Recent Developments in Social Impact Management in Extractive Resource Development in Peru

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This paper focuses on efforts currently underway in Peru to ensure that hydrocarbon and mineral development is undertaken in a socially responsible and sustainable manner. First, it provides an overview of the institutional and legal framework that deals with the environmental and social impacts of hydrocarbon and mine development in the country. Second, it explains the role of the newly-created General Social Management Office and its activities in the area of public participation and social impact management. Finally, it provides a brief account of some of the challenges ahead. This includes increasing the flow of investment to underdeveloped areas while maintaining regulations safeguarding land use for indigenous peoples.

Cet article examine les efforts qui ont été déployé au Pérou afin que l’exploitation des hydrocarbures et des minéraux soit effectuée durablement et d’une manière socialement responsable. D’abord, l’article expose une vue d’ensemble des structures institutionnelles et légales juridiques qui gèrent les impacts sociaux et environnementaux du développement des hydrocarbures et des mines dans le pays. Ensuite, il explique le rôle du nouveau Bureau général de gestion sociale et ses activités dans les domaines de la participation publique et de la gestion de l’impact social. Finalement, il résume quelques-uns des défis à relever, y compris une augmentation de l’investissement dans les zones sous-développées tout en sauvegardant des règles qui protègent la terre au profit des peuples indigènes.

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Peru is rich in hydrocarbons and other mineral deposits. The country is also home to a large and diverse indigenous population that ranges from jungle-dwelling groups that remain in voluntary isolation to sedentary rural communities dedicated to traditional subsistence farming. Peru is also one of the few mineral-rich countries of Latin America that remains virtually unconditionally open to foreign investment. It continues to attract steady and increasing levels of investment and development activity. Economic development gains notwithstanding, poverty levels remain high and income distribution is far from equitable.\(^1\) More often than not, extractive activities take place in poor areas which, traditionally, have borne the negative results of development while accruing few of the benefits. A result of these conditions is that the development of hydrocarbon and mineral resources in Peru is a source of constant social turmoil, pitching local populations against developers and demanding increasing governmental attention and efforts. A report issued by the Public Defendant's Office in June 2007 listed seventy-five cases of social conflict\(^2\) that were either active or latent. Of the thirty-five active cases, twenty-one were related to mining or hydrocarbon activities. Eighty-one per cent of all cases were in areas where the majority of the population lives below the

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\(^2\) Defined in the Report as conflict situations in which at least one of the following was present: threat to human life, integrity or health; damage to private or public property; impairment of the free movement of people or things; impairment of the exercise of public authority; or a stoppage of public services.
poverty line. By March 2008, the number of total conflicts had escalated to ninety-three, with the share of cases related to extractive activities and cases located in extreme poverty areas remaining more or less the same. An escalation in the level of violence has also been reported. By the end of July 2008, the total number of cases had reached 147. The Public Defendant’s Office attributes the unrest to the population’s fear of environmental impacts and a belief that extractive activities are incompatible with traditional subsistence activities. These fears may result from environmental legacy issues and the population’s belief that the government is unable to prevent the contamination of their environment. It may also be due to a general feeling of discrimination, including the fact that local communities enjoy few tangible benefits from these resource activities, notwithstanding the 2001 promulgation of a law to ensure fair allocation of the rent from natural resources.

This paper focuses on current efforts by the Peruvian government to ensure that hydrocarbon and mineral resource development is undertaken in a socially responsible and sustainable manner. First, it will provide an overview of the institutional and legal framework that deals with hydrocarbon and other mineral development in Peru. Second, it will explain the role and activities undertaken by the newly-created General Social Management Bureau (“OGGS”) of the Ministry of Energy and Mines. Finally, it will provide a brief account of some of the challenges still ahead.

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7 Peru, Ley del Canon 27506 (7 September 2001), online: <http://www.mim.org.pe/marco_legal/ley_general_de_mineria_y_canon/Ley%2027506%20Ley%20del%20Canon%20Minero.pdf>. Note that petroleum rents are only covered to the extent that they are dealt with by ad-hoc laws. Natural resources rent comprises about half of the region’s income, while about one-third is due to hydrocarbons. Government-commissioned studies highlight the fact that funds sit in local governments’ accounts year after year because their operational shortcomings prevent them from devising and implementing investment plans. Also, host communities have not benefitted from cheaper fuel or increased access to energy and other types of infrastructures. See Centro de Investigación Parlamentaria Peru, Transferencias a gobiernos subnacionales 2003-2006, online: Congreso de la República del Perú <http://www.congreso.gob.pe/historico/cip/temas/proceso_descentralizacion/Transferencias-Subnacionales.pdf>.
8 This article is devoted to government-led action. As such, company-led initiatives are beyond the scope of this study.
2. THE FRAMEWORK GOVERNING RESOURCE DEVELOPMENT

