Washington consensus” including fiscal balance, the opening of the economy, export-driven growth and free trade.⁹ The reforms encouraged the privatization of state enterprises and public services, liberalized markets—especially the labor market—ensured security of tenure, and reformed the way tax was administered. Within this context, the mining sector became the spearhead of efforts to attract investment—especially foreign investment—to a country considered a high financial risk. The privatization of the mines, many of which at that point were heavily owned by the state, also offered liquidity to the government.

In late 2002, Peru entered a period of unprecedented growth as a result of the rise in international metal prices and the expansion of production. This resulted in a trade surplus of US\$321 million in the same year.¹⁰ Since then, the mining sector has been fundamental to the country’s growth as well as many of its contradictions. Peru is now one of the largest mineral producers in the world (see Table 1).

| Product | Latin America | World |
|---------|---------------|-------|
| Zinc | 1 | 3 |
| Tin | 1 | 3 |
| Lead | 1 | 4 |
| Gold | 1 | 7 |
| Copper | 2 | 3 |

⁹ Noejevovich, H. (2002). *El Consenso de Washington y sus efectos: Argentina y Perú, 1990-2000*. Recuperado el 9 de febrero de 2015, de <http://files.pucp.edu.pe/departamento/economia/LDE-2009-02-11.pdf>

¹⁰ Torres Cuzcano, V. (2014). Grupos económicos y bonanza minera en el Perú. *Apuntes*, XLI(75), 171-210. Recuperado el 17 de febrero de 2015, de <http://revistas.up.edu.pe/index.php/apuntes/article/view/483>

| | | |
|----------------|---|----|
| Silver | 2 | 3 |
| Molybdenum | 2 | 4 |
| Selenium | 2 | 9 |
| Cadmium | 2 | 8 |
| Rock phosphate | 2 | 12 |

Table 1¹¹ showing Peru's ranking in terms of mineral production, 2014

The rapid growth of mining operations has been accompanied by a significant increase in conflicts in the sector. To a large extent, these conflicts revolve around natural resources (especially land and water) which are the basis of the livelihoods of many rural communities but which the companies also need for their operations¹² and pertain to the distribution of benefits that mining activity generates.¹³

Mineral prices have declined steadily since 2011¹⁴ with the World Bank forecasting a downward trend in prices over the next five years.¹⁵ This reduction impacts company profits and hence the taxes paid to the treasury as well as the resources transferred to regions and municipalities.

The oil and gas sector is less important for the country's economy. This can be largely explained by the scant and unreliable geological information available which is a constraint to attracting investment to the area.¹⁶ However, the exploitation of the Camisea gas fields is vital in terms of tax revenues for the

¹¹ Source: MINEM(2015). *Perú 2014. Anuario minero. Reporte estadístico*. Lima, Perú: Ministerio de Energía y Minas. Page. 31

¹² Bebbington, A. (2013). Industrias extractivas, conflictos socioambientales y transformaciones políticoeconómicas en América andina. En A. Bebbington (Ed.), *Industrias extractivas, conflicto social y dinámicas institucionales en la región andina* (pág. 400). Lima: IEP, CEPES, GPC.; ; Bebbington, A., & Williams, M. (2008). Water and mining conflicts in Peru. *Mountain research and development*, 28(3-4), 190-195.; Bury, J. (2004). Livelihoods in transition: transnational gold mining operations and local changes in Cajamarca, Peru. *The Geographical Journal*, 170(1), 78-91.

¹³ Arellano Yanguas, J. (2011). 'Minería sin fronteras' Conflicto y desarrollo en regiones mineras del Perú. Lima, Perú: Pontificia Universidad Católica del Perú; Universidad Antonio Ruiz de Montoya; Instituto de Estudios Peruanos.

¹⁴ Baca, E., & Ávila, G. (2015). *El fin del súper ciclo de los commodities y su impacto en los ingresos regionales*. Lima: Grupo Propuesta Ciudadana. Recuperado el 20 de febrero de 2015, de <http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/NIA%207-2015.pdf>

¹⁵ World Bank

http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2015a/Price_Forecast.pdf

¹⁶ Arellano Yanguas, J. (2013). *Industrias extractivas, descentralización y desarrollo local: economía política de políticas fiscales y redistributivas en Perú y Bolivia*.

Assadourian, C. (1982). *El sistema de la economía colonial: mercado interno, regionales y espacio económico*. Lima: IEP.

Cusco region and has made possible the transformation of Peru's energy matrix.¹⁷

With a background to extractive industry in Peru in mind, this report is divided into nine further sections. Section 2 briefly discusses the methods and conceptual framings used in the work. Section 3 describes the technical procedures surrounding revenue sharing from extractive industries, including a discussion of how these laws and policies came to be and any major failings in the accountability system regarding natural resource revenue management. Section 4 describes the budget process in technical terms, as well as the institutional failings within it. Section 5 reflects on the findings of the previous two sections to describe which actors maintain the most influence over the budget and over the allocation of natural resource wealth. Section 6 seeks to link institutional failing within the budget process and mining policy to failings within the broader accountability ecosystem in the country. To do so Section 6 details: how accountability institutions are meant to function, how they actually function, what the implications of their failure are and how they have been able to stubbornly resist reform. Having focused on how power is manifest at a central level, Section 7 of the report briefly describes the extent to which power has been effectively decentralized in the country. Section 8 provides an overview of opportunities for civil society to influence budget priorities and drive accountability. Finally, Section 9 provides a brief conclusion.

¹⁷ In the last twenty years, the energy matrix has altered and slightly over 40 percent of electricity consumed in the country is supplied by thermoelectric plants run on natural gas, and a similar percentage is provided by hydroelectric plants. Thermoelectric plants supplied with diesel, oil residue, or coal produce the remainder (Castillo, G. (2015). *Visión y manejo tecnocrático de los glaciares andinos, entre amenazas y oportunidades: el caso de la laguna de Parón en el Perú*. En C. Yacoub, B. Duarte, & R. Boelens (Edits.), *Agua y ecología política: el extractivismo en la agroexportación, la minería y las hidroeléctricas en Latinoamérica* (págs. 231-7). Quito: Justicia Hídrica-Paraguas; Abya-Yala).

2. METHODS AND CONCEPTUAL FRAMINGS

In addressing the research imperatives set by this project, this research adopted a number of different methods. Given that a core framing of the research was that accountability is not simply the outcome of rules, but also the outcome of power relations,¹⁸ a major focus of this study was (wherever possible) on documenting differences between what is meant to happen and what actually happens, and then explaining any variance. Since the focus of this work was on the means by which revenues are collected, and by which they are allocated, the procedures that were focused on were the laws and policies defining revenue collection, and those defining the budget process. In addition, in order to account for the fact that power matters in establishing rules, to whatever extent was possible some effort was also dedicated to explaining the political and economic contexts that shaped the rules governing revenue sharing policies and the budget.

In carrying out this research the report's authors undertook a thorough review of: tax laws in the extractive sector, public budgeting procedures, competencies in the decentralization model, and the operation of public spending institutions and auditing mechanisms. They also reviewed reports from civil society groups whose work is considered relevant to the subject matter. Academic literature was heavily consulted as a means to gain insights into the processes driving Peru's economic policy choices since the early 1990s. In order to understand instances when laws or policies might have been broken or circumvented the work relied heavily on the reports of investigative journalists. This has included the reports of journalists working for major outlets (such as *La República* and *The New York Times*) as well as smaller specialized outlets linked to civil society (*Ideele* and *Convoca*). This approach is thought to have provided a robust account of potential rule breaking given the extent to which Peru's media is consolidated in

¹⁸ Fox, J. (2007) *Accountability Politics: Power and Voice in Rural Mexico*. Oxford: Oxford University Press

pro-business hands (through *El Comercio*¹⁹). It should be recognized, that a number of the cases referenced in this report remain outstanding in the courts.

In order to account for the direct role of citizens in accountability processes, the work also analyzed the capacity for civil society to oversee budget and revenue sharing processes, and leverage moments of mal-administration in order to garner an accountable response. This included running a survey with members of civil society regarding what they thought were the major impediments to achieving accountability. The findings from this survey are inserted into relevant points of the report. In addition the research involved a review of all the known projects which have sought to “follow the money” and audit budget expenditures by reconciling budget allocations and transfers with receipts at the point of service delivery.

Finally, the information collated has been complemented with semi-structured in-depth interviews with a group of public and private sector players. These were held between December, 2014 and January, 2015. For reasons of confidentiality, the report does not reveal the identity of the interviewees. The sector where the source works is indicated at the end of each quote.

¹⁹ *El Comercio* controls about 70% of the country’s newspapers (Acevedo Rojas, J. (2012). *Hacia una comunicación plural. Posibilidades y límites del aporte de la universidad en el campo de las políticas de comunicación en el Perú*. Lima: PUCP. Recuperado el 5 de julio de 2015, de)

3. REVENUE SHARING IN PERU

Beginning with the formal processes that dictate how revenue from extractive industries is collected in Peru, it is worth noting that, legally, Peru’s natural resources are considered the heritage of the nation with the state having sovereignty over their use, including the entitlement to pass those resources on to a third party who can carry out the activities necessary for their exploitation. In this respect the Peruvian state grants the rights to exploit the natural resources in its territory, with effective mining rights corresponding to payments made by concession-holders in the form of a fee. The current fee is a fixed amount established in US dollars and paid annually from the year in which the request for each hectare was submitted—see Table 2 for a list of the changing concession fees. Concession holders have the right to explore and exploit the mineral resources found within an area with established boundaries, but to a depth which is not defined.

| Year | General System | Small-Scale Miner | Artisanal Miner |
|-------------|----------------|---|-----------------|
| 1992 - 2000 | US\$ 2 | US\$ 1 (also non-metal concessionaires) | |
| 2001 | US\$ 5 | US\$ 1 | |
| 2002 | US\$ 3 | US\$ 1 | |
| 2003 | US\$ 3 | US\$ 1 | US\$ 0.50 |

Table 2²⁰. Showing fixed amount to be paid for mining validity fee. In US Dollars (US\$)

According to Legislative Decree No. 674 (Sept. 1991), which regulated the process of Promoting Private Investment in State Companies (privatization), the resources obtained from these processes is treasury money that should be allocated towards either development programs, aimed at eradicating poverty, or towards pacification in the country. Regulation S.D. No. 070-92-PCM (17/07/92) subsequently established that, under exceptional circumstances, prior to and as an alternative to being transferred to the treasury, the revenues from subsoil resources could be used to pay for economic, financial, legal, labor and other recovery programs. This scheme was designed by The Peruvian Agency for

²⁰ Formulation: *Societas Consultora de Análisis Social*

Promotion of Public Investment (*ProInversión*). Currently fees paid on concessions comprise income tax (standing at 28%²¹), with the rate on profits paid at 6.8%. Other fees include royalties and a special mining tax (see below for more details). All of these fees are paid to the state.

Regardless of these different fees and taxes, Peru is thought to offer relatively generous taxation policies towards mining companies. In this respect it is notable, for example, that the country ranks 46th out of 122 major extractive countries in terms of the extent to which its tax policy is perceived to encourage investment.²² At the same time the country ranks 7th (out of 122), based on its attractiveness in terms of pure mineral potential.²³ Given that policy concerns (which include factors in addition to tax rates) are only thought to account for 40% of investment decisions, this would suggest that Peru has scope to increase its tax burden in the mineral sector and take greater advantage of its significant mineral potential. Despite this, it is important to appreciate that the current law in the country is considered less generous than it was previously (to be discussed below).

Regarding the national distribution of resources, the central government receives tax from concessionaires and distributes 50% of this revenue to the subnational government—this transfer is known as the “canon” (“resource tax”²⁴).²⁵ The transfer of the canon is an administrative operation carried out between the different levels of government. Distribution of the canon takes place according to indices set by the Ministry of Economy and Finance, based on measures of a region’s population and poverty rate.²⁶ From this total figure, 25% of revenues go to the regional government, of which 5% must go to the universities located in the region. 25% goes to municipalities in the specific province in which the natural resources are located, and 10% goes to the municipality in the district where the resource is extracted. Finally, a further 40% of total revenue goes to the municipal government within the regions, excluding the province or provinces where the natural resource is found (see Table 3 for details). Notably, canon revenues can only be used to fund capital expenditure, with none of the resources being available for current expenditure.²⁷

²¹ Expected to shift to 27%, between 2017-2018, and 26% from 2019 onwards.

²² Jackson, T. (2015). *Survey of Mining Companies 2014*. Vancouver, Canadá: Fraser Institute Annual. Recuperado el 2 de febrero de 2015, de <http://www.fraserinstitute.org>

²³ Jackson, 2015

²⁴ There are six types of canon: mining, oil, gas, hydro energy, fishing and forestry.

²⁵ Oré Chávez, I. (noviembre de 2008). Canon minero y poder demanial del Estado. *Derecho y cambio social*(15). Recuperado el 10 de febrero de 2015, de <http://www.derechoycambiosocial.com/revista015/canon%20minero.htm>

²⁶ Based on a calculation of Unmet Basic Needs

²⁷ There are some small exceptions for this which allow part of the revenues to be used for project design and maintenance.

| | To 2003 | Law N° 28077 September 2003 to August 2004 | Law N° 28332 August 2004 to date |
|--|--|--|--|
| Criteria for canon distribution | Distribution to local governments according to the criteria of the area of influence of the deposit. | Distribution to regional and local governments according to the distribution indices set by the MEF based on population and poverty criteria linked to basic needs and infrastructure deficit. | Distribution to regional and local governments according to distribution indices set by the MEF based on the criteria of Population and Unmet Basic Needs (UBN). |
| Regional government | 20% of total revenue must be invested in activities with regional impact | 25% of total revenue for the regional governments where the natural resource is found and the region's state universities (5%). | 25% of total revenue for the regional governments where the natural resource is found and the region's state universities (5%). |
| Municipalities in the province where resource is extracted | 20% of total revenue | 25% of revenue for municipalities in the province where the natural resource is exploited. 10% of total revenue for the municipality of the district where the resource is extracted. | 25% of revenue for municipalities in the province where the natural resource is exploited. 10% of total revenue for the municipality of the district where the resource is extracted. |
| Municipalities in the region where the resource is extracted | 60% of total revenue for the provincial and district municipalities of the department or departments where the natural resource is found, according to population density criterion. | 40% of total revenue for the local governments of the department or departments of the regions, excluding the province or provinces where the natural resource is found. | 40% of total revenue for the local governments of the department or departments of the regions, excluding the province or provinces where the natural resource is found. |

Table 3²⁸ Amendments to canon distribution, following laws passed

Finally, in addition to these fees and taxes, one-off revenues are covered by the Social Trusts or Social Funds. These funds are geared towards meeting basic needs and improving the quality of life of the community in the areas influenced by mining operations. They are private, fall outside the tax system and only apply to a limited number of companies. The Social Trusts/Funds operate through established non-profit civil associations, whose purpose is solely to manage these investments. The Peruvian Agency for Promotion of Public Investment (*Proinversión*) awards tenders which describe the contract between the company which won the bid and *Proinversión*. The latter transfers the resources to a legal entity (civil partnership) and establishes the Fund/Trust, to be composed of representatives of the company and the community in the company's area of influence.

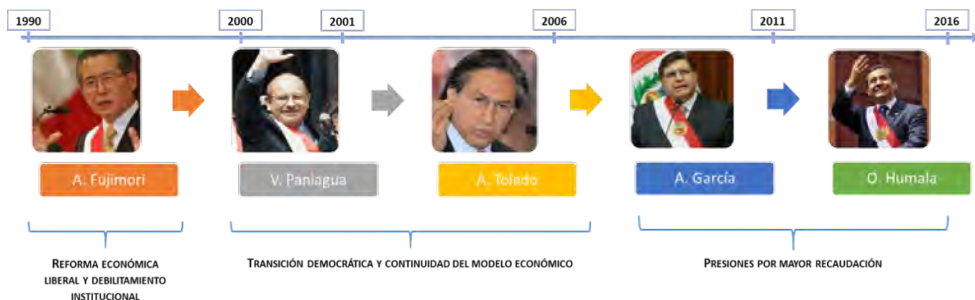
²⁸ Formulation: *Societas Consultora de Análisis Social*

UNDERSTANDING REVENUE SHARING IN PERU

Understanding the relatively generous terms afforded to extractive companies in Peru requires an exploration of the changing political and economic fortunes of the country over the last 30 years. As was mentioned above, following the violence of the early 1980s, Peru found itself in a state of social and economic turmoil. By the end of the decade half of Peru was under a state of emergency. At the same time, years of high public spending (sustained by international loans) and economic mismanagement under the Garcia government were squeezed by a rise in international interest rates that left the country bankrupt and unable to pay its debts. As a result, Peru was excluded from the international financial system and plunged into economic crisis. The extent of the crisis is captured by the fact that, between 1988 and 1989, per capita GDP fell by 23 percent and in 1989 inflation bordered on 2,800 percent—one of the highest inflation rates in world history.²⁹

It was in this context that Alberto Fujimori—until then an unknown university lecturer—won the general elections with the support of left-wing political parties and the APRA party. Once in office, Fujimori removed his former allies and implemented aggressive economic liberalization reforms. In August 1990, the government implemented extreme measures that stopped inflation, but led to recession and drastically reduced real wages. It greatly devalued the currency, resulting in increases in the price of goods and services; implemented fiscal adjustments (including a huge cut in public spending, resulting in mass layoffs) and removed controls on the dollar.³⁰ In addition, in the face of opposition from Parliament in 1992, the government effected a self-coup and dissolved Congress.

Figure 4 showing Peruvian presidents 1990–2016



²⁹ Gonzáles de Olarte, E. (16 de abril de 2007). *Economía política de la era liberal peruana: 1990-2006*. Recuperado el 12 de diciembre de 2014, de <http://blog.pucp.edu.pe/item/9028/economia-politica-de-la-era-neoliberal-peruana-1990-2006>

³⁰ Gonzales de Olarte, 2007

Drastic as these measures were, they found strong support among much of the population, the local business community, and international financial organizations. Much of this support stemmed from a crisis of legitimacy within the traditional parties,³¹ who were criticized for failing to tackle the country's two major problems: political violence and economic crisis. In this context "independent candidates,"³² such as Fujimori, came to be seen as pragmatic and successful.³³ Fujimori's government became attractive for traditional political careers, but did so within an authoritarian and extra-institutional system.³⁴ The result was that Fujimori's control over Congress was significant.

To further their control the Executive made intensive use of "emergency decrees" both to expand the budget and to make transfers from one budget area to another.³⁵ Opposition to neo-liberal reform was limited as the traditional leftist parties were in disarray following the turmoil of the 1980s. At the same time social organizations and unions had been greatly weakened, first by political violence and then by massive layoffs and job insecurity.