The 1980s were a turbulent time for Peru, marked by rising social unrest, terrorist activity, and the failure of the economic policies implemented during the first Garcia administration. With the election of President Fujimori in 1990, Peru embarked on an aggressive reform process directed at attracting private investment, primarily to its extractive sector. Several new laws were enacted, including Decree 757 to Promote Private Investment. Decree 757 eliminated the State’s exclusive privileges in economic activities and natural resource exploitation, and placed it on par with private parties whenever it is involved in economic activities. It also set the basis for instituting simple and accessible administrative processes and reaffirmed sectoral authority to regulate and manage environmental and related social impacts. Decree 757 dedicated much attention to creating a stable investment environment, purposely including a declaration concerning the contractual (non-administrative/non-discretionary) and strictly binding nature of any stabilization agreements entered into by the State. The 1990s framework established under President Fujimori remains in place with few changes, which, if anything, reaffirms the general pro-investment orientation of the government.

An important change introduced under the government of President Toledo (2001-2006) was the decentralization of the country’s administration. Under the general policy guidance of the national government, the 2002 Decentralization Law placed much emphasis on sustainable regional development, including energy and natural resource development. The Regional Governments’ Law further defines regional governments’ duties and jurisdiction to specifically include areas of special relevance to hydrocarbon and mineral development, such as:

- formulation, coordination and supervision of strategies regarding access to, and settlement in, environmentally sensitive areas;
- compliance and enforcement of laws, regulations, contracts, projects, and studies related to environmental protection and the sustainable use of natural resources;
- promotion of public participation in planning, management, and control of development programs and investment.

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11 Ibid., arts. 6 & 13. An exception is made for activities undertaken in naturally protected areas. Resource exploitation activities in frontier lands are declared to be of special national interest.


Notwithstanding decentralization, *in-situ* resources remain vested in the State and the national administration retains general law and policy-making, regulatory, and enforcement powers in connection with them.\(^{15}\) The Ministry is divided into two Vice Ministries, covering energy (i.e. electricity and hydrocarbons) on the one hand, and mines on the other. Concessions and contracts are handled outside the Ministerio de Energía y Minas (“MEM”).\(^{16}\) An autonomous agency, OSINERGMIN, is in charge of enforcement matters. MEM is the environmental authority for the extractive sector, with each subsector having set up its own environmental affairs bodies.\(^{17}\) Social impact issues have traditionally been subsumed in, and dealt with alongside environmental matters.

Under this arrangement, the administration and regulation of hydrocarbon and mining activities, including environmental and social impact management, fall under the shared jurisdiction of the national and local governments. In practice, however, they evidence an overwhelming presence of the national government. Due to both the lack of institutional capacity at the local level and to political hurdles, the transition toward decentralization is progressing at a glacial pace. To date, local governments have been unable to wean themselves from their dependence on the central government.

Despite the challenges intrinsic to ongoing decentralization and displays of public disaffection with the neo-liberal model, the government has been able to maintain course and Peru has received consistently good ratings from investment watch indexes.\(^{18}\) The increasing levels of belligerence and local hostility toward extractive activities are, however, a source of preoccupation. Success in the overall goal of promoting sustainable development while securing continuous flows of investment to the sector is highly dependent on achieving a climate of social stability, and on the availability of adequate institutional and procedural tools to prevent, monitor, and deal with situations of actual or potential social conflict. This message is frequently and loudly voiced by international companies, and has been the major force behind the creation, within MEM, of the General Social Management Bureau.


\(^{16}\) Peru, *Decreto Supremo 014-92-EM, Ley General de Minería* (3 June 1992), online: Ministerio de Energía y Minas <http://www.minem.gob.pe>. During the 1990s reform process, the former state-owned oil and gas monopoly PETROPERU was stripped of all public privileges and replaced by PERUPETRO S.A. The State transferred its ownership rights for oil and gas resources to PERUPETRO and entrusted the corporation with the responsibility of promoting and negotiating investments, supervising operations and executing contracts on behalf of the state. The company also has a duty to coordinate compliance with environmental laws. Though wholly owned by the State, PERUPETRO is a private company and is governed by the principles of private law. *Ley de organización y funciones de PERUPETRO S.A., Ley 26225 de 1993*, El Peruano, 24 de agosto de 1993; *Aprueban el Estatuto Social de la Empresa PERUPETRO S.A., Decreto Supremo No. 048-93-EM*, El Peruano, 15 de noviembre de 1993.

\(^{17}\) *Decreto Supremo 031-2007-EM*, supra note 15.

2.1 Oficina General de Gestion Social (General Social Management Bureau) ("OGGS")

OGGS was created by Supreme Decree 066-2006\(^{19}\) as the agency in charge of promoting harmonious relations between companies and civil society. It also ensures the appropriate management of social issues. As a direct response to the turbulent conditions prevalent in the mining sector, OGGS was placed under the exclusive responsibility of the Vice Ministry of Mines and had jurisdiction over mining activities only. OGGS’s stated mission under the original 2006 statute was to achieve proactive, systematic, and coherent social management through the implementation of enhanced transparency, accountability, and communication tools, including public participation in the Environmental Impact Assessment (“EIA”) approval process.

Decree 006-2006 defined its functions as covering:

- formulation of policies and plans to promote harmonious relations between companies, civil society, regional authorities, and other government bodies;
- assistance with regulatory development;
- promotion of conflict resolution and agreements between parties;
- promotion and development of social studies;
- assessment and advice to the Ministry in relation to EIAs;
- provision of general advice on social issues;
- participation in public hearings as required by the EIA process;
- training and capacity building; and,
- design and promotion of international cooperation projects.

In practice, though formally affiliated with the mining subsector, the office was increasingly drawn into action in the energy area, particularly oil and gas. Though the legality of OGGS’ intervention in non mining-related matters was questionable, it responded to the reality of an increasing need for enhanced government presence and leadership in social management issues Ministry-wide.

Added to the inherent complexities of social impact management confronted by OGGS were challenges relating to inter-institutional coordination of tasks and responsibilities. As evidenced in the preceding list of functions, a logical manifestation of the inter-relatedness of social and environmental factors is that OGGS’s work is closely tied to the responsibilities discharged by the Ministry and other agencies in connection to environmental management. Accordingly, OGGS must coordinate its activities with the bodies in charge of environmental assessment and approval for each subsector within the Ministry: the Dirección General de Asuntos Ambientales Energéticos (“DGAAE-MEM”) for the case of oil and gas, and the Dirección General de Asuntos Ambientales Mineros (“DGAAM-MEM”) for all mining-related matters. In addition to DGAAE and DGAAM, responsibility for different aspects of environmental

\(^{19}\) Peru, Decreto Supremo 006-2006-EM, online: El Peruano <http://www.elperuano.com.pe>. Note that the agency was originally created as a directorate and responded to the Dirección General de Gestión Social (DGGS).
management is distributed among a number of bodies outside MEM. Therefore, OGGS must deal with, *inter alia*, the agency in charge of natural protected areas and renewable resources, INRENA (attached to the Ministry of Agriculture); the special body in charge of indigenous affairs, INDEPA; INGEMMET, an autonomous agency in charge of mining concessions; Perupetro, a government-owned company charged with investment promotion in oil and gas, holding the power to conduct the public bidding process and negotiate concession agreements; and OSINERGMIN, the independent enforcement agency for mines and energy, including oil and gas.20 Unfortunately, the mandates of the existing bodies are somewhat unclear, and cross-sector organization and coordination is weak. This leads to uncertainty, power vacuums, and some overlap and competition among agencies. The decentralization process, still in the consolidation phase, adds a new layer of confusion.21

Upon commencement of OGGS’ activities, the problems listed above were found to be particularly acute in relation to social impact management where there was no clear lead agency or common standards and protocols for social impact assessment and management.22 Indeed, up until the creation of OGGS, little attention had been given in Peruvian law and regulations to the management of social impacts associated with extractive resource development. Instead, social impact management constituted a minor item within the scope of the EIA and management processes.23 As a result, given the advisory role prescribed for OGGS in Decree 006-2006, DGAM and DGAAE continued to proceed on a business as usual basis, allowing no room for enhanced social management under the direction of the new specialized body. The institutional set-up of OGGS translated into inequalities between the different productive activities on the ground. Due to a lack of common criteria and guiding protocols, community involvement, impacts, and benefit management were dealt with differently by officials responsible for regulating mining activities and officials responsible for regulating hydrocarbon activities. This led to tension between neighbouring communities hosting contiguous proj-