With strong international pressure to restore democratic order, the regime promulgated a new Constitution in 1993 (which remains in force). This created a system with a single house congress, in which Fujimori's party enjoyed an absolute majority. The result of these combined conditions was that economic changes could be implemented with limited political or institutional resistance. In particular there was no articulation of an alternative development narrative which countered the approach focused on attracting mining investment. Specifically, the plausibility of state ownership had become untenable due to the failure of economic policies in the 1980s, while the environmental movements of the sort apparent today had yet to manifest. As a Technical Secretary at the RLIE puts it:

"It was a period marked by the absence of resistance. Mining investments came back, they had clear political support in the context of an authoritarian regime. Not that there was no opposition or protests, of

³¹ Evidenced by their fall in the share of the vote, from 97% in 1980 to 8% in 1995.

³² The first independent candidate appeared in 1989: Ricardo Belmont won the Lima city elections and in 1995, Fujimori was re-elected with an anti-political party discourse.

³³ The popularity of the regime was furthered by the capture of Abimael Guzman, the top leader of the PCP-SL, in September 1992 (Cotler 1998).

³⁴ Degregori, C., & Meléndez, C. (2007). *El nacimiento de los otorongos. El congreso de la república durante los gobiernos de Alberto Fujimori (1990 - 2000)*. Lima: IEP.

³⁵ Carranza, L., Chávez, J. F., & Valderrama, J. (2007). *La Economía Política del proceso Presupuestario: El caso peruano*. Lima, Lima, Perú: Instituto Peruano de Economía.

Carrillo, S. (abril-mayo de 2002). Actuación política de los medios de comunicación peruanos. Elecciones generales del 2000 y 2001. *Razón y palabra*, 26. Recuperado el 21 de junio de 2015, de <http://razonypalabra.org.mx/anteriores/n26/sluz.html>

various kinds. Yanacocha was one of the first companies to resume investments and also to generate the first unrest, but it was a scenario in which the issue of social responsibility ... was still not on the agenda.”

Between March 1991 and December 1992, the regime passed some 923 legal decrees which promoted the privatization of state enterprises and public services,³⁶ the liberalization of markets—especially labor, the security of private land ownership,³⁷ and reformed tax administration.³⁸ The economic policies of the regime replaced the welfare state model in an effort to achieve economic recovery by promoting the private sector. Given the lack of technical staff in the country, both the World Bank and the IMF were central in terms of designing reforms, granting loans and providing financial guarantees.³⁹ Notably, such policy represented a radical break with the previous two decades in which the economy had been tightly controlled by the state.

Within this context, the mining sector became the spearhead of efforts to attract investment—especially foreign investment—to a country considered a high financial risk. As the Technical Secretariat of the Latin American Network on the Extractive Industries (RLIE) put it:

“The importance of investment and of mining was generally agreed. There may have been some disagreement on the part of one sector that wanted to see a far more active role of the state, but at that time there was no strong current of opinion against mining.”

The result was that mining policy was geared toward attracting foreign investment in order to both develop already identified deposits (for example La Granja, Michiquillay, Quellaveco, and Yanacocha) and to explore new opportunities. The reforms included:

- Guarantees against expropriation and state competition (both of which were stipulated in the Constitution)
- The creation of a modern system of property registration and reforms to ownership
- Absolute freedom to repatriate capital and profit
- Free availability of foreign currency at floating market prices

³⁶ Between 1991 and 1998 there were over 180 privatizations for a value of nearly US\$ 8 billion (Paliza (julio de 1999).

³⁷ The Land Act was passed in 1995. The first cases of land sale/purchases for mining were the gold projects of Yanacocha in Cajamarca and Pierina in Ancash (Glave T., M. (2008). Valor y renta de la tierra en los Andes peruanos. Reflexiones en torno a la nueva minería. En G. Damonte, B. Fulcrand, & R. Gómez (Edits.), *Perú: el problema agrario en debate - SEPIA 12* (Vol. 12, págs. 182-201). Lima, Lima, Perú.).

³⁸ Gonzales de Olarte, 2007

³⁹ Gonzales de Olarte, 2007

- Non-discrimination—with regard to property rights and tax obligations—between domestic and foreign companies.

Importantly, an essential element for attracting capital to the sector was to make a considerable increase in companies' capacity to appropriate mining revenue. The key measure was to alter the tax system, reducing income tax from 35 percent to 30 percent⁴⁰ (see Table 4)—a rate that was maintained throughout the decade of Fujimori's regime. Under these reforms mining also benefited over other economic activities. Special provisions included the tax-free reinvestment of profits, so that only those profits that would be distributed to the mine shareholders would be subject to income tax. Thus, mining company profits were exempted from income tax payment by up to 80 percent if they were reinvested.⁴¹ They were also given special rates to account for annual depreciation, and during certain periods⁴² have been exempt from capital gains tax on the revenues generated by the sale of concessions abroad, or on the Lima Stock Exchange.⁴³ The implications of such provisions include cases such as the Toromocho mining project from which an estimated US\$218 million was foregone in terms of tax revenues as a result of various concessions.

Notably, such generous benefits, along with others,⁴⁴ were enshrined in "Investment Promotion Guarantees and Measures" (hereafter mining stability contracts) which companies signed⁴⁵ with the state thereby ensuring tax, exchange, and administrative stability for a minimum of fifteen years.⁴⁶ The Technical Director of the Latin American Network on the Extractive Industries describes the period as follows:

⁴⁰ The income generated in the country, including third category income or that derived from trade, industry, and others stipulated in the law; these include that income obtained from mining, gas, and oil.

⁴¹ Campodónico, H. (23 de noviembre de 2009). *Antamina: invirtiendo con nuestros impuestos*. Obtenido de Cristal de mira: <http://www.cristaldemira.com/articulos.php?id=2048>

⁴² EY Americas Tax Center 2015. Peru enacts tax changes that temporarily exempt certain transfers of shares from capital gains tax, Global Tax Alert.

⁴³ Campodónico, H. (14 de septiembre de 2007). *Decisión tomada: Majaz va de todas maneras*. Obtenido de Cristal de mira: <http://www.cristaldemira.com/articulos.php?id=1566>

⁴⁴ The tax benefits are: (a) income tax stability. Current rate plus two percentage points; (b) export system stability; (c) stability of IGV, ISC, IPM and any other consumer tax (only their transferable nature); (d) other tax stability. Administrative benefits: mining rights and obligations. This includes stability of the sub-surface fee and mining royalties. Other benefits include: (a) free availability in exports and domestic sales of their products; (b) free availability in Peru and abroad of the revenue generated by their exports; (c) free convertibility to foreign currency of national currency generated by the sale in the currency of mining production; (d) non-discrimination regarding exchange rates (Ganoza Vargas-Machuca, agosto de 2014).

⁴⁵ Main mining companies with tax stability contracts: Xstrata Tintaya, Cía. Minera Milpo SA, Cía. Minera Santa Luisa SA, Minera Sipán SA, Empresa Minera Los Quenuales, Minera Yanacocha, Doe Run Perú, Cía. Minera Antamina SA, Sociedad Minera Cerro Verde and Barrick Misquichilca SA.

⁴⁶ Projects could be granted benefits if they met a minimum investment amount

“The hegemonic discourse at the time was to provide foreign investors with security. The contracts companies signed with the state had the force of law, and could not be subsequently amended. Lower tax rates were set given the risk of the investors going elsewhere.”

The economic reforms of the government of Alberto Fujimori succeeded in their aim of attracting investment, and between 1990 and 2001, Peru received a total of about US\$ 6 billion.⁴⁷ Private investment also came to play an increasingly important role in the economy, moving from 12.7% of GDP between 1979 and 2004, to 16.8% of GDP between 1994 and 2005.⁴⁸ In 1993, the Yanacocha gold mine commenced operations, making the country the second largest gold producer in the Americas, after Canada.⁴⁹

| Period | General system applicable to activities that generate third category income including mining, oil, and gas |
|---------------|--|
| Prior to 1990 | Income Tax: Rate - 35% on net income |
| 1991-2000 | Income Tax: Rate - 30% on net income |
| 2001 | Income Tax: Rate - 20% on net income if profits are reinvested Rate - 30% on net income if profits are not reinvested |
| 2002 | Income Tax: Rate - 27% on net income |
| 2003 | Income Tax: Rate - 27% on net income 4.1% - on profits to be shared |
| 2004 | Income Tax: Rate - 30% on net income 4.1% - on profits to be shared |
| 2015 | Income Tax: Rate - 28% (2015-2016), 27% (2017-2018) and 26% (2019 onwards) Rate on profits to be shared - 6.8% (2015-2016), 8% (2017-2018) and 9.3% (2019 onwards) |

Table 4⁵⁰ showing the historical evolution of income tax rates for third category income

Changes in the political sphere during the late 1980s also drove changes in the business sector. With a history of protesting the nationalization of private assets,

⁴⁷ A level only exceeded by Chile in all of Latin America (Bridge 2004).

⁴⁸ Castillo, P., Montoro, C., & Tuesta, V. (s.f.). *Hechos estilizados de la economía peruana*. (B. C. Perú, Ed.) Recuperado el 15 de enero de 2015, de Banco Central de Reserva del Perú: <http://www.bcrp.gob.pe/docs/Publicaciones/Revista-Estudios-Economicos/14/Estudios-Economicos-14-2.pdf>

⁴⁹ Arellano Yanguas, 2013

⁵⁰ Formulation: *Societas Consultora de Análisis Social*

the business community, through their associations, decisively supported the measures adopted by the government of Fujimori. Major national business groups went into partnership with multinational companies and benefited from the country's economic performance and process of privatization.⁵¹

Such changes played out in the extractive sector where the extractive industries belong to the National Society for Mining, Oil, and Energy (SNMPE), one of the country's most powerful associations.⁵² The power of this group can be seen in its effective lobbying for public policies, manifest most clearly by ensuring that the Ministry of Energy and Mining (MINEM) continues to stimulate investment in the sector and limits regulation. One significant result is that while the oil and gas sector has extensive legislation, mining is only regulated by a decree which did not get through Congress. Explaining this state of affairs, a former Director General of the Social Management Office of MINEM stated:

“This is a decree. Why? Because the mining companies wanted it. They are strong ... if you look at the law, the Oil and Gas Act is a tome of 200 pages, but the Mining Law has 20. ... The Oil and Gas Act is a solid law, with an explanation of the motives and it has structure, supplementary and temporary presentations ... it was drafted when there was inflation, terrorism, Fujimori's structural adjustment, Congress had been suspended and there was pressure from the OAS [Organization of American States], the IMF [International Monetary Fund] and the World Bank; the Bank offered experts. I knew many of those who came to work here with MINEM to draft some norms but when they left it was the Oil and Gas Act that prospered, not the mining legislation, because that was in the hands of the mining companies.”

The strengthening of business interests under privatization were augmented by structural adjustment reforms that had empowered the Ministry of Economy and Finance (MEF) as the institution to maintain fiscal discipline and attract foreign investment on which further loans were conditional. As Carranza, Chávez, and Valderrama (2007: 26) describe:

“During the 1990s, the need to comply with the agreements with the IMF was important ... In more recent years the limits on the fiscal deficit and on the yearly increase of expenditure of the law of fiscal responsibility are replacing those of programs with the IMF, as instruments to limit the options of the President for increasing spending and the deficit—besides the constitutional mandate that prohibits Central Bank loans. This restriction increases the political cost of significantly raising the public budget throughout the year, at

⁵¹ By 2010, 25 economic groups operated in Peru's mineral mining: 12 controlled by Peruvian families and 13 by foreign capital (Torres Cuzcano, 2014). The latter controlled almost two thirds of the sector's income and profits.

⁵² Arellano Yanguas, 2013

least because of the loss of confidence any major failure to comply would lead to, especially with regard to the deficit goal.”⁵³

In the late nineties, the Peruvian economy entered recession. This was partly caused by the Asian crisis that shrank the inflow of capital; but also by the reduced rate of privatization which led to less public and private investment. The outcome was that the MEF was further empowered as the IMF became an even more important guarantor of economic stability. At the same time there was a waning of confidence in the government of Fujimori. In 2000, after Fujimori’s third government took office, grave accusations of corruption began to emerge.⁵⁴ Likewise, Fujimori’s systematic and questionable legal and constitutional amendments, enacted as part of an effort to ensure his reelection, raised considerable opposition and civil unrest. The situation culminated with Fujimori eventually fleeing the country. Congress declared the presidency vacant and appointed a transitional government headed by Valentín Paniagua. Elections were held the following year.

This break with authoritarian control and a slow-down in the economic recovery allowed for popular expressions of discontent aimed at the neo-liberal policy agenda which had been pursued to date. As such, the transitional government amended the tax law, passing Law No. 27343 (09-06-2000). This served to reduce tax benefits, so that reinvested profits were no longer tax free—although this did not apply to taxpayers who at that time had approved investment programs. Further to this, the law, which was also a supreme decree approved by the Council of Ministers, granted companies stability only for operations exploring and exploiting natural gas. Despite these more favorable reforms, the law also waived an earlier surcharge of 2 percentage points which was previously levied on top of the income tax rate applicable at the time of signing the contract.

Although Alejandro Toledo was elected president in July 2001, his party did not win a majority in Congress and he was urged to make parliamentary alliances.⁵⁵ Such conditions made the markets nervous regarding the direction future economic policy might take. In order to allay fears the government appointed Pedro Pablo Kuczynski—former Minister of Energy and Mines in the second government of Fernando Belaúnde, and previously employed by the World Bank and the First Boston Bank—as the minister of economy and finance. Under this

⁵³ Carranza, Chávez, & Valderrama, 2007, p. 26

⁵⁴ According to a 2013 Datum survey, Peruvians consider Fujimori’s regime to be the most corrupt in Peru’s history (La República. 14 de Octubre de 2013). In its 2004 Global Corruption Report, Transparency International ranked Fujimori’s regime as the seventh most corrupt in modern history, with illicit appropriation of US\$600 million of public funds (Transparency International 2004).

⁵⁵ He made an alliance with the *Partido Frente Independiente Moralizador* (FIM).

leadership the government went on to re-launch privatization efforts and established fiscal goals in accordance with the IMF.

A challenge faced by the Toledo government was that the low tax burden (barely reaching 13 percent of GDP) left the government unable to improve public spending or make large public investments.⁵⁶ As a result the idea of a “windfall tax” that would have increased government revenues was mooted for discussion in congress. The initiative was shelved, however, as it was thought that it would affect investment promotion policies, and met with serious opposition from the business sector—which by this time was thought to have significant influence over the Executive, especially the Ministry of Economy and Finance.⁵⁷ As an alternative the government chose to try and attract private capital in order to raise revenues. It did so through further privatization and concessions. It also sought to increase the public debt by establishing a borrowing program, and extended the neoliberal model by signing free trade agreements.⁵⁸ A Manager at the Office of the Comptroller General explained the outcome in the following way:

“Much of the tax revenue came from the extractive industries. If you took [the income of] two or three mining companies from the state [by placing a windfall tax on them] you would simply cut income, and it was very clear to everyone that you couldn’t touch it, because that was where the state got its revenue from.”

During this period, macroeconomic results were continuous, stable and promising. Peru became an emerging economy which could nearly qualify for international levels of investment. This was due to three primary reasons. First, economic policy remained the same, focused on achieving fiscal balance, directing monetary policy based on inflation goals, and liberalizing the economy. Second, international growth, above all in the economies of China, the United States, and India, was increasing demand for raw materials, mainly minerals. Finally, the country had achieved stable growth in private investment.⁵⁹ Notably none of these factors was directly concerned with a proactive macroeconomic policy, and hence the stability and growth were mostly the result of factors external to the government. In this respect, most analysts agree that despite

⁵⁶ Gonzáles de Olarte, 2007

⁵⁷ Barrantes, R., Tanaka, M., Vera, S., & Pérez-León, M. (2010). *El boom de los recursos naturales y las coaliciones presupuestarias - una ilustración con el caso peruano*. Lima: Instituto de Estudios Peruanos. Recuperado el 11 de noviembre de 2014, de [http://www2.ids.ac.uk/futurestate/pdfs/Paper%20Peru%20version%20final%20enviada%20limpia%20\(4\).pdf](http://www2.ids.ac.uk/futurestate/pdfs/Paper%20Peru%20version%20final%20enviada%20limpia%20(4).pdf)

⁵⁸ Gonzáles de Olarte, 2007

⁵⁹ Gonzáles de Olarte, 2007

such promising signs, Toledo's government was characterized by institutional and political instability.⁶⁰ As Gonzáles de Olarte (2007) describes:

“This may have been a major reason why the economic cycle became separated from the political cycle, producing a process of economic growth barely affected by the permanent though low-intensity social unrest under Toledo's government.”

Higher metals prices drove substantial changes in the first decade of the twenty-first century, in Peru. Increased prices drove a steady increase in both company profits and government tax revenue. At the same time, however, it became apparent that the boom in prices was not effectively addressing poverty in the country. The result was efforts to change both the share of the revenues that were collected by the state and the manner in which those revenues were to be distributed.

In 2004 a group of congressmen from mining regions were finally successful in bringing a bill before Congress for the introduction of royalties.⁶¹ The bill was passed, however its passage met with significant resistance from the Ministry of Economy and Finance, as well as the private sector where the National Society of Mining, Oil, and Energy tried to stop the Bill. Congress, however, passed the law and President Toledo enacted it despite the objections of the Finance Minister. This pushback against dominant government interests can partly be explained by the political weakness of the Executive at the time. The president's approval ratings were extremely low (around 10 percent), the ruling alliance had little control over Congress, and members of the opposition were calling for the president to resign. As a result, failure to approve the law would have left the government more politically unstable. This proposal also had the support of several local governments which had important mineral resources, including Moquegua, Pasco, and Huancavelica, that would benefit from increasing taxation. Notably, despite success in passing this law, the royalties only applied to new investments or older operations not protected by stability contracts.⁶² The result was that they had less of an impact on revenue than was hoped for.

In 2006, elections once again created space for proposals to reform public policy, with their imperative again driven by higher mineral prices which had brought unrest in the mining regions where people wanted a greater share of the mining profits. During the election several candidates called for a review of the tax

⁶⁰ Ballón, E. (2006). Crecimiento económico, crisis de la democracia y conflictividad social. Notas para un balance del toledismo. En desco, M. Paredes, & E. Toche (Edits.), *Perú Hoy, Democracia inconclusa: transición y crecimiento* (págs. 17-64). Lima: desco Centro de Estudios y Promoción del Desarrollo.

⁶¹ Mining royalties are the economic remuneration the sector's companies had to pay the state for mining metal and non-metal minerals.