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20 The Ministry of Environment had not been established at the time that OGSS was created.
ects.\textsuperscript{24} OGGS’ limited advisory role, and DGAAE’s and DGAAM’s reluctance to cede some of their established turf to the new agency, deprived OGGS’ opinions of any mandatory force and gave it no room to take preventative action on the ground, forcing the agency to limit itself to intervening when called for in times of crisis.\textsuperscript{25} Accordingly, despite OGGS’s successful intervention in crisis situations,\textsuperscript{26} the number and intensity of social conflicts arising from the sector’s activities continued to grow.\textsuperscript{27}

It did not take long for Peruvian administrators to realize that, as originally conceived, OGGS would not be able to cope with the ever-increasing social management demands of the sector. In particular, given its marginal capacity to intervene at the decision-making stage, it would not be able to turn the tide of its social management activities from reactive, to proactive, and from conflict management and crisis resolution, to conflict prevention. Such a move was considered of vital importance for the sector’s continued progress. As a result, little more than a year after its set-up, OGGS’ statutes were revised and re-written.

OGGS’s new statute was published in the official gazette, \textit{El Peruano}, on June 26, 2007. While it did not grant OGGS substantially different powers from those accorded in the original statute, it did broaden the scope of its social management obligations to incorporate energy (hydrocarbon and electricity) activities. In doing so it also elevated OGGS’ position in the hierarchy. While the office was formerly under the jurisdiction of the Vice Ministry of Mines (to whom it reported), today it is a general advisory body that responds directly to the Minister’s office.\textsuperscript{28} Its scope of action thus reaches across the spectrum of Ministry activities and it is not subordinated to the management of either subsector. Despite its advisory role and the fact that it cannot, \textit{per se}, issue regulations, the revamped OGGS quickly set off to provide more coherent, sector-wide guidance in social management.

\section*{3. OGGS AND BEYOND}

Real, sustainable progress in social management can only be achieved if social impacts are assessed and taken into account at the project design and approval stage. Public participation is key to the incorporation of the social variable into impact assessment and management. Though Peru may have been among the first countries in Latin America to fully embrace

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\textsuperscript{24} Author’s personal communication with OGGS, March 2008.
\textsuperscript{25} The reluctance of the environmental affairs bodies, particularly DGAAE, to defer to OGGS was based on the argument that those offices had already established their presence in the communities and built a reputation with the locals that was based on years of practical experience.
\textsuperscript{26} Although OGGS was set out on paper in December 2005, it only became fully operational by the second half of that year. Nevertheless, its 2007 quarterly reports list an impressive track record, having identified, catalogued, mapped and, where necessary, intervened in sixty cases of social conflict. OGGS also participated in EIA evaluations (social impacts), including definition of assessment criteria and indicators, and other oversight activities. See Peru, Ministerio de Energía y Minas, Dirección General de Gestión Social, \textit{Informe Trimestral}, online: Ministerio de Energía y Minas <http://www.minem.gob.pe/archivos/dgss/publicaciones/>.
\textsuperscript{28} Decreto Supremo 031-2007-EM, supra note 15, arts. 50 & 51.
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public participation in extractive resource development, the country still struggles to incorporate participation into decision-making in a meaningful and productive way.

In the past, opportunities for participation were limited and restrictive. Public hearings were the only vehicle for public participation in the EIA approval process. The format and procedures prescribed – entirely alien to their target audience, composed primarily of indigenous peoples and poor farmers – did not lend themselves to the type of interaction necessary for informed decision-making.\(^{29}\) As a result, not all social impacts were properly considered and not all provisions necessary for avoidance or mitigation were included in approved project plans. Social discontent and conflict became the norm.

Among the actions undertaken by OGGS and the Ministry to address increasing public discontent with extractive activities was the revision of public participation regulations for both subsectors. The first regulations to be finalized were those dealing with participation in the hydrocarbon subsector. Supreme Decree 012-2008-EM was issued in February of 2008.\(^ {30}\) A few months later came the mining regulations.\(^ {31}\) The regulations provide direction to companies as well as community stakeholders on the government’s expectations regarding public involvement in project development. Though the content and organization of the mining and hydrocarbon regulations differ, the core requirements are basically the same.