⁶² Arellano Yanguas, 2013

stability contracts, so that mining revenues would become subject to royalty payments, and for the imposition of a windfall tax which would further increase government revenue.⁶³ On being elected, however, President Alan Garcia gave in to mining company interests and adopted measures less progressive than those he had run on during his campaign. As a middle ground, in December 2006, he launched the *Programa Minero de Solidaridad con el Pueblo* (Solidarity with the People Program) known as the *Fondo Minero*.⁶⁴ Under this agreement the contributions were voluntary and companies themselves would be responsible for managing these resources, following a few minimum rules agreed with the state.⁶⁵

Understanding the evolution of the *Fondo Minero* as a middle ground solution to the desires of the private sector and the public requires understanding the exceptional influence of the private sector in Peru. It has been mentioned above that companies have direct interaction with the political system, principally through their associations (the Confederation of Private Businesses, the National Association of Industry and the National Mining and Petroleum Society) and through the links they have with various sections of the political system— which is thought to give them greater bargaining and lobby power than any other sector.⁶⁶ The National Mining and Petroleum Society (SNMPE) and the Confederation of Private Businesses (CONFIEP), in particular, are considered the country's most influential trade associations. Much of the strength of this lobby results from close connections with the Ministry of Economy and Finance, which was strengthened when the country liberalized and undertook structural adjustment reforms.

With the above in mind, it is important to note that unrest in mining regions constrained the capacity of mining companies to carry out their operations. In this respect, the mining companies understood rural unrest in the mining areas as product of the state's failure to effectively distribute the mining revenues.^{67,68} The result was that when, in 2006, President Garcia offered to create a windfall tax on mining, the companies lobbied government to implement an alternative in the form of the "Voluntary contribution in solidarity with the people" (*Fondo Minero*). Under the *Fondo Minero*, companies signed agreements to invest the same amount as would have been collected under the windfall tax (2.5 percent of declared profits, raising US\$600 million in four years), however, this revenue did not go through the treasury (being formally described as "non-public

⁶³ Arellano Yanguas, 2013

⁶⁴ Regulated by Supreme Decree No. 071-2006-EM dated 12-21-2006.

⁶⁵ Arellano Yanguas, 2013

⁶⁶ Ballon, 2006

⁶⁷ Companies cited issues of capacity and bureaucracy as principal stumbling blocks, notably ignoring issues of environmental damage or expectations of higher profits.

⁶⁸ Arellano Yanguas, 2011

exceptional”) and instead the companies were allowed to determine the investments. As a Regional Coordinator for the Revenue Watch Institute put it:

“[The business sector] was pressing hard for this—with its own ways of wielding influence—because for them it was fundamental that people should feel the benefits immediately.”

Such an approach exemplifies a broader process by which extractive companies, in light of social pressure for greater public revenue from the extractive activities to be captured by the state, have actively proposed alternatives for revenue management that are conducive to promoting their operations. This included going so far as to put mechanisms in place for public participation as a means to channel resources for social investment into their areas of operation. As the RLIE Technical Secretary notes:

“Perhaps the boldest part of this measure was that they recognized that it was important to work with the regional government, not just at local level. Antamina is a major example,⁶⁹ because it developed interesting ways to build capacity in sub-national governments. But not all the companies did this.”

This approach, however, posed a number of problems. Firstly, it failed to strengthen the state as it removed it from the role of promoter of development in a number of communities. Secondly, it failed to guarantee that investments corresponded with local investment interests and priorities.⁷⁰ Finally, the incentives of the program resulted in the companies creating local patronage networks, as they used the investments to generate a form of social license allowing for the operation of their projects.^{71,72}

Five years after the *FondoMinero* was set up, it had achieved only limited buy-in from companies. In late 2011 when the *FondoMinero* was wound up, it had only spent 65 percent of the amassed funds, leaving S/.794 million undisbursed at the

⁶⁹ It is worth noting that Antamina was the major mining company at the time, contributing the majority of the fund.

⁷⁰ CSR, especially in the extractive sector, has serious limitations: it is voluntary, it depends on companies’ profits; it is reduced to the scope of the project; investment tends to focus on education and health; and it is discretionary and depends on the company’s own objectives (Durand & Campodónico, 2010).

⁷¹ “This is illustrated by the Yanacocha mining company which set up its own NGO to channel resources instead of creating institutional mechanisms for negotiating with the authorities.” RLIE Technical Secretary.

⁷² Salas, G. (2007). Responsabilidad social corporativa y promesas de modernidad de la minería: Antamina y sus relaciones con la comunidad de San Marcos (Huari, Áncash; 1997 - 2002). *paper presented to the twelve meeting of the Seminario Permanente de Investigación Agraria, Tarapoto*. Salas, G. (2010). La embriaguez del canon minero: La política distrital en San Marcos a doce años de la presencia de Antamina. *Anthropologica*, 28(28), 11-138.

end of the program.⁷³ The fund's main investment (42 percent) was allocated to infrastructure, with only 6.2 percent going to development projects and to capacity building within public administration. The law stipulated that a baseline study was necessary to evaluate the impact of the projects, a mid-term evaluation and a final evaluation. By March 2011, of the 40 companies that made up the *FondoMinero*, only four had registered the baseline and just one had submitted a mid-term evaluation.⁷⁴

Dissatisfaction with the *FondoMinero* drove further attempts at reform which again took place during an election cycle, this time in 2011. Again, the special mining tax was proposed as a replacement to the *FondoMinero*, and again this was met with resistance from the business sector. In fact, a few months prior to the elections, the MEF and SNMPE had hired experts to prepare conciliatory proposals for the incoming government.⁷⁵ After the Humala government took power, Premier Salomon Lerner led negotiations with the SNMPE technical team. In less than two weeks an agreement was reached which created the Special Mining Tax (IEM),⁷⁶ replacing the *FondoMinero*. A Former Director General of the Social Management Office of MINEM described the process in the following way:

“The mining companies understood that they had to give more money, Humala accepted their request not to tax windfalls. Humala accepted this ... in other words there was already an agreement between high-level government officials [and] the main mining companies.”

The special mining tax amended the voluntary contributions so that they are now compulsory. In addition, the money generated by these taxes now goes to the state, which controls distribution. Most notably, however, under this law, mining taxes do not have to be invested in the areas in which mining is taking place. A Former Director General of the Social Management Office of MINEM described the process as follows:

⁷³ These funds continued to be disbursed after the agreement ended; however, as of 2014 there were still funds pending execution.

⁷⁴ Grupo Propuesta Ciudadana. (2012). *El Aporte Voluntario Minero. Un necesario balance a la gestión empresarial*. Lima: GPC. Recuperado el 29 de junio de 2015, de <http://www.propuestaciudadana.org.pe/portal/sites/default/files/publicaciones/archivos/Publirrepositorio-aporte-voluntario-032012.pdf>

⁷⁵ Arellano Yanguas, 2013

⁷⁶ Law N° 29789 (09-28-2011). The IEM taxes the operating income from the sale of raw metal mineral resources, and that from autoconsumption and unjustified withdrawals of the goods. The amount paid for the IEM is considered as expenditure for income tax purposes in the tax year in which it was paid. The law established that the mining royalty would be quarterly and not monthly as it had been since 2004. The amount paid in mining royalties would be considered expenditure for income tax purposes in the corresponding fiscal year.

“The government has given no guarantee that this new revenue will go to the producer areas, to be reinvested in the project’s area of operation. The mining payment was designed; the MEF receives more money and transfers it to the MIMP [Ministry for Women] and MIDIS [Ministry of Development and Social Inclusion], which channel it to the social programs. And that’s the way the money goes.”

As the *FondoMinero* was brought to an end, new mechanisms have been created which allow for public revenues to be channeled directly to areas in which mines are operating. Most notable in this respect is the “Infrastructure Work for Tax” (Oxl; *Obras por Impuestos*), which was created in 2009 and allows companies to carry out public construction work and discount the amount from the sum they pay in tax to central government. The Oxl was created to speed up decentralized public investment; however, it also contributes to companies being perceived by communities in a more positive, generous manner, and facilitates the reputation of their projects. Some actors believe that Oxl is actually of significant benefit to the extractive companies. As an economist at the civil society organization, *GrupoPropuestaCiudadana*, explains:

“I think the state has a more or less constant way of thinking ... The state is very concerned to keep up mining investment and so it takes decisions like this one so that the social climate will be favorable to investments. The Infrastructure Works for Tax mechanism is not the main aim, but in practice this is happening. Infrastructure Works for Tax has a main objective, to accelerate investment, [to] get public investment faster. But as it is the mining companies that are announcing this, the mechanisms of service to the projects and so on, they end up serving the interests of the companies, in the sense that they are announcing this as part of the social responsibility, and they are building up their corporate reputation, or they are even funding the social license that they need with public monies. I think that there has been continuity in this.” “What I think is that Infrastructure Works for Tax is something the companies have lobbied for, and more so now that the voluntary contribution has come to an end. The companies are now keeping this mechanism because, to some extent, it allows them to continue to have funds to continue to give what was the voluntary contribution.”

In short, this mechanism not only concentrates and accelerates public investment in the lands where the extractive companies work; it is also a sort of public subsidy for getting the social license necessary for developing their operations. Moreover, this kind of investment could widen the gaps between urban and rural areas by favoring concentrated populations (in villages and small towns) at the expense of disperse communities with low population density.

Today, according to information from the Private Investment Promotion Agency (ProInversión), there are 1,498 projects selected for private companies to implement using the Oxl mechanism. This represents a potential investment of S/. 5.580 billion. Most projects focus on education (i.e. school construction) (329 projects, representing 22 percent of total investment); followed by sanitation, with 242 projects (16 percent) and urban transport, with 224 projects (15 percent). Similarly, public investment by private entities may be in the urban area. The less represented sectors are livestock, telecommunications, environment, and public cleaning.⁷⁷

Having now discussed the terms of revenue sharing between companies and the Peruvian state, this section moves to explore the historical evolution of the canon system, by which revenues are sent to mining affected regions. Although this is technically undertaken as a transfer between governments, and could therefore be discussed in Section 4, because it is essentially a form of earmarking, it is discussed here so as to maintain a consonant structure with the other country reports written as part of this research project.

UNDERSTANDING THE “CANON”

The first point to note when discussing the canon system is that it was originally created as means by which to offer compensation to the territories for the extraction of their natural resources. The origins of the system lie in the Loreto region in 1976⁷⁸, where major oil deposits were discovered, and where regional political groups mobilized to demand that a part of the oil revenue be transferred directly to the regional institutions. The military government of the time decided to give 10 percent of the value of regional oil production and called the transfer the “oil canon.”^{79,80} Later, this right to have a share of the revenue from natural resources exploitation was recognized in the 1979 Constitution and maintained in the 1993 Constitution.

The notion of the canon as a means to distribute resources therefore stems from ideas of compensation for environmental damages as a result of resource extraction. In addition, it is generally thought that the reason the canon system was adopted in the case of mining was as a means to fund the incipient process of decentralization (see Section 7 below) which involved providing the new

⁷⁷ Gestión. (29 de Marzo de 2015). Empresas pueden invertir hasta S/. 5,580 millones bajo mecanismo de Obras por Impuestos. *Gestión*. Recuperado el 3 de Abril de 2015, de http://gestion.pe/economia/empresas-pueden-invertir-hasta-s-5580-millones-bajo-mecanismo-obras-impuestos-2127531?utm_source=gestion&utm_medium=mailing&utm_campaign=newsletter_2015_03_29

⁷⁸ These were the first transfers made from the extraction and exploitation of natural resources in the country (Ministerio de Energía y Minas, 2010).

⁷⁹ Legal Decree N° 21678 (10.11.1976).

⁸⁰ Arellano Yanguas, 2011

regional governments with economic resources. In this context the MEF found it simpler to distribute this revenue than to create a reform measure to provide the regions with tax revenue. As the Vice President of Corporate Affairs at Antamina describes the process:

“... the districts ... got very little. That was when decentralization was starting; people wanted a lot of resources. What resources could we give them? This was still a country with no resources.”

As mentioned above, the canon was further supported by the companies who saw it as a means to ensure that the local context for mining was as positive as possible by making sure that substantial flows of revenues went to mining affected areas. Likewise, as might be expected, the idea of distributing resources to mining affected areas was strongly supported by members of Congress from mining affected regions.

When considering the distribution of resources in the country it should be noted that this question has actually been a far more politically contentious issue⁸¹ than the question of whether the country, as a whole, was capturing a sufficient portion of the revenues.⁸² The result is that the organization of the Canon has undergone numerous changes since 1993 (see Table 4, above for details). Such changes have principally been of three kinds: A first, focused on the percentage of the income tax to be distributed to the subnational governments, which was increased in the case of mining.⁸³ A second was linked to the inclusion of entities to benefit from the canon, including lower administrative levels (districts) and also the state universities as recipients of this income. Finally a third change, related to the kind of stakeholders involved in the distribution model, shifting from the state to the companies and back again to the state—as mentioned above.

Notably, a number of studies funded by the SNMPE have proposed further amendments to the Canon Act. All of these have maintained the focus on sending revenues back to affected areas⁸⁴ (although it should be noted that similar proposals have come from academia, NGOs, and congress) and reducing the overall tax burden. For example, they have suggested that the revenue be used to finance local capacity-building and that it be distributed in accordance with the Social and Environmental Impact Assessments. It has similarly proposed

⁸¹ As expressed in debates by political parties and in Congress, and through social tensions expressed in civil movements and conflicts.

⁸² Notably, this is in contrast with what occurs in other South American countries—especially in Venezuela, Brazil, Ecuador, Bolivia and even Chile—and takes place in the context which is highly centralized and with one of the most extreme rates of territorial inequality in the region.

⁸³ In the case of the oil canon and other industry payments the conditions defined in the 1990s remained in force to July 2010. In 2012, Congress approved an amendment that significantly increased the amounts transferred through the oil canon (Arellano Yanguas, 2013).

⁸⁴ Boza Dibós, B. (2006). *Canon minero. 'Caja chica o palanca para el desarrollo'* Lima: CAD Ciudadanos al Día.

that investments made by mining companies in local capacity-building be deducted from income tax.

One outcome of the use of the canon system as the primary means for distributing resource wealth is that it has served to produce inequalities both between and within regions.⁸⁵ For example, between 2004 and 2010 the province of Espinar, where the Tintaya mining project is located, had an annual budget averaging 9,087 Peruvian Sols per capita. This is compared to the Villa El Salvador municipality, in Lima, which, in 2012, had a total annual budget of S/. 193 per capita.⁸⁶ These inequalities are also produced in the regions with urban areas tending to receive a greater portion of the revenues, due to the higher number of voters who live there⁸⁷ and biases in the participatory budget (see below).

Notably however, despite these large sums of money, and even disregarding high levels of inequality, it is unclear whether or not the use of these resources has effectively promoted development at the sub-national level. One concern in this respect has been the apparent low spending capacity of the subnational governments. For example, up until November of 2012, regional and local governments had spent, on average, 57.2 percent and 51.5 percent of canon revenues, respectively.⁸⁸ The result is that central government (which is usually not led by the same political parties as those governing the region), the local community, and the extractive companies have encouraged subnational governments to increase their spending capacity. The resultant increase in spending has, however, been accompanied by a drop in the quality of spending. One result of this has been the placing of restrictions on the canon, which is why revenues are not available to cover recurrent expenditures.

In addition to driving concerns about quality, the focus on spending has been an obstacle to designing programs for savings, for stabilizing revenues for longer periods, and for supporting multiannual budgets. Currently, with the fall in revenue from the extractive canon⁸⁹—produced by the combination of the new tax system and the fall in prices—any attempt to create stabilization mechanisms

⁸⁵ To November 2012, canon and other industrial payment transfers made to the Cusco region totaled S/. 2.36 billion; almost twice the amount received by the Ancash region (S/. 1.22 billion). In the same year, Madre de Dios received only S/. 14 million and Lambayeque S/. 55 million (CAD *Ciudadanos al Día*, 2012).

⁸⁶ Soria, L. (2014). *Evaluación de la inversión pública y privada alrededor del proyecto minero Tintaya, Espinar (Cusco)*. Lima: Oxfam.

⁸⁷ Soria, 2014

⁸⁸ Mosqueira, S., & Baca, E. (2012). *La ejecución de inversiones a noviembre 2012*. Nota de Información y Análisis, Grupo Propuesta Ciudadana, Lima. Recuperado el 8 de enero de 2015, de <http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/NIA%203%202012%20gasto%20publico%20a%20noviembre.pdf>

⁸⁹ In 2012, the mining canon totaled S/. 5.21 billion and for 2015, according to projections, it should reach S/. 1.70 billion, a 67 percent reduction (Baca, 22 de febrero de 2015).

and improve spending has been removed from the discussion. The public agenda has focused on how to encourage spending, including public-private mechanisms (including, for example, the Work for Tax system).

Despite the above problems with the canon it is thought unlikely that the policy can be significantly altered, because of the political costs involved and the extent to which the canon has become entrenched in Peru's political landscape:

“In 2008, a congressional commission that was studying a possible reform had to be dissolved without having formulated a clear proposal because as soon as the community and mining region authorities heard about it they moved to stop it.” (Arellano Yanguas, 2013, p. 92)

Looking at revenue sharing processes in Peru it seems that there persists a tension between the interests of the business lobby (especially extractive companies), and public opinion over what constitutes a fair deal for the country, regarding its mineral resources. Historically, the balance of power has been with the business lobby and MEF, as a result of the fallout from the political and economic crisis of the 1980s. That being said, with high mineral prices during the 2000s, each election has been characterized by popular appetite for a president who will reform the mining laws and increase the country's share of mining revenues as a means to fund social expenditure. This has slowly generated changes in the law which have improved the terms of extraction from the perspective of the state. Notably, however, despite the gains made by government in terms of implementing greater taxes, such as through the special mining tax, the recent drop in mineral prices means that tax revenues have actually been on the decline recently. For example, revenues were 39.7% lower in 2013 than they were in 2012.⁹⁰

Despite these tensions, it is notable that in Peru, of greater concern than the level of taxation has been interest in distribution of revenues. Regional governments have sought access to resources, while companies have pushed for revenues to be distributed in the regions in which they are operating—as this is thought to improve their relationship with local communities. On the part of the state, this has created problems including marginalizing the State's role in development and driving inequality. It has also not achieved meaningful human development. The state has, however, been able to retain administrative control over these resources, including the ability to autonomously define where mining revenues are invested. In response, companies continue with forms of corporate social responsibility, continue to lobby for revenues to be directed towards mining affected areas, and seek to fast track social investment in those areas.

⁹⁰ Viale, C. (2013). Evasión y elusión tributaria en el Perú. En desco, *El Perú subterráneo*. (Vol. 24, págs. 199-214). Lima, Lima, Perú: desco. Recuperado el 6 de febrero de 2015, de <http://www.desco.org.pe/sites/default/files/publicaciones/files/09%20Viale%20El%20Per%C3%B3%20subterr%C3%A1neo%20PH%20dic%202013.pdf>

Having now described the technical rules by which revenues are collected and distributed in Peru, this section turns to, finally, describing the accountability and oversight institutions governing these processes.

ACCOUNTABILITY AND REVENUE SHARING

In terms of oversight, the proceeds from extractive industries are not subject to any specific monitoring procedure. They are part of public revenue, described as “specific resources,” and are audited under the rules of existing administrative systems. Control over the sector is regulated by the National Control System Act⁹¹ and the Office of the Comptroller General of Peru⁹² (CGR), and applies to all levels of government, regardless of the legal status or funding source.

The CGR is an autonomous body that controls public assets, including the country’s resources.⁹³ It has economic, administrative, financial and functional autonomy. The Comptroller General is appointed by Congress for a period of seven years and can also be removed by it. In the system for detecting and sanctioning corruption, the CGR works with other institutions, including the Public Ministry, chaired by the attorney general and the judiciary.

The CGR drafts monitoring reports and sends them through the CGR Public Prosecutor, to the Public Ministry which is the body responsible for submitting criminal complaints to the judiciary in response to evidence of criminal activity. In the case of liability, the Comptroller files the complaint directly with the judiciary.⁹⁴

Further to the CGR, The Comprehensive Financial Administration System (SIAF) and the National Public Investment System (SNIP) are both powerful tools for providing information to the public regarding public administration. The Public Sector Financial Administration Act (Law N° 28112) establishes that the SIAF is the official tool for recording, processing, and generating financial information about the public sector. It is operational among all public entities and bodies and at all levels of government.

⁹¹ It is composed of the CGR, all the authorities responsible for auditing government, independent auditing societies appointed by the Comptroller’s Office and the Institutional Control Authorities.

⁹² Law N° 27785, 2002.

⁹³ A total of 2,506 entities are subject to auditing and they include the Executive, local and regional governments, autonomous entities, the administrative units of Congress and the judiciary, state companies, regulators, the armed forces and the police force, and private bodies which receive contributions from the state.

⁹⁴ Alonso, P., de la Cruz, R., Payne, J., Straface, F., Alonso, J., & Linder, A. (2007). *República del Perú: evaluación de la gobernabilidad democrática*. BID. Recuperado el 6 de julio de 2015, de <http://publications.iadb.org/bitstream/handle/11319/5585/Rep%C3%BAblica%20del%20Per%C3%BA%3a%20Evaluaci%C3%B3n%20de%20la%20gobernabilidad%20democr%C3%A1tica.pdf?sequence=1>

These systems for monitoring the use of public finances have gradually improved. It has been possible to track canon resources since 2006 and since 2008 these records have been disaggregated by category or sub-account (mining canon, oil, gas canon, forestry canon etc.).⁹⁵ Further to this, since 2008 such disaggregated data has been available in the user-friendly consultation on the budget which is available online. Likewise, all relevant mining and petroleum sector legislation is published on the website of the Ministry of Energy and Mining, while all fiscal legislation is available on the MEF's website. The mining cadaster (GEOCAMIN) publishes all the current mining licenses.⁹⁶

Finally, Peru joined the Extractive Industries Transparency Initiative in 2005. The EITI is a voluntary mechanism aimed at promoting transparency on the part of both companies and governments in the use of surpluses generated by mining activities. The purpose of the EITI is to reconcile the payments made by companies with those received by states.

Despite these mechanisms for ensuring oversight of extractive industry revenues, the process does have problems. Notably, one of the major limitations of the administrative auditing systems is that the CGR is not thought to have sufficient capacity to carry out a rigorous audit.⁹⁷ In addition, both the SIAF and SNIP suffer from the fact that there are no formal sanctions for failing to comply with accountability obligations contained within these laws (see below for more details). Additionally, although citizens can use these laws in order to get access to information, in many instances this information takes significant skill to interpret. In this respect, despite improvements in making information available, in many instances that information is still not geared towards facilitating public inspection and auditing.

Given these problems, some reports show that certain mining companies remain involved in tax evasion, primarily through transfer payments, ghost expenses and undervaluing production (see Section 5 for more details). In the case of the last of these, a real problem pertains to SUNAT's inability to effectively verify production volumes, costs, and transaction prices.⁹⁸ SUNAT is able to request technical support from MINEM, but MINEM has only just begun to conduct pilot production audits, and there are not currently rules in place to assess mineral volumes and values. As such the sector relies on a system of self-assessment

⁹⁵ Prior to this, these resources were only identified as "ordinary resources" in the income account.

⁹⁶ IMF 2015. Peru fiscal transparency evaluation. IMF country report no. 15/294

⁹⁷ Proyecto Internacional de Presupuesto (IBP). (2005). *Índice latinoamericano de transparencia presupuestaria. Una comparación de 8 países*. Poder Ciudadano, CORFAS, UCR, Probidad, CIEN, Fundar, CISAS, CIUP. Managua: Agencia Británica de Cooperación (DFID), Oficina de Nicaragua. Recuperado el 17 de febrero de 2015, de

<http://unpan1.un.org/intradoc/groups/public/documents/icap/unpan034837.pdf>

⁹⁸ IMF, 2015

for audit purposes.⁹⁹ Further to this, audit information is not publicly available.¹⁰⁰ The state has placed these limits on civil society's access to information with the justification that companies have a right to tax confidentiality. This means that tax evasion is hard for the state to audit and civil society to detect.

With the above in mind, what we find is that while accountability within the extractive sector in Peru is supported by high levels of transparency, and by a legal framework which provides clear allocation of institutional responsibilities, there remain problems with the system. Most notably much of the information that is presented is hard to understand, and certain transparency legislation contains no sanction for those institutions that fail to comply. Finally, while transparency is good regarding revenues that are in the system, there remain challenges to ensuring accountability over the profits before they enter the system, as the process is reliant on self-reporting.

Having now discussed the process by which revenues are collected and distributed, how they came to be that way, and the limitations on accountability and oversight institutions, this report turns to explore the means for distributing those revenues which are not administered through the canon and instead enter the central budget. In order to do this, the following section goes about describing the budget process and its institutions of accountability, before describing the actors who, as a result, have primary influence over the budget process.

⁹⁹ These problems are more pronounced in the mineral sector than in the petroleum sector

¹⁰⁰ IMF, 2015

4. THE BUDGET PROCESS IN PERU

The national budget process in Peru involves the National Directorate of the Public Budget (DNPP) (which is part of the MEF), as well as the budget offices and heads of department of ministries and other government departments that have budgets. In the case of regional and local governments, the regional presidents and mayors, along with the Regional or Municipal Council, are jointly responsible for budget processes.

The law for the Budget System covers all three levels of government (national, regional, and local). The system establishes the procedure for the distribution and transfer of public funds. At the subnational level distribution is conducted in accordance with this national legal framework. The distribution ratios for the mining royalty, mining canon, oil canon, and further oil resource payments and others, are defined and approved by the Ministry of Economy and Finance and authorized by a Ministerial Resolution.

The Ministry of Economy and Finance is central in the formulation of the budget. It designs and submits a draft budget to the Prime Minister's Office (PCM) for discussion, before passing it to Congress for approval. In formulating the budget, input is solicited from ministries and departments, whose planning offices create operational plans, which are then submitted (along with their budgets) to the MEF. Formally, the MEF is authorized to ensure that there is consonance between long-term planning (articulated in institutional plans¹⁰¹), short-term operational plans, and the annual budget.

In terms of budget formulation the process is guided by certain principles, processes, methodologies, and technical rules. These were created by Law N° 27293 as part of the National Public Investment System, one of the aims of which was to avoid poor-quality technical files regarding the implementation of state projects and to optimize the use of public monies.

As of 1993, budget expenditures are limited to finances that are available within the treasury.¹⁰² An important outcome of this process is that the Treasury

¹⁰¹ Contained in Institutional Strategic Plan (PEI), Strategic Plans, Multi-Annual Sector Strategic Plans (PESEM), Regional Development Plans (PDRC), and Local Development Plans (PDLC).

¹⁰² Prior to 1993 it was common that any deficit in the budget would be financed, almost automatically, by the Central Bank (BRC) with the budget increases approved by Congress— in

Committee is afforded an essential role in the formulation of the budget. Notably, this committee is made up of public servants from the MEF and is presided over by the Vice-Minister of the Treasury, who is also from the MEF, thereby affording the MEF further control over the promulgation of the budget. The composition of this committee has remained unchanged for the past 25 years,

Social expenditure is implemented through institutions managed by the central government, such as the Cooperation for Development Fund (FONCODES), the MIMP, MIDIS, etc. The explanation for such investments is thought to be a desire to create populist loyalties—as was the case of the Fujimori regime — as a way of achieving legitimacy in a context of institutional and political party weakness (see below).

Regarding budgets at the subnational level, the participatory budget process was put in place in 2002 through the dissemination of the decentralization reforms—enacted with the intention of reconstructing a more democratic and transparent government in the wake of the Fujimori regime. The exact mandate of the participatory budget was clarified in 2003, by the Participatory Budget Law (Law 28056), which dictates that the capital investment costs of each regional, provincial, and local budget must be developed with civil society input. The initial budget law outlined eight necessary steps, but these were reduced to four in 2009. The steps include:

1. Preparation, or identifying, registering, and training participating agents.
2. “Concertation”: During this phase the participating agents meet to discuss the region’s development plan and prioritize the “themes” of projects that should be funded in the new budget. This discussion should be based on the development plan. The technical team then evaluates each proposed project and, based on the agreed-upon priorities, recommends the projects that should be funded.
3. Coordination among the different levels of government, which consists of meetings between the regional president and the local mayors to make sure that spending is coordinated, sustainable, and has regional impact.
4. Formalization of investment projects. This takes place during a regional meeting where all participating agents are given a vote in the final project list. This final list is sent to two regional governmental bodies, the Regional Coordination Council and the Regional Council, for approval.

which the Fujimori government maintained a broad majority (Carranza, Chávez, & Valderrama, 2007)

CONTROLLING THE EXECUTION OF THE BUDGET

The budget system is a solid institution and one of the longest-lasting in contemporary Peru. In this regard it contrasts with the general scarcity of long-standing policies in the country. The major oversight institution is the Congress, which has to sign off on the budget created by the MEF. Congress has a further role to play via the Congressional Standing Committee on Budget and Public Accounts, which is meant to monitor the Executive's compliance with the budgetary rules as well as expenditure.

In addition to congressional oversight, horizontal oversight institutions include the Internal Control Entities (OCI) that oversee and monitor the proper and transparent management of resources and assets of government departments. OCIs exist in all three levels of government, as well as Congress, the judiciary, prosecutors, regulators, autonomous bodies and state companies.

Finally, the Decentralization Act (Law N° 27783), the Transparency and Access to Information Act (Law N° 27806), and the Participatory Budget Act (Law N° 28056) together established tools for public participation in regional and local government administration. Most importantly for the purposes of oversight, these laws made it compulsory for the government to provide and circulate institutional and financial information about the use of public monies. This has included the setting up of websites on the part of both the MEF and the regional governments which serve to describe budget information.

In order to facilitate the process of transparency and accountability the government also created the Regional Coordination Councils (CCR) and the Local Coordination Councils (CCL). The councils are liaison channels between these subnational government levels and civil society representatives. Their function is to establish consensus and give an opinion on the annual participatory budget, the development plan, and the vision and strategic guidelines of the programs which make up the local and regional development plan. Council members are elected through a process regulated by an ordinance approved by the regional government and the local or provincial municipality. They also propose investment priorities. Their duties do not include inspecting budget management among the regional government departments or the municipality.

FAILINGS IN THE BUDGET PROCESS

Although the above institutions appear to provide significant oversight and accountability within the budget process, a number of problems persist. Firstly Congress, as the principal oversight institution, is thought to be far from effective at overseeing and monitoring the Executive (the reasons for this are discussed in more detail in Section 6). Likewise, the Congressional Standing Committee's

monitoring is considered superficial, at best, with expenditure monitoring being even worse.¹⁰³

Further to the failings of the Congress, the monitoring carried out by the Internal Control Entities (OCI) (which are meant to oversee and monitor the proper and transparent management of resources and assets across all levels and branches of government) is thought to be weak, while their ability to evaluate the performance and actions of these offices is limited.¹⁰⁴

Regarding the participatory budget, although CSO participation is thought to be significant, and has increased between 2008-2009, interest in participating in the process has waned over the period 2009 to 2011. Part of the problem is that there are significant costs (in terms of time and money) involved with participating in the process. For example, the World Bank has quantified the actual costs for a Peruvian rural dweller who participates in the entire budget process during a given year as approximately \$195, or 95% of a monthly salary at minimum wage.¹⁰⁵ The result is that the process tends to offer greater representation to elite groups, which tend to have an urban bias.

Finally, considering the role of transparency reforms, public information portals on the budget do not publicize budget information sufficiently.¹⁰⁶ Likewise, as with the oversight of extractive industry revenues (see Section 3) the information contained in the portals is not always presented in a manner that is easy for the public to understand, meaning that citizens need significant levels of technical literacy to interpret the information. The limitations of these mechanisms are evidenced by the low level of knowledge about the budget among the population. For example, in 2004, only one in two people knew that the canon existed.¹⁰⁷ The extent to which these problems are manifest can likewise be seen in Figure 5 below, in which survey respondents identify the extent to which budget information is publically available, but at the same time note relatively low levels of public understanding of the budget process.

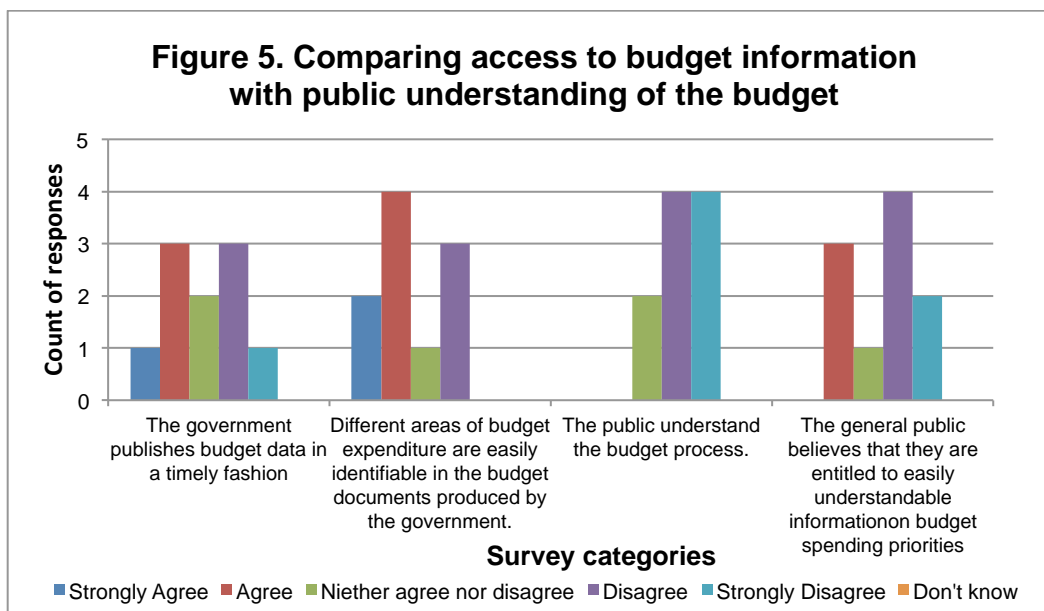
¹⁰³ Alonso et al., 2007

¹⁰⁴ Liber. (2014). *Contraloría no supervisa el funcionamiento de las oficinas de control institucional*. Lima: Liber Centro de Información Abierta. Recuperado el 7 de julio de 2015, de <http://www.centroliber.org/contraloria-no-supervisa-el-funcionamiento-de-las-oficinas-de-control-institucional/>

¹⁰⁵ World Bank (2010) "Peru: Evaluación del presupuesto participativo y su relación con el presupuesto por resultados." Washington, D.C.: The World Bank.

¹⁰⁶ GPC. (2011). *Balance de los mecanismos de participación ciudadana*. Lima: GPC Grupo Propuesta Ciudadana.

¹⁰⁷ Boza Dibós, 2006



Source: Research survey

In terms of the Regional and Local Coordination Councils (CCR and CCL respectively), although these were very active at first, they did not work regularly and participation has fallen with each election.¹⁰⁸ One explanation for this is that the CCR and the CCL functions overlap with those of the regional governments and local municipalities, although the latter's decisions are binding. As such, the Councils have less capacity for influencing the municipal or regional budget and hence are losing legitimacy.¹⁰⁹

Further, the CCR are perceived to be alien to the general public.¹¹⁰ This can be seen in the diminishment of interest among community organizations taking part in them. For example in 2003, 1,056 regional organizations registered in the elections of members of the CCRs, while four years later only 821 took part in elections.¹¹¹

¹⁰⁸ Proyecto USAID/Perú ProDescentralización; MCLCP. (2009). Participación y descentralización. *Percepciones y expectativas ciudadanas. Evaluación rápida de campo 2009*. Lima: Proyecto USAID/Perú ProDescentralización; Mesa de Concertación de Lucha contra la Pobreza.

¹⁰⁹ Cabrera, T., Rodríguez, M., & Soria, L. (2006). Actores sociales y modelos de gestión de la ciudad en Lima sur. En desco, & E. Toche (Ed.), *Nuevos rostros en la escena nacional* (Vol. Perú Hoy, págs. 225-260). desco Centro de Estudios y Promoción del Desarrollo. Recuperado el 8 de noviembre de 2014, de

<http://www.desco.org.pe/sites/default/files/publicaciones/files/PeruHoy20006B.pdf>

¹¹⁰ Castillo, G. (2011). *Estudio de percepciones de las y los ciudadanos en los procesos participativos a nivel subnacional y sus actitudes acerca del desempeño de las industrias extractivas en las regiones de Ayacucho, Ancash, Cusco, Cajamarca, Junín, Loreto, San Martín y Ucayal*. Lima: Societas Consultora de Análisis Social.

¹¹¹ GPC, 2011

Finally, the subnational authorities only tend to comply with the minimum legal requirements of the Decentralization Act (Law N° 27783), the Transparency and Access to Information Act (Law N° 27806), and the Participatory Budget Act (Law N° 28056). To this end, they tend to convene hearings at very short notice or fail to announce meeting agendas in advance. In 2005, only half of all local governments published information on their budgets, compared with 82 percent of regional governments.¹¹²

Considering the budget process in Peru, it appears that the budget is a long-standing and robust institution. The flip side of this, however, is that the MEF maintains significant control over the process. This includes the ability to draft the budget, determine whether proposed budgets fit with longer-term plans, and play a role in approving financing from the treasury. Congress appears to be compromised in its ability to oversee the budget. Although the participatory budget has achieved some positive outcomes, exclusionary elements persist based on the costs of participating.

Considering these features of the budget, and noting the above discussion of the procedures governing the collection and distribution of extractive revenues, we are in a position to reflect upon who, in reality, has the most authority in determining the allocation of resources in Peru. It is to a discussion of these dynamics that this report now turns.