Under the regulations, once the concession has been granted, the government (through delegation to the concession-granting bodies, i.e. INGEMMET and Perupetro) takes the lead in informing the community about its development plans. This includes introducing the developer and discussing the project with the assistance of the developer. From then on, the developer must ensure the public’s involvement in the EIA study preparation and approval as prescribed in the regulations. The preferred mechanism for the public’s involvement is the workshop, where the company provides additional details about the project and answers questions from the community. As a result of this interaction, the project proponent prepares a Community Relations Plan ("CMP"). The plan details all the measures it will put in place to mitigate impacts and ensure ongoing participation, including follow-up of commitments made to the community. Provisions for participation in monitoring and verification activities are also included in the rules for both subsectors and must be reflected in the content of the CMP.


The government’s preoccupation with social management is underscored by the requirements of Supreme Decree 042-2003-EM. The decree, applicable to the mining sector, is an appeal to industry to apply best practices. It requires from all licensed applicants a sworn affidavit committing, *inter alia*, to employ excellence in environmental management; respect local authorities, culture, and customs; and maintain a continuous dialogue with local authorities and communities.  

Moreover, the OGGS is currently developing a list which identifies best practices applicable to Peru.

Notwithstanding Decree 042-2003, the new regulations on participation and other OGGS activities, the framework for social impact management in the mining and hydrocarbon sectors in Peru rests on somewhat weak foundations. The main weakness is the result of the fact that after years of working under a mandate that was focused exclusively on resource development and the sector’s unrestricted growth, Peru’s hydrocarbon and mining authorities have been saddled with sustainability duties that are unclear and difficult to reconcile with the revenue-driven institutional culture. A prime example of this lack of clarity is found in the regulations setting up the Ministry. Decree 031 of 2007 lists among the purposes of the Ministry that of “promoting the strengthening of harmonious relations between the companies of the sector and civil society or the population impacted by their activities.” How harmonious is harmonious when this mandate is confronted with that of “promoting investment in the sector”?

No further guidance is provided on the meaning of this duty. As a result, “[g]iven that the success of the [privatization] model depends on maintaining the strategic alliance with the extractive industries … [t]he nature of the model itself has driven [the government] to [prioritize] its role of promoter [of industry] over that of supervisor.” Indeed, as the author of the preceding quotation explains, the natural consequence of the ingrained institutional culture and the lack of proper law and policy guidance is that economic concerns take priority in the decisions relating to new developments, with the environmental and social concerns taking a back seat.

Thus, under Peruvian law and practice, once a project is proposed there is a general understanding that it will proceed and that the environmental and social impacts can be avoided or minimized. Current regulations address the issue of the scope of the Environmental (and Social) Impact Studies (ESIS) and subsequent Assessment (ESIA) in very broad terms. This translates to “self-guided” studies with a wide range of results in terms of scope and detail of issues covered. The lack of government-sanctioned terms of reference or detailed scoping criteria, and the resulting disparity in the studies, translates into a lack of benchmark indicators for evaluation and approval. Assessment decisions are difficult to justify and approved environmental and social management plans, reflecting the ESIA from which they derive, may miss critical site-specific environmental and social issues.

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34 *Decreto Supremo 031-2007-EM, supra* note 15, art. 4.l [translation by the author].

35 *Ibid.* art. 4.a. [translation by the author].


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mitigated to satisfaction.\textsuperscript{38} At the outset of the participatory process, when community input is crucial, the emphasis of the rules and resulting practice is to provide information to the local communities on the nature of the activities to take place, the rights of the concession holder, its environmental obligations, and the local people’s rights and obligations.\textsuperscript{39} Rather than instituting a mechanism to promote dialogue and consensus building, the regulations open a one-way, information-giving channel that corrals the public into the receiving corner. Only once a project proponent has entered the environmental assessment stage do the regulations create some space to incorporate community input. By then, it may be too late, as the public may be considerably alienated and may have taken a stand in opposition to the project. Moreover, at that stage, most of the decisions on project design and location have already been made. There is limited room for the type of community input that may require changes in project design or placement. In fact, unless the public has been involved ahead of the EIA’s preparation, and has gained substantial knowledge of the issues at stake, the time allocated by the regulations to the environmental approval process, including opportunities for public participation beyond a formal hearing process\textsuperscript{40} (a maximum of 150 days from presentation of the study in the case of hydrocarbons,\textsuperscript{41} 45 days for mining\textsuperscript{42}), is inadequate to allow meaningful participation and the conclusion of satisfactory agreements on impact and benefit distribution between a developer and the project’s stakeholders.\textsuperscript{43} Once the regulatory terms have expired, and provided that all necessary information has been submitted to the authorities’ satisfaction, a decision to approve or disapprove is issued. This occurs regardless of pending grievances on the part of the local communities. Approval is implicit in the expiry of the regulatory term without a pronouncement on the part of the regulatory agency.\textsuperscript{44} Consequently, despite all its efforts, the government is locked in a situation where conflict is the norm.\textsuperscript{45}