¹¹² Boza Dibós, 2006

5. INFLUENCING REVENUE ALLOCATIONS

The dominant position of the Executive Branch across a host of government processes is thought to have given them almost complete control over the direction of public investment.¹¹³ Within this, given the fact that the MEF is able to authorize the budget and oversee planning consonance, as well as their dominant role on the Treasury Committee, it is clear that they play a particularly important role in shaping budget priorities. Notably the consolidated position of the MEF regarding planning and public policy was bolstered when the Central Planning Institution (INP) was abolished in the 1990s as part of the neoliberal reforms. This central role should have been undermined by the creation of the Center for National Strategic Planning (CEPLAN; Centro Nacional de Planeamiento Estratégico) in 2005, however, while this new institution is thought to have the technical capacity to undertake research and analysis, little is done at the executive level to promote adoption and implementation of its studies. Notably, in this respect, the president of CEPLAN's governing board is not a member of the Council of Ministers and CEPLAN does not have the capacity to take the lead in executing specific projects.¹¹⁴ As such, the MEF remains the major player in shaping public policy. One researcher in the Office of the Comptroller General described the dominant position of the MEF as follows:

“The MEF has maintained a line of work that has institutionalized the model. The main decisions on the attainment of resources and their distribution go through this technocracy.”

In addition to formal control, the dominance of the MEF is thought to be strengthened by its technical capacities. Once the MEF has promulgated the budget, both the Cabinet and Congress are only able to introduce minor

¹¹³ Straface, F., & Basco, A. (2006). *La reforma del Estado en Perú*. BID Banco Interamericano de Desarrollo. Recuperado el 6 de julio de 2015, de <http://publications.iadb.org/bitstream/handle/11319/3783/La%20Reforma%20del%20Estado%20en%20Per%C3%BA.pdf?sequence=1>

¹¹⁴ OECD 2015 Multi-dimensional Review of Peru: Volume I. Initial Assessment, OECD Development Pathways, OECD Publishing: Paris.

changes.¹¹⁵ No social or political groups are thought to exist that can exert sufficient pressure or have sufficient technical ability to make major alterations to the proposed budget. Congressional debate of the Peruvian budget is dominated by orders from the Executive Branch,¹¹⁶ as expressed by one Congressional representative:

“It is a great disappointment to me to see that the Peruvian Congress, elected by the people, is reduced to acting like a beggar, holding out its hand for money, reading the SNIP codes, pleading, imploring someone who was not elected by the people, a public servant of this government. It’s a pity to be asking like a beggar despite the fact that it is Congress that approves the General Budget”.

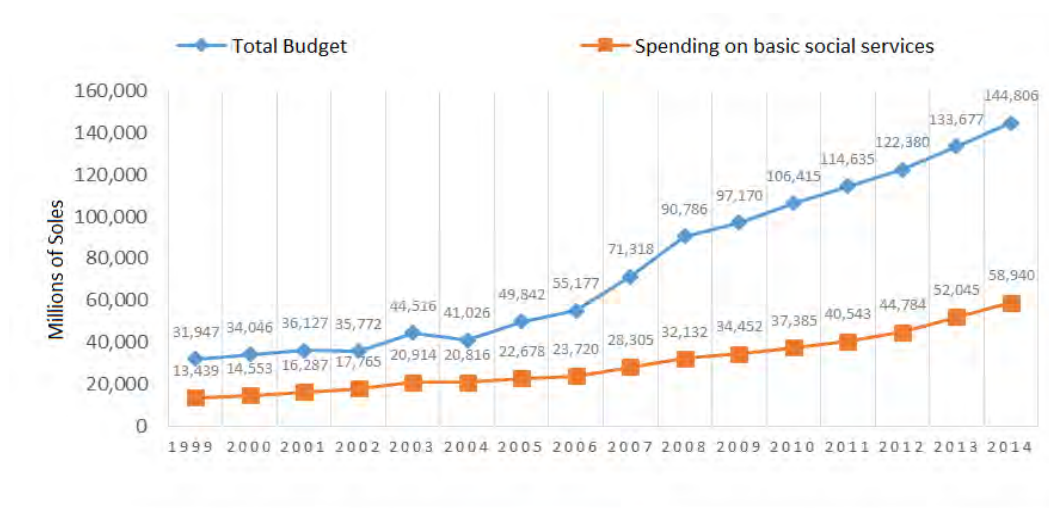
The Prime Minister’s Office also plays an important role in the process of budget formulation. The result is a tension between a general trend on the part of the president to increase spending, while a fiscally conservative MEF seeks to maintain a pattern of austerity and a desire to increase internal reserves. The outcome has been that, on the one hand, numerous presidents have had to back off from efforts to expand social spending in the face of pressure from a fiscally conservative MEF and Central Bank, while on the other hand it should be noted that the last 15 years of presidential periods have seen a relatively slow (compared to the increase in budget revenues) increase in basic social expenditure (see Figure 6). The frustration generated by such tensions - between a popular president and technical MEF - is captured by an interviewee at the Research Department of the Office of the Comptroller General:

“We are still a country with great fear of economic meltdown ... we continue acting like a frugal country when income has multiplied extraordinarily. We continue to maintain a MEF that saves money like a big protector and we worry about maintaining enormous reserves while there still are a lot of people starving.”

¹¹⁵ Barrantes, Tanaka, Vera, & Pérez-León, 2010

¹¹⁶ Mauro, R. (2014). La construcción política del Presupuesto de la República. En E. Toche (Ed.), *Perú Hoy, Más a la derecha Comandante* (págs. 211-232). Lima: desco Centro de Estudios y Promoción del Desarrollo. Recuperado el 22 de febrero de 2015, de <http://www.desco.org.pe/sites/default/files/publicaciones/files/12%20R%20Mauro%20Per%C3%BA%20Hoy%20julio%202014.pdf>

Figure 6. Comparing spending on basic social services with the total budget¹¹⁷



These sentiments are reiterated in the words of a previous member of Congress, who resigned from the governing party, accusing it of having betrayed its promises of social change:

“It is the MEF who governs this country, it states what will and will not be done ... Not just Segura, but the entire team that has been there for decades and it causes problems because they are not capable of seeing that a law not only has economic, but also social impact.”

The result of the dominant role of the MEF in the budget process means that the community of experts within the MEF effectively functions as “policy entrepreneurs”.¹¹⁸ One positive outcome of this continued dominant role of the MEF is that it has given continuity to government policy, despite changes in government management. The result has been continuous improvements in certain national indicators, such as: reductions in child mortality, chronic malnutrition, and anemia; improvement in reading comprehension and mathematics in second grade primary school students; economic growth and poverty reduction inter alia. Notably, however, from this perspective, it has been pointed out that the political parties have stopped being producers of either ideas or political initiatives.¹¹⁹

¹¹⁷Source: *Societas Consultora de Análisis Social* (Ministerio de Economía y Finanzas. (23 de junio de 2015). *Sistema de Seguimiento de la Ejecución Presupuestal*. Obtenido de Ministerio de Economía y Finanzas: <http://apps5.mineco.gob.pe/transferencias/gl/default.aspx>)

¹¹⁸ Tanaka, M. (15 de Marzo de 2015). Las claves del éxito (y del fracaso). *La República*. Recuperado el 16 de Marzo de 2015, de <http://www.larepublica.pe/columnistas/virtu-e-fortuna/las-claves-del-exito-y-del-fracaso-15-03-2015>

¹¹⁹ Tanaka: *Las claves del éxito (y del fracaso)*, 2015

All of the above notwithstanding, the government of President Humala has been particularly successful at negotiating with the MEF technocracy for a growth in social expenditures, in order to finance programs aimed at combating poverty, educational policies, and health. The particular success of Humala in this regard can be partially explained by the role that the Ministry of Development and Social Inclusion has played in the de-politicization of social programs. Furthermore, the commodities boom made more money available to the state, while the implementation of the Special Mining Tax has placed a greater share of the country's revenue under the control of the government, allowing for some leeway in terms of expenditure.

Overall, the result of different priorities for budget investment has meant that levels of social expenditure have grown. In 2000, the non-financial expenditures¹²⁰ of the central government totaled 34 billion Peruvian Sols. This is expected to reach 162 billion Peruvian Sols in 2017.¹²¹ This expenditure was geared towards addressing urban and rural poverty reduction and it has had some success. Between 2004 and 2012, poverty fell 33 percentage points.¹²² Thus, after having reached a high of 58.7 percent in 2004, monetary poverty in the country has fallen in a sustained manner; in 2013, the official figure was 23.9 percent. The bulk of poverty has traditionally been located in rural areas, especially in the Andean region; and for decades there has been a significant gap between urban and rural poverty. In 2009, this gap reached 49 points. However, in recent years rural poverty has been observed to be decreasing more rapidly than that reported in urban areas and in 2013, the gap was 32 points.¹²³ Notably however, the extent to which this drop in poverty is attributable to social spending versus the general positive impacts of GDP growth is hard to tell. For example, historically, poverty levels have been hard to improve despite economic growth, with poor social policies having been identified as the problem.¹²⁴ At the same time, while the current government attributes the recent drop in poverty levels to its effective social programming,¹²⁵ rates of poverty reduction have

¹²⁰ This includes current expenditure: wages, goods and services, and transfers; and capital expenditure: public construction work and private-public construction works.

¹²¹ MEF. (2014). *Marco Macroeconómico Multianual 2015-2017*. Lima: MEF Ministerio de Economía y Finanzas. Recuperado el 15 de febrero de 2015, de http://www.mef.gob.pe/contenidos/pol_econ/marco_macro/MMM_2015_2017.pdf

¹²² MEF, 2014

¹²³ INEI. (2014). *Evolución de la pobreza monetaria 2009 - 2013. Informe técnico*. Lima: INEI Instituto Nacional de Estadística e Información. Recuperado el 18 de febrero de 2015, de http://www.inei.gob.pe/media/cifras_de_pobreza/informetecnico.pdf

¹²⁴ Yamada, G. and Castro, J. 2007. Poverty, inequality and social policies in Peru: As poor as it gets. Documento de Discusión, University del Pacifico

¹²⁵ Reuters, 2015 "Poverty reduction slows in Peru as economic growth falters", <http://www.reuters.com/article/us-peru-economy-poverty-idUSKBNONE2ES20150423>

slowed significantly since economic growth began to slow in 2014.¹²⁶ Untangling the exact cause of recent reductions in poverty therefore remains difficult.

When it comes to the specific distribution of revenues from extractive industries through the canon, it should first be noted that these transfers pertain to a significant quantity of resources. For example, in 2004, when the most recent reform to the canon was approved, the transfers of the mining canon and royalties amounted to S/. 308 million at constant 1996 prices (90 million US dollars). The increase in the international mineral prices meant that the transfers multiplied 13 times in three years. Canon transfers between 2005 and 2008 represented on average 55 percent of all the transfers received by the subnational governments.

Regarding control over the distribution of canon revenues, these are largely determined by the dynamics of the participatory budget process which shape budget priorities at the subnational level. It is beyond the scope of this research to try and identify the mechanisms by which decision-making power over this process might be effectively distributed or captured,¹²⁷ but it has been noted elsewhere that results of the participatory budget process in Peru have been limited. Problems within the participatory budget process include:

1. Participation being limited to organizations and not individuals
2. Little engagement by women in the process and limited engagement by organizations representing women's issues
3. Complex technical rules describing the budget process, as well as significant time commitments mean that the formal process for developing the budget are often not followed¹²⁸
4. The process is dominated by elite organizations, who are largely professional, able to invest the time and afford the registration fees. These groups tend to have an urban bias.
5. There is a lack of formal sanction for politicians who do not carry out the participatory budget process in the spirit of the law.

As a result, the participatory budget process is still thought to be dominated by elite actors that do not represent the diversity of the civil society sector in Peru.¹²⁹

¹²⁶ INEI 2015. Evolución de la Pobreza Monetaria en el Perú al 2014

¹²⁷ Part of the reason for this is that the results of the participatory budget vary drastically from town to town, making an exploration of the mechanisms of capture highly context-specific (McNulty, 2013).

¹²⁸ In 2007, for example, 7.5% of monitored districts did not have oversight committees (as are mandated) (Mesa de Concertación para la Lucha Contra la Pobreza (MCLCP) 2007). Further to this, only one in nine monitored regions was found to have oversight committees that had actually organized meetings (Grupo Propuesta Ciudadana, 2009).

The above notwithstanding, the outcome of the participatory budget process is thought to have increased government allocations towards investments that are “pro-poor.” Additionally, the ambition of that investment is also thought to have increased. Such allocations aside, it is noted that many of these approved projects are not executed (in 2007 the figure was as high as 50%). This is thought to be due to a mix of political factors such as senior elected officials, who have the ability to change the budget after participatory committees have approved it, deciding to fund different projects, or when budget allocations do not meet the technical requirements set out by the MEF.¹³⁰

In addition to the above, management of the canon revenues at the sub-national level is thought to be characterized by clientelist relations,¹³¹ enabled by the fact that many municipalities operate projects directly, allowing them to hire local labor. In some cases, candidates for local election have made the promise of work part of their election campaigns, for example in the Espinar municipality.¹³² Such processes are facilitated by the fact that local officials can make changes to the budget of up to ten percent during construction work. Such processes do however result in higher direct staff costs, and more arduous administration processes, especially when purchasing materials and inputs.¹³³

Looking at influence within the budget in Peru it appears that the process is dominated by the MEF, as a result of their dominant position in the process and their technical capacity. In this respect, relatively limited social expenditure seems to be maintained as part of an ideological commitment to austerity as a lasting outcome of the problems of fiscal indiscipline experienced in the country in the 1980s. This general trend notwithstanding, it does appear that since 2004, a national priority has become addressing poverty and increasingly funds have been made available to support these ends.

Regarding the use of the canon revenues, the process is determined by the dynamics of the participatory budget. While it is hard to comprehensively appraise this initiative, positive elements include an increase in the number of pro-poor investments that are approved for implementation.¹³⁴ That being said, a

¹²⁹ McNulty, S. 2013. Improved Governance? Exploring the results of Peru’s participatory budgeting process. Paper prepared for the 2013 annual meeting of the American Political Science Association: August 29 – September 1.

¹³⁰ McNulty, 2013

¹³¹ Baca, E., & Narváez, J. (2009). *Gasto público y canon en el Perú. Análisis y recomendaciones para el mejor aprovechamiento de las rentas del gas de Camisea*. (E. Baca, & P. Díaz, Edits.) Lima: CBC; Arariwa; GPC. Recuperado el 12 de noviembre de 2014, de http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/gasto_public_o_canon_Peru.pdf

¹³² Soria, 2014

¹³³ Baca & Narváez, 2009

¹³⁴ McNulty, S. (2012) “An Unlikely Success: Peru’s Top-Down Participatory Budgeting Experience,” *Journal of Public Deliberation*: Vol. 8: Iss. 2, Article 4.

large number of these projects are not authorized and projects do not get implemented. In addition, problems with the participatory budget include the extent to which engagement with the process remains an elite project, dominated by urban interests and one that does not have sufficient engagement on the part of women.

Having now described the rules and accountability institutions overseeing the collection and allocation of extractive industry revenues, it is clear that there are a number of failings within the process. Most clearly these appear to be issues surrounding a lack of sanction for breaches in accountability, underperforming oversight institutions and a lack of political will to carry out audits—on both government bodies and extractive corporations. In an effort to understand these processes we turn now to an exploration of the broader context of accountability in which relations of oversight and authority are situated.

6. THE ACCOUNTABILITY CONTEXT

There are three kinds of oversight mechanisms in Peru: (i) administrative checks, within the institutional government auditing system, such as the Office of the Comptroller General (CGR); (ii) political checks, within the municipal and regional councils and Congress, all of which have inspection faculties; and (iii) those of the general public, whose participation is established by law.

Beginning with congress as the most prominent oversight institution, the Constitution gives the Legislature broad powers to monitor the Executive's policies and behavior. It can censure cabinet ministers, approve ministers before they take office, and has to approve the budget. It also has the right to question the heads of the portfolios, to request data or reports from the ministries and other government agencies, to create commissions of inquiry, to review and accept or reject legislative actions taken by the Executive, and to hold preliminary hearings, make political judgments, bring constitutional charges and initiate votes of no confidence, as well as control emergency decrees.¹³⁵ Given such powers, congress is intended to act as a counterweight to the dominance of the executive.

The appropriate conduct of members of congress is ensured by the Congressional Ethics Committee, which is able to initiate an inquiry against a congressperson when there is sufficient evidence of violations of the Code of Ethics.¹³⁶

Moving to the administrative checks and balances, with the resumption of democracy, the government of Paniagua made great efforts to strengthen the foundations of an anti-corruption system. The government set up a justice sub-system and an anti-corruption police force to work together in coordination and

¹³⁵ Between 1995 and 2009, 1,127 emergency decrees were issued, 41 percent between 1995 and 2000.

¹³⁶ Liber. (2014). *Comisión de Ética Parlamentaria desestimó en promedio 84.5% de los casos que conoció durante sus dos últimas gestiones*. Lima: Liber Centro de Información Abierta. Recuperado el 6 de julio de 2015, de <http://www.centroliber.org/comision-de-etica-parlamentaria-desestimo-en-promedio-84-5-de-las-denuncias-que-conocio-durante-sus-ultimas-2-gestiones/#more-374>

an Anti-corruption Prosecutor's Office. It also amended the law for more effective and immediate action.¹³⁷ A significant outcome of these changes was that they resulted in improved public information and transparency standards. In 2002, the Transparency and Access to Information Act was passed (Law N° 27806), which created the legal requirements for creating transparency portals and allowed citizens to activate access to information requests.

As a final arm of accountability the media, after having been captured by the Fujimori regime (see above) regained some of its freedoms (which are enshrined in the 1993 constitution) under the transitional government of Paniagua. New tabloids were published (*Perú 21*, *La Primera*, for example) which had editorials with differing positions that shaped public opinion. Investigative journalism currently reports regularly on corruption and nepotism.

Despite the above provisions, in reality Peru has a presidential system in which the Executive Branch has greater powers than the Legislative and Judicial branches. The effectiveness of congress as a counterweight to the dominance of the executive is therefore compromised. Furthermore, fragmentation and volatility within parliamentary blocks is a major issue, and there exist repeated cases of congressmen changing party sides and political positions in an opportunistic manner. Frequent cases of corruption involving members of Congress have served to discredit the institution, alienating citizen support. According to regional surveys, Peru comes last in Latin America regarding support for the Congress with less than 1 in 10 citizens feeling represented by the Legislative Branch.¹³⁸ Further to this, the auditing function of Congress has become a political game focused on: investigating former presidents (Alejandro Toledo and Alan Garcia), investigating and suspending parliamentarians, and efforts by the opposition to impeach current ministers or initiate votes of no confidence.

Regarding corruption, the former anti-corruption procurator and current chair of Transparency International, José Ugaz, considers that there is little political will to tackle the problem, even among the highest level of the country's leaders. His views appear to be supported by the fact that despite the auditing powers congress holds, and despite their activity pursuing investigations among certain political candidates, there has historically been little effort to audit the collection and distribution of revenues from the extractive industries.¹³⁹

¹³⁷ Dargent, E. (2005). Jugando a los señores: reflexiones sobre los procesos anticorrupción en el Perú. En F. Portocarrero (Ed.), *El pacto infame: estudios sobre la corrupción en el Perú* (págs. 377-402). Red para el Desarrollo de las Ciencias Sociales en el Perú.

¹³⁸ Corporacion Latinobarometro, 2015. *Informe 1995 – 2015*. Santiago de Chile. Corporacion Latinobarometro.

¹³⁹ The late Congressman Javier Diez Canseco and Congressman Manuel Dammert, who replaced him in the current Congress, have presented allegations and proposals for investigation and auditing. However, because of their minority position in Congress, these proposals did not prosper.

Part of the problem is that the lack of public faith in the parties means that no one is able to attain a majority in congress. This results in significant instability among government, with Cabinets tending to last less than six months. Such conditions make it hard to generate the political will to counter corruption.¹⁴⁰

Compounding this problem is the fact that the administration is compromised by a significant number of conflicts of interest—including within the extractives sector. This includes, for example, the chair of the Energy Security Committee of ProInversión, Edgar Ramírez, who was in charge of the selection procedure for awarding concessions for a gas pipeline in the south of the country to the *KunturTransportadora de Gas Company*. During the application process it turned out that Ramírez had drafted three of the five studies that are necessary to obtain the concession.¹⁴¹

In terms of the anti-corruption offices instituted by the transitional government, these offices are thought to have lost focus and the anti-corruption policy has lost continuity. The explanation for this is thought to lie in the fact that when these strategies were formulated they were strictly focused on certain jurisdictions, and failed to involve civil society. In terms of other administrative checks, as mentioned above, the CGR is thought to lack the capacity to carry out a rigorous audit.¹⁴²

Regarding oversight institutions, both the Prosecutor's Office and the judiciary are thought to lack integrity, with the last and current Attorney Generals both being investigated under suspicion of having links with organized crime.¹⁴³ The effective functioning of the Judiciary is further compromised by the fact that 45 percent of all prosecutors in the Public Ministry are provisional,¹⁴⁴ meaning that they lack job security¹⁴⁵ which compromises their independence. Finally, further obstacles to addressing corruption stem from civil society research which shows that the judiciary does not currently have an appropriate system for recording

¹⁴⁰ López, S. (25 de junio de 2015). La crisis política. *La República*, pág. 5.

¹⁴¹ Marticorena, M. (2 de julio de 2014). Habría conflicto de intereses en el Gasoducto Sur Peruano. *El Comercio*. Recuperado el 20 de febrero de 2015, de <http://elcomercio.pe/economia/peru/habria-conflicto-intereses-gasoducto-sur-peruano-noticia-1740006>

¹⁴² Proyecto Internacional de Presupuesto (IBP) (2005)

¹⁴³ Castillo Hajar, M. E. (27 de Octubre de 2014). José Ugaz: "Más allá de los discursos, el presidente tiene que adoptar medidas contra la corrupción." *La República*. Recuperado el 3 de Abril de 2015, de <http://www.larepublica.pe/27-10-2014/mas-alla-de-los-discursos-el-presidente-tiene-que-adoptar-medidas-contrala-corrupcion>

¹⁴⁴ Liber. (2015). *Estadística entregada por el Poder Judicial en materia de delitos contra la administración pública es confusa e inverosímil*. Lima: Liber Centro de información abierta. Recuperado el 6 de julio de 2015, de <http://www.centroliber.org/estadisticas-del-poder-judicial-en-materia-de-delitos-contrala-administracion-publica-son-confusas/>

¹⁴⁵ The dismissal of a provisional prosecutor requires no more than the signature of the chief prosecutor.

convictions and acquittals in cases trying corruption among government officials.¹⁴⁶ This lack of clear statistics makes the effective formulation of anti-corruption policies impossible.

Finally, in terms of transparency legislation and citizen action, as mentioned above, transparency portals frequently fail to provide information in a format which is easily understandable by the local population. In addition, there is no available sanction for organizations that fail to comply with access to information requests. The effectiveness of this latter tool is further compromised by the extent to which companies are protected from such requests on the grounds that company information is sensitive, and therefore not subject to transparency requirements.

In terms of EITI the disclosure of company profits experiences little scrutiny, as companies are rarely effectively audited, and, as was mentioned above, the system is reliant on self-reporting. Lacking audits, effective prosecution, and limited transparency requirements, companies can, with relative impunity, declare their own profits, allowing for the possibility for transfer mispricing, under-reporting on production, and expense account fraud. Such problems notwithstanding, it should be noted that the EITI has allowed a gradual although limited approximation to companies' payments, with improvements showing in the 4th national report released in 2014.

Finally, in terms of the media, although the resumption of democracy restored certain freedoms and the ability to speak critically of the government, the press, which was bought off by Fujimori and Montesinos, remained in the hands of those who had bought it, even after the regime ended. The result is that today the majority of the country's media (press, radio, and television) is highly consolidated, owned by just four major business groups and families. The most influential, *El Comercio* group (which owns 78% of all the printed press), tends to promulgate a discourse which is supportive of a neo-liberal world view.

Outside of these consolidated media outlets, the national newspapers have little penetration, with circulation largely limited to urban areas. They suffer from a low level of professionalism in their reporting and their influence on public opinion is limited. Where influence is leveraged it tends to be towards the ends of fostering unrest and divisions, and polarizing the local community at extremes. The situation among local radio stations is similar to that of the local papers.¹⁴⁷ With weak political parties and other channels of representation, the media has increasingly developed a leading role in deciding political and social agendas. As García-Sayán (2015) puts it: "One convincing report in the newspapers has a thousand times more impact than hours of parliamentary debate".

¹⁴⁶ Liber, 2015

¹⁴⁷ Bebbington, A., Scurrah, M., & Chaparro, A. (2013). *La sociedad civil y las industrias extractivas en el Perú: un mapeo y análisis preliminar*. Lima: Ford Foundation.

IMPLICATIONS OF LIMITED ACCOUNTABILITY

Before describing the contemporary outcomes of these institutional failings in Peru, it is worth noting that the country has been affected by corruption throughout its history as a republic. For example, between 1820 and 2000 it is estimated that corruption cost the country about four percent of GDP every year.¹⁴⁸

That said, today, a lack of political will to undertake audits, compromised oversight institutions, and the limitations on transparency combine to result in the ongoing appropriation of funds and a failure on the part of companies to pay taxes. Both of these problems clearly have negative implications for the availability of funds to be spent on human development.

Regarding the lack of political will to undertake audits, for example, during the administration of César Álvarez, the Ancash regional government received S/. 1.84 billion from the mining canon. According to press investigations, over half of this money may have been used for illicit contracts for public construction works.¹⁴⁹ Despite this, as the Vice President of Corporate Affairs at Antamina put it: “no one was interested in auditing.” The process by which such appropriations might take place is described by the Former Director General of the Social Administration Office (MINEM):

“It is simply corruption ... Ancash is a clear example. People get astronomical amounts of money, they identify a series of needs and announce tenders, but then they have a network of contacts, beyond the bounds of the tender, front men and so on and they identify the bidders and formulate the profile for the ones they want to win the tender.”

The case of Ancash is not isolated. There is a widespread lack of transparency, mismanagement, and corruption at the subnational level—particularly among regional governments. In this context corrupt practices in several regional administrations eventually became so open and brazen that intervention became unavoidable, despite the dysfunction in oversight mentioned above. The result was that in the fall of 2014, 22 out of 25 regional presidents were investigated by

¹⁴⁸ Quiroz, A. (2013). *Historia de la corrupción en el Perú*. Lima: IEP - IDL.

Recoba, E. (28 de abril de 2014). *Las Bambas: cuando la política, los impuestos y el lobby se juntan*. Obtenido de lamula.pe: <https://redaccion.lamula.pe/2014/04/28/las-bambas-cuando-la-politica-los-impuestos-y-el-lobby-se-juntan/edu1968/>

¹⁴⁹ Muñoz, L. (15 de abril de 2014). Casos por corrupción en gestión de Álvarez comprometen S/. 1,000 millones. *La República*. Recuperado el 20 de noviembre de 2014, de <http://www.larepublica.pe/15-04-2014/casos-por-corrupcion-en-gestion-de-alvarez-comprometen-soles-1000-millones>

the National Controller's Office.^{150,151} By the end of the same year three of those regional presidents were incarcerated, two more had fled their offices, and another had been barred from holding public positions.¹⁵²

Notably, rather than instilling faith in the audit function of the state, the consequence of these scandals has been that the authority and public standing of regional governments has been significantly weakened. At the same time, the central government has strengthened its powers of intervention, including the option to establish an executive unit to directly assume responsibility for fiscal management and to process payments of a regional government in cases where a regional government had its accounts frozen in order to safeguard public funds.

In the aftermath of this anticorruption drive, diverse proposals have been put under discussion aiming to increase accountability and transparency among subnational governments and improve articulation of anticorruption policies. Among the measures proposed are the establishment of an Internal Control Committee in each regional government, adherence to an Internal Control Act Agreement, the development of quantitative/qualitative analysis of corruption modalities at the regional level, and the development of a regional anticorruption system with participation of civil society organizations, regional media, business associations, academia, etc.¹⁵³

In addition to problems of corruption among subnational governments, failure to audit companies has cost the country potentially significant sums of money in foregone taxes as companies undertake transfer mispricing, expense account fraud, and undervalue production. In terms of transfer mispricing, for example, the company Doe Run Peru is thought to have created fictional debts with its parent company, as well as overvaluing its expenditures, for goods purchased from the parent company. For several years Doe Run continued to make loans and collect charges with its "sister" companies before declaring bankruptcy in

¹⁵⁰ El Comercio, 2014. *Contralor Khoury: el proceso de descentralización no tuvo éxito*. <http://elcomercio.pe/politica/actualidad/contralor-khoury-proceso-regionalizacion-no-tuvo-exito-noticia-1735602>

¹⁵¹ La Republica, 2014. *22 presidentes regionales tienen procesos judiciales*. Available in: <http://larepublica.pe/25-09-2014/22-presidentes-regionales-tienen-procesos-judiciales>

¹⁵² World Bank, 2015. *Program Information Document – Concept Stage*. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/09/09/090224b0830c65ac/1_0/Rendered/PDF/Peru000Public00wdown0Option0Project.pdf. El Comercio, 2014. *Seis presidentes regionales no concluirán sus gestiones*

¹⁵³ Consorcio de Investigación Económica y Social, 2015. *Propuestas de Políticas para los gobiernos regionales 2015 – 2018*. Lima. CIES.

2009 (the company also left significant environmental problems).¹⁵⁴ Through this process the company was able to repatriate resources without paying tax.¹⁵⁵

Regarding questionable expense account practices, a controversial report by Peruvian political analyst Raúl Wiener,¹⁵⁶ and broadcast by the BBC, described how the Yanacocha mining company had created ghost expenses to produce a negative balance and pay no tax. Wiener estimates that Yanacocha could have avoided recording net profits of about US\$3.079 billion, the equivalent of US\$ 1.186 billion in income tax avoided.¹⁵⁷

Finally, regarding resource undervaluation, The Camisea Consortium has raised concerns. According to the contract signed with the Peruvian state, this consortium has to pay 30 percent of the final destination price of the sale of the gas after deducting all the costs. The consortium indicated gas sales outlets where the price of gas is lower, although in 2010 Repsol (a consortium member) sent at least 10 gas shipments to other higher-priced outlets. PERUPETRO calculated the royalties that Peru should have received given the final destination markets and their sales prices, estimating that the country should have received an additional US\$45 million in royalties.¹⁵⁸ The case was taken to international arbitration before the International Center for the Settlement of Investment Disputes (ICSID), which in 2015 ruled in favor of the Peruvian state and ordered the consortium to pay the undeclared royalties and corresponding interest.¹⁵⁹ Notably, however, despite the involvement of PERUPETRO it should be noted that this case was not brought by the state, but by former workers at PERUPETRO, who:

¹⁵⁴ Ñiquen, A. (4 de abril de 2012). *Doe Run: 'la sombra del fraude'* Obtenido de lamula.pe: <https://poder.lamula.pe/2012/04/04/doe-run-la-sombra-del-fraude/albertoniquen/>

¹⁵⁵ Campodónico, *Doe Run se burla del gobierno y de los peruanos*, 2009, <http://larepublica.pe/columnistas/cristal-de-mira/doe-run-se-burla-del-gobierno-y-de-los-peruanos-05-08-2009>

¹⁵⁶ Justo, M. (23 de noviembre de 2014). 'Por qué la compañía de oro más grande de Sudamérica da pérdidas' *BBC Mundo*. Recuperado el 2 de diciembre de 2014, de http://www.bbc.com/mundo/noticias/2014/11/141114_economia_yanacocha_mina_peru_finde_ac

¹⁵⁷ Wiener Fresco, R., & Torres Polo, J. (2014). *La Gran Minería: ¿paga los impuestos que debería pagar?* Lima: Red Latinoamericana sobre Deuda, Desarrollo y Derechos (LATINDADD). Recuperado el 30 de enero de 2015, de

http://www.justiciaviva.org.pe/webpanel/doc_int/doc12022015-200431.pdf

¹⁵⁸ Bessombes Burgos, C. (22 de Marzo de 2015). El viraje en el manejo de Petroperú. La República. Recuperado el 31 de Marzo de 2015, de <http://www.larepublica.pe/22-03-2015/el-viraje-en-el-manejo-de-petroperu>

¹⁵⁹ Bessombes, C. (25 de mayo de 2015). Segundo fallo favorable del CIADI para el Perú en sector hidrocarburos. *La República*. Recuperado el 26 de mayo de 2015, de <http://larepublica.pe/impresia/economia/2699-segundo-fallo-favorable-del-ciadi-para-el-peru-en-sector-hidrocarburos>

... went alone to Washington, and in 2010 made sure that the inquiry and monitoring were carried out. They had sufficient information to clarify the matter and hired a specialist firm to certify the fact that the gas was in fact being re-exported.¹⁶⁰

UNDERSTANDING A PERSISTENT LACK OF ACCOUNTABILITY

Explaining the persistent state of limited accountability and dysfunctional oversight in Peru requires a brief reflection on the historical political economy of the country and the manner in which it shaped institutional function. In this respect, it is first worth noting that the country's oversight institutions were created to manage a context of economic scarcity. They were therefore poorly equipped to manage the bonanza that subsequently took place with the spike in commodity prices.

Further to this, during the 1980s, in a context of mass unemployment and under-employment, economic crisis, internal violence, a weak state, and indifferent society, the informal sector and crime emerged as strategies which reaped benefits.¹⁶¹ This behavior has become entrenched across the country, resulting in the deterioration of national institutions. In this respect the general public tends to function, and accept, the notion of "implicit exchange"¹⁶² in which the cost of illegal action by a corrupt authority is compensated for by the benefits it might produce for the local community.¹⁶³

The deterioration of institutions was exacerbated during the period of growth and economic liberalization where the formal oversight institutions of the state (especially the judiciary, political parties, and Congress) were progressively weakened. Much of this process took place under the Fujimori regime, which weakened Congress, captured the judiciary and took control of the media. Regarding the failings of congress, the roots of this process lie in the 1990s when a pro-Fujimori majority allowed Congress to be weakened in exchange for wage

¹⁶⁰ Bessombes, C. (25 de mayo de 2015). Segundo fallo favorable del CIADI para el Perú en sector hidrocarburos. *La República*. Recuperado el 26 de mayo de 2015, de <http://larepublica.pe/imprensa/economia/2699-segundo-fallo-favorable-del-ciadi-para-el-peru-en-sector-hidrocarburos>

¹⁶¹ Durand, F. (2013). Socioeconomías informales y delictivas. En desco, *El Perú subterráneo* (págs. 19-37). Lima, Lima, Perú: desco. Recuperado el 6 de febrero de 2015, de <http://www.desco.org.pe/sites/default/files/publicaciones/files/01%20Durand%20El%20Per%C3%BA%20subterr%C3%A1neo%20PH%20dic%202013.pdf>

¹⁶² A term which explains voter toleration of corrupt politicians, and why they vote for them (Morales, 2015).

¹⁶³ A recent example of this is the results of the Lima city municipal elections, which were won by a candidate accused of corruption but who, in the end, "does something."

increases and special privileges.¹⁶⁴ In terms of the Judiciary the government came to directly control it, using it as a lever to pressure rival groups and to benefit allies. Finally, regarding the media, the Fujimori government was able to take control over all private television channels in the country through a combination of bribery and legal trickery—for example annulling the citizenship of the owner of the channel *Frecuencia Latina*, Baruch Ivcher.

With the return to democracy, many institutions recovered their autonomy. Particular examples are those known as “islands of efficiency” in the public sector. These functioning institutions are found in areas key to Peru’s economic development—such as the Ministry of Economy and Finance, the Central Bank, PROINVERSIÓN, INDECOPI, and the regulating agencies. Unlike other public sector institutions, these islands of efficiency tend to have a high degree of autonomy, stability, and competitive salaries. Fifteen years after the return to democracy these institutions are working well (in technical and administrative terms). This is in contrast with other essential public services, especially health, education, justice, public administration, and political representation.

Notably however, in creating these islands of efficiency, the state has further fused the relationship between business and political leadership, through the establishment of a revolving door between politics and business. On the one hand this has generated a technically efficient bureaucracy; however on the other hand, it has resulted in entrenching a neoliberal ideology within the most powerful decision-making bodies of government who are also able to exercise their technical knowledge to the ends of influencing processes.¹⁶⁵ This has not only generated a lenient approach towards the audit and oversight of businesses, it is thought to have created conflicts of interest in cases where regulators are overseeing companies that they formerly worked for (see above).