As a result, for example, Peru can boast increasing levels of investment while at the same time be host to America’s most polluted municipality, La Oroya. La Oroya, in the rich mineral province of Yauli, is home to the largest copper smelting operations in Peru, and was privatized in 1996. There, on any given day, the levels of sulfur dioxide in the air can be over 100 times

\textsuperscript{38} For example, the environmental regulations for mining define environmental assessment study as one directed at prevention or mitigation, rather than assessment of the overall viability and convenience of a project. Though the more recent participation rules refer to building consensus and achieving agreements on impact and benefit management, in practice there is little room for negotiating changes to project design. DS 016-93-EM, supra note 23, art. 2; DS 028-2008-EM, supra note 31, art. 4. Also, the rules on participation in hydrocarbon sector decision-making define the purpose of participation as a process directed at informing and collecting information on the measures that allow avoidance or mitigation of potential negative environmental and social impacts. DS 012-2008-EM, supra note 30, art II, 2.2.

\textsuperscript{39} DS 028-2008-EM, supra note 31, art. 12; DS 012-2008-EM, supra note 30, arts. 4-6.

\textsuperscript{40} Although a hearing operates the suspension of the approval process, given its formal and adversarial nature, a hearing alone cannot guarantee adequate and meaningful participation.

\textsuperscript{41} DS 015-2006-EM, supra note 23, art. 28.

\textsuperscript{42} DS 016-93-EM, supra note 23, art. 23.

\textsuperscript{43} Deadlines should be able to accommodate the cultural differences and issues related to stakeholders’ knowledge and understanding of the industry’s practices and procedures.

\textsuperscript{44} Both administrative and judicial reviews are available. See Barrera-Hernández, “Legal Framework”, supra note 29.

\textsuperscript{45} Scurrah, supra note 36.
the levels that are considered “emergency” levels. Though the privatization agreement between the new owner, Doe Run Peru S.R.L., and the government included an environmental management and adaptation program (“PAMA”), its shortcomings and inadequate implementation perpetuated pre-existing negative conditions. Only after a long battle between the local mining company and the public did the government take action in defense of the health of the local population and required enhancements to the PAMA while extending the compliance deadline. More recently, despite continued protests, on 3 April 2009 the government announced a new extension of the term.

In the oil and gas sector, within just the first 15 months of construction of the Camisea transportation system by a private consortium, Transportadora de Gas del Perú (TGP), there had been five reported ruptures in the natural gas liquids pipeline. This had significant negative impacts on the environment and the local people. Among the reasons given for those failures and consequent impacts is the weak legal and institutional framework for assessing, preventing and monitoring environmental and social impacts, as well as government pressure to proceed with the operation.

In circumstances such as these, opportunities for timely and meaningful public participation in development decision-making are of utmost importance, and the need for continuous community involvement is paramount. Recent developments, however, send contradictory signals.

4. CONCLUSION: UNCERTAINTY IN THE AIR

Overall, the law and the institutional framework which control Peruvian development are going through a period of transformation. The ongoing transformation may include some instances of trial and error. It may also include trauma as the tension between the principles


47 Peru, Defensoría del Pueblo, Unidad de Conflictos Sociales, “Conflictos al Día, Boletín diario de noticias, artículos de opinión, y normas legales” (29 August 2008), No. 232, online: <www.defensoria.gob.pe>. Lead blood levels were also reported to be above normal, Scurrah, ibid.

48 Milagros Salazar, “PERU: Bailout of Mining Co. eclipses Environmental Disaster” Inter Press Service (8 April 2009), online: <http://www.ipsnews.net/news.asp?idnews=46445>.


of sustainability and competitiveness in the international investment market becomes more apparent. Generally, many of the changes currently in the pipeline have the potential to have significant impacts on both the extractive sector and the work of the Ministry of Energy and Mines vis-à-vis social impact management. Below is an account of the most salient adjustments underway.