One example of this dynamic is the renewal of the concession given to the Norwegian oil company Interoil by the Minister of Energy and Mines, Eleodoro Mayorga.¹⁶⁶ According to allegations, when the contract was renewed the company was insolvent, with an US\$18 million debt to the state. In spite of this the concession was granted without guarantees. Notably Eleodoro Mayorga was also a partner of the law firm, Laub & Quijandría, who may have advised Interoil on an arbitration award against the Peruvian state.^{167,168}

¹⁶⁴ Alonso et al., 2007

¹⁶⁵ Campodónico, H. (30 de Marzo de 2015). Petroperú: el atropello fue total. *La República*. Recuperado el 30 de Marzo de 2015, de <http://www.larepublica.pe/columnistas/cristal-de-mira/petroperu-el-atropello-fue-total-30-03-2015>

¹⁶⁶ Peru21. (8 de septiembre de 2014). *Perú21*. Recuperado el 30 de enero de 2015, de <http://peru21.pe/politica/eleodoro-mayorga-interpelacion-interoil-congreso-tutorial-mem-2197657>

¹⁶⁷ Of note is that the Access to Information Act appears to have worked in this case. In 2014, the Centre Liber asked the Ministry of Energy and Mines for the emails of Eleodoro Mayorga. The

A further example of this revolving door politics is the close link between extractive industries, prestigious law firms, and public servants, revealed by a recent piece of investigative journalism.¹⁶⁹ The law firms are hired as much by the mining companies that are fined as they are by the state.¹⁷⁰ As an example of these conflicts, take the case of Fabiola Capurro Villarán, who was director of the Department of Environmental Health (DIGESA¹⁷¹), between August 2007 and January 2008 and then became a partner in *Estudio Ferrero* law firm¹⁷² as a specialist on issues of the environment and natural resources. Notably while she was a partner in the law firm, the institution ruled in favor of the Buenaventura mining company, a client of her new employer, in a sanction procedure.

Regarding the weakness of congress as an oversight institution, able to operate as an effective check on the powers of the executive, a significant part of the problem is that corruption scandals which were exposed in the wake of the Fujimori regime have undermined the public faith in the party system. This has created a dynamic by which election to Congress is thought to depend more on the public image of the potential politician, rather than on the coherence of their election manifesto. Compounding problems of public mistrust is the fact that elections produce a high rate of turnover among congresspeople, and that members of congress are allowed to cross the floor.¹⁷³ As a result, when someone is elected to Congress they are susceptible to the influence of special interest groups and the legislative lobby. As Carranza, Chávez, & Valderrama (2007: 36) explain:

request had the backing of Transparency and Access to Information Act. The government objected, maintaining that they were private employee material. When the request was rejected, it was passed to the judiciary, which filed a habeas data. The Fifth Court has ruled in favor of the request: "... all information produced, obtained or in the possession or control of the State, should be public knowledge" (Uceda, R. (30 de junio de 2015). Un juez rompe el secreto. *La República*, Recuperado el 30 de julio de 2015, de <http://larepublica.pe/impres/politica/11723-un-juez-rompe-el-secreto>)

¹⁶⁸ Bessombes, C. (5 de enero de 2015). La ampliación de los contratos petroleros será investigada. *La República*. Recuperado el 30 de enero de 2015, de <http://www.larepublica.pe/05-01-2015/la-ampliacion-de-contratos-petroleros-sera-investigada>

¹⁶⁹ Salazar, M. (2015). *El círculo minero de la infracción*. Convoca. Periodismo de investigación y análisis de datos. Lima: Convoca. Periodismo de investigación y análisis de datos. Recuperado el 1 de Abril de 2015, de <http://www.convoca.pe/node/172>

¹⁷⁰ Castro, A. (2015). *Defensa corporativa y estatal*. Convoca. Periodismo de investigación y análisis de datos. Lima: Convoca. Periodismo de investigación y análisis de datos. Recuperado el 1 de Abril de 2015, de <http://www.convoca.pe/node/168>

¹⁷¹ La Dirección General de Salud Ambiental

¹⁷²The *Estudio Ferrero* law firm, between 2005 and 2014, signed 54 contracts with state institutions, which generated income which exceeded \$532,000 US dollars for legal assistance and analysis of documents at the request of PeruPetro, ElectroPerú, PetroPerú, Sedapal, among other state institutions (Castro, 2015).

¹⁷³In the 2001 – 2006 Congress, 25 percent of the members of Congress left the parties with which they were elected.

“High turnover among Congressmen reduces the benefits of establishing any relationship of cooperation between governments. In such a context, those involved would prefer to ensure the most immediate individual benefits instead of seeking cooperation with other Congress people and the Executive, which yield benefits in the long term.”

In fact, under such conditions, corruption is thought to be an important means for fueling patronage as a way to achieve legitimacy.

As a result, congress is thought to be motivated by immediate and individual party interests. Many people invited to run on the ticket of political parties and become members of Congress have their own agendas. One example is Congressman Amado Romero, elected for *Gana Perú*, who resigned from that party and is now in the ranks of *Dignidad y Democracia* (DD). The congressman is the owner of the *Sociedad Minera Playa Nuevo Horizonte*, a gold mining concession in Laberinto (Madre de Dios), where irregular mining is rife. He was suspended from Congress for 120 days in 2011 by the Congressional Ethics Commission because of his links to irregular mining activities. He is currently on the working party of the Congressional Commission on Energy and Mines, which is to draft a new Mining Bill. The congressman and the working party coordinator, Martin Belaunde Moreyra (*Solidaridad Nacional* party) confirmed that he was taking part and said that he trusted in his colleague’s “good will.”¹⁷⁴

A result of such dynamics is that congress has neither the will nor the capacity to investigate instances of maladministration. One significant outcome of this is that congressional inquiries have become limited. For example, the Congressional Ethics Committee dismissed an average of 85 percent of the complaints brought during the last two governments: Martha Hildebrandt (2009-2011) and Humberto Lay (2011-2013). Congress is therefore currently one of the least popular public institutions. In August 2014 public disapproval of it stood at 86 percent.¹⁷⁵ In addition, the political parties are not strong institutions. Peru is the country with the second highest volatility in constituencies controlled by the main parties in Latin America (52 percent, as compared with 25 percent for the Latin America region).¹⁷⁶

In addition to the corruption scandals in the wake of the Fujimori regime which undermined popular faith in the established party system, decentralization and the establishment of local governments (see Section 6) helped the rise of

¹⁷⁴ Saldaña, J. (26 de Marzo de 2015). Amado Romero integra grupo que alista nueva ley de minería. *El Comercio*. Recuperado el 1 de Abril de 2015, de <http://elcomercio.pe/politica/congreso/amado-romero-integra-grupo-que-alista-nueva-ley-mineria-noticia-1800191>

¹⁷⁵ GfK Perú. (2014). *Resultados del estudio de opinión pública sobre política*. Lima: GfK Perú. Recuperado el 8 de octubre de 2014, de <http://es.slideshare.net/GfKPeru/gfk-per-encuesta-de-opinin-pblica-agosto-2014>

¹⁷⁶ Ballón, 2006

independent candidates and subsequently of regional and local movements.¹⁷⁷ These movements, which become politically active during elections and fade afterwards,¹⁷⁸ multiplied¹⁷⁹ and replaced the political parties, trade unions and urban social movements.¹⁸⁰ They have managed to channel the widespread and deep dissatisfaction with national parties, with which they have very little connection. These groups are institutionally weak, do not guarantee the establishment of lasting institutional arrangements,¹⁸¹ and have been characterized by numerous cases of corruption and mismanagement. This, in turn, serves to limit their chances of influencing central government or having nationwide impacts.¹⁸²

In terms of the Judiciary, it was co-opted by the Fujimori regime and never recovered. In the last ten years, the APRA party has gained great influence over it, and together with Congress, the judiciary is the most discredited state institution in the country.¹⁸³ There are mass allegations of corruption among judges. The current Minister of the Interior, for example, José Pérez Guadalupe, has stated that “95 percent of those arrested during January and February in Lima by the Criminal Investigation Department (Dirincrí) were not prosecuted, despite evidence passed to the judicial system.”¹⁸⁴

In a new case, a regional president of Ayacucho, Wilfredo Ocorima, has been given a five-year prison sentence. He has close ties with the local judiciary, which is common in Peru’s regions. The regional president employs relatives of judges and donates money to the courts. In this case, S/.1000,000 was transferred to

¹⁷⁷ In the 2010 elections, the regional movements won presidents in 21 regional governments of a total of 24.

¹⁷⁸ López Ricci, J. (2014). *Presupuesto participativo 11 años después: ¿cambio de rumbo o más de lo mismo?* Lima: Grupo Propuesta Ciudadana. Recuperado el 10 de enero de 2015, de <http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/Cuaderno%20Descentralista%2030.pdf>

¹⁷⁹ In the 2010 elections, 148 regional movements competed; almost twice the number that stood in 2006 (76) (JNE).

¹⁸⁰ Arellano Yanguas, 2013

¹⁸¹ López Ricci, 2014

¹⁸² Azpur, J. (2006). La descentralización y la participación en el proceso de construcción de la democracia. En M. Paredes, & E. Toche, *Perú Hoy, Democracia inconclusa: transición y crecimiento* (págs. 149-176). Lima: desco Centro de Estudios y Promoción del Desarrollo.

¹⁸³ La República. (14 de diciembre de 2014). Ipsos Perú: aprobación al presidente Ollanta Humala subió cinco puntos. *La República*. Recuperado el 13 de Abril de 2015, de <http://www.larepublica.pe/14-12-2014/ipsos-peru-aprobacion-al-presidente-ollanta-humala-subio-cinco-puntos>

¹⁸⁴ Andina Agencia Peruana de Noticias. (7 de abril de 2015). El 95% de detenidos por Dirincrí está libre, pese a pruebas dadas al sistema judicial. *Andina Agencia Peruana de Noticias*. Recuperado el 13 de abril de 2015, de <http://www.andina.com.pe/agencia/noticia-el-95-detenidos-dirincri-esta-libre-pese-a-pruebas-dadas-al-sistema-judicial-550633.aspx>

build new premises for the High Court of Ayacucho.¹⁸⁵ A criminal inquiry against the media which reported the corruption of the regional government is now open.

By considering the broader context of accountability in Peru it appears that challenges regarding the management of natural resources are located within broader problems that pertain to the relationship between the executive and congress, as well as the judiciary. In this respect, not only is the executive particularly powerful and sympathetic to business interests, but congress and the judiciary appear to be dysfunctional. While the relative power of the executive, as well as its close ties with the business sector stems from the fallout of the crisis of the 1980s, the respective problems with congress and the judiciary appear to have their roots in the Fujimori regime, having never recovered from the damages done to their autonomy. Challenges in addressing these issues stem from a large public acceptance of maladministration as well as general distrust for the established parties. These problems are compounded by the decentralized nature of politics, which makes generating a political majority capable of undertaking such reforms incredibly difficult.

Having now discussed the broader dynamics of accountability within the central state it is worth remembering that a significant portion of the revenues from extractive industries are distributed through subnational level governments. Although some of the dynamics shaping this process have been mentioned above, it is worth briefly describing the ways in which power is manifest within the decentralized government, in order to understand the dynamics shaping expenditure decisions. It is this task to which the research now briefly turns, before going on to describe the opportunity for CSOs to influence processes of revenue allocation and affect accountability.

¹⁸⁵ Uceda, R. (23 de junio de 2015). El gobernador y sus amigos. *La República*, Recuperado el 25 de junio de 2015, de <http://larepublica.pe/impres/politica/9956-el-gobernador-y-sus-amigos>

7. A NOTE ON DECENTRALIZATION

Although decentralization was promoted in 1993 as part of the new constitution, decentralization under the Fujimori regime lacked substance. In this respect the process was more focused on maintaining political control through the co-optation of the regional social and political elites^{186,187} than it was genuine decentralization of decision-making power. To these ends Fujimori pursued a policy of ambitious social spending in the regions wherein control over decision-making was retained by the central government.

The substantive forms of decentralization manifest today only really began with the return to democracy in the early 2000's. In 2002 Congress drove the enactment of several laws which created conditions for the first regional elections. Over ten years later, results are limited. The powers and functions assigned to subnational governments are still not clear; some resources have been transferred without specific tasks being assigned while other tasks that have been assigned frequently lack sufficient funding.¹⁸⁸ Today, the subnational entities (regional and local governments) are highly dependent on transfers from the central government based on revenue sharing formulae, such as funding through FONCOMUN, the canon and some of the royalties associated with mining and oil and gas. The regions lack any powers to levy taxes.

Currently regional and local authorities are elected by closed lists for a period of four years. The winning list receives most of the positions on the regional or municipal council. This closed list system strengthens the discretionary power of the parties over the selection of candidates and therefore affects a candidate's performance once elected. Regional presidents and mayors chair the respective legislative bodies, allowing them the authority to interfere with the regulation and

¹⁸⁶ In doing so Fujimori dismantled the twelve local governments that were created in 1989 and replaced them with the Regional Administration Transitory Councils (CTAR).

¹⁸⁷ Tanaka, M. (2002). *La dinámica de los actores regionales y el proceso de descentralización: 'el despertar del letargo'* (Vol. Documento de trabajo N° 125). Lima: IEP Ediciones. Recuperado el 18 de junio de 2015, de <http://198.57.164.64/~ieporg/textos/DDT/ddt125.pdf>

¹⁸⁸ Congreso de la República. (2013). *Evaluación del proceso de descentralización. A 10 años de su inicio*. Congreso de la República, Comisión de Descentralización, Regionalización, Gobiernos Locales y Modernización de la Gestión del Estado. Lima: GIZ, USAID Peru; ProGobernabilidad. Recuperado el 12 de enero de 2015, de http://www.propuestaciudadana.org.pe/sites/default/files/sala_lectura/archivos/Evaluaci%C3%B3n%20del%20proceso%20de%20descentralizaci%C3%B3n%20-%20Com%20Desc.pdf

oversight of these bodies. It is thought that if regional presidents and mayors were withdrawn from their legislative bodies, they could be better regulated and controlled.¹⁸⁹

Regarding the process of resource allocation, as mentioned above, the participatory budget process tends to be dominated by an elite group which is not representative of the full breadth of Peruvian civil society, which also tends to have an urban bias. In addition, the management of local resources is subject to discretionary acts by regional leadership and compromised oversight. In this respect local resources can be subject to sustaining clientelist relationships.¹⁹⁰

Finally, despite the formal decentralized structure, the country has an extremely centralized system of public resource management and the use of public resources is strongly controlled by the Executive Branch (see above). Furthermore, in recent years a trend towards the recentralization of the public budget has emerged within a context of stern criticism of decentralized management due to the denunciation of corruption in several regional governments and their ineffectiveness to expend the resources they have been allocated. This situation is expressed in the increase of percentage of resources that the central government will receive in 2015, 7 percent more than that received in 2009.^{191, 192}

¹⁸⁹ Alonso et al., 2007

¹⁹⁰ Soria, 2014

¹⁹¹ The proposed law for the 2015 Public Sector Budget reaches S/. 130.6 billion. Of this, 73 percent will be transferred to the national government, 15 percent to regional governments, and 12 percent to local governments (Ávila & Baca, 2014).

¹⁹² Ávila, G., & Baca, E. (Octubre de 2014). *El presupuesto público 2015 y los recursos para las regiones. La recentralización del presupuesto avanza*. Grupo Propuesta Ciudadana. Grupo Propuesta Ciudadana. Recuperado el 27 de Noviembre de 2014, de <http://www.propuestaciudadana.org.pe/sites/default/files/NIA%206%20-%202014.pdf>

8. OPPORTUNITIES FOR CSO INFLUENCE

Opportunity for civil society to influence to engage with both governance dynamics and budget allocations has been institutionalized within the process of contemporary governance in Peru. This has primarily taken place through the creation of two institutions. First there was the stipulation in the 1993 constitution of requirements for transparency which manifest in terms of the right to access public information and the creation of transparency portals (Law N° 27806). Second was the creation of the participatory budgeting process (Law N° 28056). Notably, both of these institutions have followed from the government's efforts to effectively decentralize decision-making.

Considering the results from our review of 32 reports from civil society groups in Peru that have sought to follow the use of public finances, it seems that both the transparency web pages and the access to information law have been important in enabling civil society to track the use of extractive industry revenues through the public finance system. Regarding the transparency portals this has included:

- Gathering information on what canon revenues have been received by municipalities¹⁹³
- Attaining information on how extractive industry revenues are being invested by local municipalities and whether social development is a priority¹⁹⁴
- Identifying discrepancies between the financial statements of major extractive companies and those of the Superintendent of Banking Insurance, regarding the transfer of canon revenues¹⁹⁵
- Identifying major delays in the completion of a number of projects being funded by canon transfers.¹⁹⁶

¹⁹³ CEDEPAS NORTE 2010: Vigilancia a la industria Extractiva Reporte No. 12 Enero-Agosto 2010 <http://www.propuestaciudadana.org.pe/sites/default/files/reporte-cajamarca-vigext.pdf>

¹⁹⁴ CEDEPAS NORTE 2010, CEDEPAS NORTE 2006a: Vigilancia Minera Cajamarca Report No. 4 Enero-Junio 2006 http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/Cajamarca_4.pdf

¹⁹⁵ CEDEPAS NORTE 2006b: Vigila Peru: Vigila Cajamarca

¹⁹⁶ CEDEPAS NORTE 2006b

Such efforts have been effectively bolstered by effective requests for access to information from public institutions, such as regional governments, municipal governments, and universities,¹⁹⁷ which has again provided further details on what canon transfers are being spent on. Further to this, it has allowed for the identification of problems including:

- The identification of the cases in which the projects being financed by extractive industry revenues suffer from poor budget execution,¹⁹⁸ are delayed,¹⁹⁹ or not executed at all²⁰⁰
- The failure to disburse, in full, the canon payments due to local governments by regional governments.²⁰¹

By incorporating EITI data, civil society organizations have been able to identify discrepancies between company and government records of revenues and canon data.²⁰² Further to this, when efforts were made to make use of interview data, projects effectively identified cases where resources were not being fully transferred from the government to institutions that were meant to receive the funds, that certain institutions (a university in this case) do not have the capacity to execute the expenditures that they are meant to carry out, and that actual spending contravened allowances.^{203, 204}

¹⁹⁷ CIPCA 2004: Vigila Peru: Vigilancia Ciudadana de las Industrias Extractivas, Piura Reporte Regional No. 1

http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/reporte_piura_extractivas.pdf; CIPCA 2005a: Vigila Peru: Vigilancia Ciudadana de las Industrias Extractivas, Piura Reporte Regional No. 2

http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/vigilancia_piura2.pdf

¹⁹⁸ CEDEP 2010: Vigila Peru: Ancash: Vigilancia de las Industrias Extractivas

<http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/ANCASH-Extractiva-13vol2.pdf>

¹⁹⁹ CEDEP 2007: Vigila Peru: Vigilancia de las Industrias Extractivas, Reporte Regional No. 6 Ancash

[http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/7D09683CD41A787C05257D2E006D9980/\\$FILE/Miner%C3%ADa_en_Ancash.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/7D09683CD41A787C05257D2E006D9980/$FILE/Miner%C3%ADa_en_Ancash.pdf)

²⁰⁰ DESCO SUR 2005: Vigila Peru: Vigilancia a las Industrias Extractivas, Reporte Regional de Arequipa No. 3,

http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/arequipa_industrias_3.pdf; CEDEP 2006: Vigila Peru: Vigilancia de las Industrias Extractivas Mineras, Reporte Regional No. 1 Monquegua, Enero-Diciembre 2006

http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/Reporte_VIE_5_Moquegua.pdf

²⁰¹ CEDEP 2010

²⁰² Propuesta Ciudadana 2011: TransparencyReport

<http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/cajamarca-informe-transparencia.pdf>

²⁰³ In this particular instance the problem was purchasing vehicles for administrative staff

The above successes notwithstanding, it should be noted that citizen oversight efforts were undermined by the fact that access to information requests were frequently ignored,²⁰⁵ or that compliance was late.²⁰⁶ Notably, a failure to comply with access to information requests applied to numerous public institutions,^{207, 208} (including in one instance a request to the ombudsperson that is meant to ensure compliance with such requests²⁰⁹) where response rates were frequently well below 50%.²¹⁰ Further to this, access to information requests made to extractive industry companies were almost never complied with.²¹¹

Explaining the lack of compliance with access to information requests it was thought that local officials often lacked an understanding that the law compelled them to meet with civil society and share information.²¹² At the same time, among companies and regional and central government, the problem was thought to be the lack of any formal sanction for failure to comply.