On the positive side, there was the creation in May 2008 of a Ministry of the Environment. The Ministry was conceived with limited powers, which do not extend to the day-to-day management of the environmental (and social) aspects of hydrocarbon and mine activities. However, the move implies recognition of the importance of environmental management, including social management, in its own right. Despite its lack of hands-on administrative power to conduct the EIA process, the new Ministry could quickly and swiftly introduce a change of direction in sectoral environmental administration. This could be achieved by moving to approve the regulations under the National Environmental Assessment System Law, available in draft format since August 2007. Article 3 of the regulations defines environmental assessment as the administrative process directed at assisting authorities and project proponents in determining the convenience and viability of a development project, opening the door for rejecting projects on the basis of their environmental and social impact. Though the rest of the draft manages to water down the language of Article 3, and could use some adjustments to ensure that the EIA is given its due weight in the project approval process, it constitutes an excellent point of departure to trigger important changes in the institutional culture of the administration of extractive sectors.

On the negative side is the highly contested push to loosen the protection previously awarded to the lands of indigenous and rural communities in an attempt to increase the flow of investment to the jungle area. This move is part of the current administration’s strategy to promote economic development and goes beyond the framework governing mining and hydrocarbon resources development. As part of this push, Legislative Decree 1015 of 19 May 2008 amended Law 26505 to make it easier for native communities to parcel out and adjudicate or sell individual plots of former communal lands in the jungle and adjacent areas (“selva” and “ceja selva”) to members or third parties outside the communities. In June 2008, Decree 1064 derogated from Law 26505 altogether, wiping out core protections previously granted to rural and indigenous community land. Unlike most regulations concerning land and issued

52 The Ministry is charged with promoting public participation in decision-making for sustainable development. DL 1013, ibid, art. 7.
54 Peru, Decreto Legislativo 1015, Decreto que unifica los procedimientos de las comunidades campesinas y nativas de la sierra y de la selva con las de la costa, para mejorar su producción y competitividad agropecuaria, El Peruano (20 May 2008), online: <wwwelperuano.com.pe> [DL 1015].
55 Peru, Decreto Legislativo 1064, Decreto Legislativo que aprueba el régimen jurídico para el aprovechamiento de tierras de uso agrario, El Peruano (27 June 2008), online: <wwwelperuano.com.pe> [DL 1064].
by the Ministry of Agriculture, the Decrees were justified as necessary for the implementation of the free trade and investment agreement with the United States.\textsuperscript{56}

Notwithstanding any potential gains in international trade and investment, the indigenous reaction to those measures had an immediate impact on the mining and hydrocarbon developers already in the area. These developers have had to operate in increasingly hostile conditions. Given the public outrage at the measures, including a violent confrontation between indigenous protestors and government forces on 5 June 2009,\textsuperscript{57} the decrees have been repealed. However, they illustrate the contradictions within the Peruvian government and, ultimately, its inability to fully embrace the social component that is essential to sustainable growth. Opening the land market for development by powerful industrial ventures, while having a weak social impact management structure, threatens Peru's efforts toward instituting a more equitable development framework. They also undermine any hopes for sustainable growth with poverty alleviation and a fair distribution of benefits.

Today, Peru's government under President A. García is seeking to implement changes that will push the sector's administration into looking for further opportunities for efficiency and austerity. This push for a leaner administration includes folding and merging national government offices\textsuperscript{58} and speeding up government approvals and processes while meeting ambitious growth targets.\textsuperscript{59} Whether García's measures will advance or choke the sector's progress remains to be seen. However, one cannot avoid wondering if austerity is compatible with the need to strengthen a governance framework which, despite much progress, is still too weak to handle important and sometimes crippling issues of social impact management, including impact and benefit distribution in connection with hydrocarbon and mineral development. Indeed, success in the overall goal of promoting sustainable development while securing continuous flows of investment rests on two factors: achieving a climate of social stability, and the availability of adequate institutional and procedural tools to prevent, monitor, and deal with situations of actual or potential social conflict.

\textsuperscript{56} DL 1015, \emph{supra} note 54, Preliminary section; DL 1064, \emph{ibid}, Preliminary section. See also: La Revista Agraria, “Mas que mercado de tierras, problema de tierras” 