In addition to these efforts at following the money, numerous cases existed in Peru of groups effectively auditing expenditures. This included the successful

²⁰⁴ Red Nacional Anticorrupción Arequipa 2012: Proyecto Vigilancia Universitaria
<http://www.scribd.com/doc/88060694/Libro-Proyecto-vigilancia-universitaria>

²⁰⁵ CIPCA 2004; CIPCA 2005b: Vigila Peru: Vigilancia Ciudadana de las Industrias Extractivas, Piura Reporte Regional No. 3
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/piura_industrias_3.pdf

²⁰⁶ CEDEPAS NORTE 2012: Reporte Social: Vigilancia Ciudadana de una Obra del Presupuesto Participativo en el Distrito de Baños del Inca
<http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/Reporte%20social%20Ba%C3%B1os%20del%20Inca.%20Agosto%202012.0.pdf>; DESCO SUR 2005, CIPCA 2006a: Vigila Peru: Vigilancia Ciudadana de las Industrias Extractivas, Piura Reporte Regional No. 4
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/piura_reporte4_mineria.pdf; CIPCA 2006b: Vigila Peru: Vigilancia Ciudadana de las Industrias Extractivas, Piura Reporte Regional No. 5
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/Reporte_VIE_5_piura.pdf

²⁰⁷ CIPCA 2005b, CEDEP 2006

²⁰⁸ Such as ministries, regional governments, local municipalities, and universities

²⁰⁹ CEDEP 2007

²¹⁰ CIPCA 2005b; CIPCA 2006a; CIPCA 2006b; Centro Bartolomé de las Casas 2007: Vigila Peru: Vigilancia de las Industrias Extractivas, Reporte Regional Cusco No. 5
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/Cusco_5.pdf; CEDEP 2007

²¹¹ CIPCA 2004; CIPCA 2005b; CIPCA 2006a; CIPCA 2006b; CEDEPAS NORTE 2010; CEDEPAS NORTE 2006c: Vigila Peru: Vigilancia de la Industria Extractiva, La Libertad
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/Reporte_VIE_5_la_libertad.pdf

; CEDEPAS NORTE 2005: Vigila Peru: Vigilancia Minera Cajamarca, Reporte No. 3 Balance 2005
http://www.propuestaciudadana.org.pe/sites/default/files/vigila_gob_regionales/archivos/cajamarca_industrias_3.pdf; Centro Bartolomé de las Casas 2007; DESCO SUR 2005; CEDEP 2006

²¹² CIPCA 2005a

monitoring of construction projects,²¹³ ensuring that repairs to damaged infrastructure actually took place²¹⁴, and the identification of implementation problems, where projects were not being built to sufficient standards.²¹⁵ In addition, such efforts were capable of revealing instances in which contracts for local construction projects were not in order,²¹⁶ as well as labor problems.²¹⁷

In terms of successes, one factor that was found to enhance the success of such endeavors was getting the monitoring committee officially recognized by the municipality.²¹⁸ On the other hand, frustrations with this process included a lack of local records (due to filing problems²¹⁹) and an unwillingness of local officials to share information with the monitoring committee. Finally, a significant obstacle to such effective monitoring programs was that they were enormously expensive, as they entailed trips to and from the sites in which expenditure was taking place.²²⁰

Regarding the participatory budget problems, while this process should be considered successful in that it has managed to engage a significant number of civil society organizations in discussions regarding the use of public resources, and for its increase in the allocation of resources to pro-poor expenditure,²²¹ problems still remain. These appear to be driven by a lack of commitment on the part of the leadership, since President Toledo, to offer genuine support to the initiative.²²² The result is that costs of participation remain high while the necessary formal process are not well followed. Overall the process remains dominated by a relative elite which does not represent the full array of civil society actors in Peru. In addition, the possibility for the budget to be amended and the technical requirements of the MEF mean that the gains seen from improved allocations are not fully realized in terms of actual expenditure.²²³ Notably, participation in the participatory budget process appears to have waned:

²¹³ CEDEP 2012: Reporte Social: Vigilancia Ciudadana a Obras del Presupuesto Participativo en el Distrito de San Marcos
<http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/Reporte%20social%20San%20Marcos.%20Abril%202012..pdf>

²¹⁴ Centro Bartolomé de las Casas 2012: Vigilancia Ciudadana a Obras del Presupuesto Participativo. Reporte Social
<http://www.propuestaciudadana.org.pe/sites/default/files/publicaciones/archivos/Reporte%20social%20Espinar.%20Noviembre%202012..0.pdf>

²¹⁵ CEDEPAS NORTE 2012

²¹⁶ CEDEP 2012

²¹⁷ Centro Bartolomé de las Casas 2012

²¹⁸ CEDEPAS NORTE 2012

²¹⁹ Centro Bartolomé de las Casas 2012

²²⁰ CEDEP 2012

²²¹ McNulty, 2012

²²² McNulty, 2013

²²³ McNulty, 2013

in its early years, there was significant participation, mainly on the part of community organizations.^{224, 225} However, the trend fell in the following years.

Reflecting on the capacity of civil society to effectively oversee and influence the use of extractive industry revenues, it seems that transparency efforts in Peru (the generation of transparency portals and the enactment of an Access to Information Law) have done much to increase civil society's ability to follow the money. That said, the Access to Information law generates low and delayed compliance rates among public institutions, and is entirely ignored by private companies. Similarly, findings generated by successful access to information requests show discrepancies between the numbers held by different government institutions as well as companies. Thus, while the crosschecking of transparency portals presents a partially effective means for following the money, there are real questions about the validity of the numbers presented by such portals. At the same time, problems of cost and a lack of local support mean that local social audits are limited in the extent to which they can improve accountability in the expenditure of resources.

Compounding these problems, some sectors of the public are thought to be aware of the need to know what resources the state receives, how they are distributed and spent, and together with citizens' security, they see corruption as one of the greatest problems facing society, beyond issues like poverty. However, this is true mainly of middle-class urban areas of Lima and not elsewhere, where unemployment, poverty, and public safety continue to be the main concerns.²²⁶

A final challenge in this respect is the extent to which corruption has been normalized through the notion of "implicit exchanges"²²⁷ whereby the public accept corruption (even when they recognize it) so long as they receive some benefits. Evidence for this is captured in the widely-used expression "he steals but he works" or, in the unabashed and hypocritical words of the incumbent regional president of Moquegua—reelected despite serious investigations of corruption:

²²⁴ Baca, E., & Castillo, G. (2010). *Perú: evaluación del presupuesto participativo y su relación con el presupuesto por resultados. Informe integrado*. Lima: Grupo Propuesta Ciudadana - Banco Mundial.

²²⁵ Between 2004 and 2009, there were over 150,000 participants in the participatory budget, on average, per year (World Bank, 2010).

²²⁶ GfK Perú. (febrero de 2015). *GfK ICC y actitudes hacia la economía*. Obtenido de GfK Perú: <http://www.gfk.com/pe/Documents/Publicaciones%202015/Febrero%202015/GfK%20Febrero%202015%20-%20Percepci%C3%B3n%20situaci%C3%B3n%20econ%C3%B3mica.pdf>

²²⁷ Muñoz, J., Anduiza, E., & Gallego, A. (2012). *Why do voters forgive corrupt politicians?: cynicism, noise and implicit exchange*. paper prepared to be presented at the IPSA conference, Madrid. Recuperado el 10 de enero de 2015, de <http://llet-131-198.uab.es/recercapol/images/p>

“Yes, it is true (I stole), but what I stole I shared with you so that you could feed your family. We are going to go on working because the wealth must be shared with all of you.” (La Prensa newspaper, 2014)

Civil society monitoring of such tax evasion is seriously limited by current legislation which grants companies confidentiality regarding their tax information. Circumvention, manipulation of accounts and the interpretation of tax law is widespread. Companies have law firms that advise them on tax issues and the state seems not to have the same capacity or interest in reversing matters (see section 6).

9. CONCLUSION

The dynamics shaping the management of extractive industry revenues in Peru appear to be dominated by three factors:

1. The strength of certain government ministries such as the MEF and the Central Bank
2. The strength of the business lobby
3. The dysfunction of Congress

In addition to these factors, there are failures with the state's oversight and prosecutorial authorities such as the Comptroller General and the Judiciary. Further to these problems is the fact that the media remains both an important driver of public attitudes and heavily consolidated.

Notably, the vast majority of these factors have their origins in the economic and social crisis of the 1980s. The remedial actions following the economic and social crisis of the 1980s focused on promoting economic growth and achieving fiscal discipline. The outcome was the strengthening of the executive, in particular, the technical capacities and autonomy of the MEF. In addition, the emphasis on a policy of privatization and growth meant that the interests of policy makers and businesses became fused, thus empowering business lobbies—especially in the extractives sector. Finally, the crisis of the 1980s has undermined public faith in the established party system, which has generated a volatile congressional space, while cooptation of the judiciary and media that took place under Fujimori has not been properly addressed.

The result of these dynamics is that Peru continues to offer favorable terms to extractive companies when signing revenue sharing agreements. From the perspective of the state the terms of these agreements have slowly been improving with election cycles being opportunities for changes to be leveraged. Notable in this process, however, is the extent to which incoming presidents have had to backtrack on their election manifestos (which were often much more radical in their proposed reforms) upon taking offices.

The distribution of revenues continues to be dominated by the 'canon' system. Notably, this distribution mechanism appears to be a result of contingencies, such as the endorsement of the oil canon in the constitution and the need to finance decentralization. The results of the canon on development outcomes appear to have been disappointing, and the system appears to have few technical merits. Despite this, however, the system looks unlikely to change given the extent to which regional governments now rely on the canon and given that the system has the support of the mining lobby - who wants to see as much

revenue as possible go to the areas affected by mining operations, as this is thought to improve their operating context, making communities, more tolerant of the damages to the local environment and livelihoods. The exact expenditure of the canon remains compromised by the limited administrative capacity within the subnational governments, as well as by the failings within the participatory budget process. All of this notwithstanding, it does appear that the state has been able to take back some control over this process, increasing its scope of responsibility for directing revenues into particular social sectors.

For the resources which are distributed through the budget, the MEF remains in control of the process, with congress lacking the technical capacity and political will to contest this powerful position. In this respect levels of public expenditure has historically been low (compared to other countries in the region²²⁸), which is thought to be explained by the idea that the country was worried about fiscal discipline and thus maintained a fiscal policy of relative austerity. Again, notwithstanding this general trend, it should be noted that there has been an increase in public expenditure since the early 2000s with the explicit aim of addressing poverty; however this has not been proportional to the increase in government revenues.

Regarding the accountability of the decision-making systems, two features dominate. The first is the lack of political will to undertake audits of both companies and regional governments. The second is that transparency requirements are both circumscribed and easy to circumvent. Regarding a lack of political will, part of the problem appears to be the close linkages between companies and government, including the revolving door which sees business and political leadership interchanging frequently. This problem is compounded by the dysfunction of congress, the volatility of which means that oversight and auditing functions are not used to great effect, and legal or structural barriers to addressing issues of corruption are left intact. Both of these problems are exacerbated by the dire state of the Judiciary which is thought to be compromised in its ability to effectively prosecute cases of maladministration, even when they are identified.

In terms of transparency and citizen oversight, while transparency legislation has improved, two problems remain. Firstly, tax payments on revenues from companies remain beyond the reach of this legislation, with company profits thought to be privileged and not subject to the transparency law. As a result, it is not possible for citizens to monitor the tax payments made by a specific company, or check the tax credits and discounts they enjoy, unless such company voluntarily decides to disclose this information. Secondly, even in cases where the law is thought to apply with minimal or no restrictions, as in the case of public institutions and civil servants, there is no sanction in place for groups that

²²⁸ Yamada and Castro, 2007

fail to comply, comply belatedly, or comply only partially. This makes application of the law to public bodies very difficult, as actors frequently ignore requests or only act upon them very late.

The result of a lack of audit capabilities combined with this lack of transparency means that revenue monitoring is severely constrained, since revenue management is only transparent once revenues are in the system. Before those revenues are declared as payments to the government and at the point of expenditure significant quantities of government revenues are thought to be lost through both tax avoidance on the part of companies and irregular expenditure on the part of local governments. Regarding the former it is worth noting that Peru suffers from very high rates of tax evasion and elusion, which in the case of the income tax is estimated to surpass 30%.²²⁹ Fraudulent transactions inflating corporate costs and expenses to reduce the taxable base detected by the tax authority during 2013 amounted to US\$350 million. Furthermore, national and international transactions involving transfer mispricing between 2007 and 2012 amounted to US\$370 billion. Oversight capacity on those transactions is marginal, with barely 5% of cases being reviewed by the tax authority and even a smaller percentage subjected to a proper audit process.²³⁰

Considering the above, the question of how one might improve the quality of revenue management in Peru is a difficult one. However, popular pressure for increasing public expenditure and reforming generous tax agreements needs to be maintained.

Greater opportunity, however, appears to lie with possibilities for expanding transparency legislation, for example offering some sanction against actors that hold the law in contempt. Likewise, efforts that seek to offer political capital towards authorizing effective audits seems another possibility for reform.

Finally, efforts focused on capitalizing on the gains made through the participatory budget process present an opportunity for increasing the use of extractive industry revenues aimed at addressing poverty. In this regard there appears to be opportunity for improving participation in the participatory budget, by providing resources to increase inclusion, increasing the oversight of administrators who can change budget priorities and addressing the technical difficulties that currently stand in the way of translating the outcomes of the participatory budget process into actual expenditures.

²²⁹ Gestion, 2014. *La Sunat proyecta cerrar con una presión tributaria de 17% este año*. Available at: <http://gestion.pe/economia/sunat-proyecta-cerrar-presion-tributaria-17-este-ano-2098058>

²³⁰ SUNAT, 2014. *Jefa de SUNAT propone en cumbre OCDE: "Fomentemos transparencia en transacciones internacionales para evitar perjuicios a ingresos fiscales"*, Nota de Prensa N° 074-2014.

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the 1990s, the number of people in the world who are illiterate has increased from 500 million to 700 million.

It is not only the illiterate who are at risk of being left behind. The world's population is growing rapidly, and the number of people who are poor is increasing. In 1990, there were 1.2 billion people living on less than \$2 a day. By 2000, there were 1.5 billion, and by 2010, there will be 2 billion.

The world's population is also becoming more diverse. There are now over 200 different languages spoken in the world, and the number of different ethnic groups is increasing. This diversity is a source of strength, but it also presents challenges.

One of the biggest challenges is how to ensure that everyone has access to the benefits of globalization. We need to find ways to help the poor and the illiterate to participate in the global economy. We need to invest in education and training, and we need to create jobs for everyone.

Another challenge is how to ensure that the benefits of globalization are shared fairly. We need to find ways to reduce the gap between the rich and the poor, and we need to ensure that everyone has access to the same opportunities. We need to create a more just and equitable world.

Finally, we need to find ways to address the environmental challenges that we face. Climate change is a global problem that affects everyone, and we need to find ways to reduce our carbon footprint. We need to invest in clean energy and sustainable development, and we need to protect our planet for future generations.

These are the challenges that we face in the 21st century. They are big challenges, but they are not insurmountable. We have the resources and the technology to solve these problems, but we need the will and the leadership to do so. We need to work together, across borders and cultures, to create a better world for everyone.

Let us not be discouraged by the challenges that we face. Let us be inspired by the possibilities that lie ahead. Let us work together to create a world that is more just, more equitable, and more sustainable. Let us create a world where everyone has a chance to thrive and to prosper.

Let us create a world where everyone has access to the benefits of globalization. Let us create a world where everyone has access to education and training. Let us create a world where everyone has access to jobs and opportunities.

Let us create a world where everyone has access to the same opportunities. Let us create a world where everyone has access to the same resources. Let us create a world where everyone has access to the same future.

Let us create a world where everyone has access to the same future. Let us create a world where everyone has access to the same hope. Let us create a world where everyone has access to the same dream.

Let us create a world where everyone has access to the same dream. Let us create a world where everyone has access to the same love. Let us create a world where everyone has access to the same life.

Let us create a world where everyone has access to the same life. Let us create a world where everyone has access to the same happiness. Let us create a world where everyone has access to the same peace.

Let us create a world where everyone has access to the same happiness. Let us create a world where everyone has access to the same peace. Let us create a world where everyone has access to the same love.

Let us create a world where everyone has access to the same love. Let us create a world where everyone has access to the same hope. Let us create a world where everyone has access to the same dream.

Let us create a world where everyone has access to the same dream. Let us create a world where everyone has access to the same future. Let us create a world where everyone has access to the same life.

Let us create a world where everyone has access to the same life. Let us create a world where everyone has access to the same happiness. Let us create a world where everyone has access to the same peace.

Let us create a world where everyone has access to the same peace. Let us create a world where everyone has access to the same love. Let us create a world where everyone has access to the same hope.

Let us create a world where everyone has access to the same hope. Let us create a world where everyone has access to the same dream. Let us create a world where everyone has access to the same future.

Let us create a world where everyone has access to the same future. Let us create a world where everyone has access to the same life. Let us create a world where everyone has access to the same happiness.

Let us create a world where everyone has access to the same happiness. Let us create a world where everyone has access to the same peace. Let us create a world where everyone has access to the same love.

Let us create a world where everyone has access to the same love. Let us create a world where everyone has access to the same hope. Let us create a world where everyone has access to the same dream.

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Let us create a world where everyone has access to the same hope. Let us create a world where everyone has access to the same dream. Let us create a world where everyone has access to the same future.



HEADQUARTERS

226 CAUSEWAY STREET, 5TH FLOOR
BOSTON, MA 02114-2206
(800) 77-OXFAM

POLICY & ADVOCACY OFFICE

1101 17TH STREET NW, SUITE 1300
WASHINGTON, DC 20036-4710
(202) 496-1180

info@oxfamamerica.org
oxfamamerica.org

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