

**ENVIRONMENTAL POLICY UNDER POLITICAL TRANSITION:
THE PERUVIAN MINING SECTOR AND THE YANACOCCHA GOLDMINE**

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TABLE OF CONTENTS

List of Abbreviations and Acronyms	iv
List of Tables	viii
Deutsche Zusammenfassung	I
I. Introduction	1
1.1. Aim, Objective, Research Questions, and Hypotheses	8
1.1.1. Aim and Objective	9
1.1.2. Research Questions	9
1.1.3. Hypotheses	10
1.2. Context of the Research	11
1.3. Justification of the Research Problem	13
1.4. Contents of the Dissertation	14
1.5. Methods	14
1.6. Sources	17
1.7. Limitations	18
II. The Building-Blocks of Environmental Policy	19
2.1. Development: From Alternative to Mainstream	19
2.1.1. Alternative Development and the “Bottom Up” Approach	19
2.1.2. Mainstream Development and the “Trickle Down” Approach	23
2.2. Public Policy: The Role of the Stakeholders vs. the Role of the Institutions	28
2.2.1. Stakeholders	28
2.2.2. Institutions	32
2.3. Participation and Good Governance	33
2.3.1. Participation	33
2.3.2. Good Governance	38
2.4. Sustainable Development: “Strong” vs. “Weak” Approach	44
2.5. Preliminary Conclusions	48
III. Environmental Affairs in Latin America	50
3.1. From Environmental Protection to Environmental Conservation	50
3.2. Environmental Conservation and Environmental Management	54
3.3. Integration of Sustainable Development in Economic Development	56
3.4. Preliminary Conclusions	59
IV. Political and Economic Context of Peru	61
4.1. Peru as a Transitional Democracy: The Political System	61
4.1.1. Governance and Policy-Making	64
4.1.2. Representation and Participation	85
4.2. Reform of the State Process in Peru before 1992	101
4.2.1. Economic Reforms	101
4.2.2. The Peruvian Political System	105
4.3. Reform of the State Process in Peru during the Nineties	110
4.3.1. Stabilisation and Structural Adjustment	110
4.3.2. Political Reforms	115
4.4. The Post-Fujimori Era	120
4.5. The Results of the Process of Reform	122
4.6. Preliminary Conclusions	129
V. Environmental Framework and Policy in Peru	132
5.1. Environmental Institutional Framework	132
5.1.1. The Legislative Branch and the Environment	132
5.1.2. The Judiciary and the Environment	139
5.1.3. The Executive Branch and the Environment	141

5.1.4.	Regional Governments	150
5.1.5.	Local Governments	151
5.2.	Environmental Regulatory Framework	153
5.2.1.	Political Constitution of Peru	154
5.2.2.	National General Laws	155
5.2.3.	Sector Laws	157
5.2.4.	Administrative Regulations	158
5.2.5.	Regional Laws and Regulations	159
5.2.6.	Municipal Laws and Regulations	159
5.2.7.	Environmental Jurisprudence	160
5.3.	Environmental Policy in Peru	162
5.3.1.	Explicit Environmental Policy and Environmental Policy Instruments	162
5.3.2.	Implicit Environmental Policy	163
5.3.3.	Evolution of State and Government Environmental Policy	165
5.3.4.	Characteristics of State and Government Environmental Policy	171
5.3.5.	Instruments of Environmental Policy in Peru	177
5.3.6.	Role of Stakeholders	182
5.4.	Preliminary Conclusions	200
VI.	The Peruvian Mining and Environmental Policy	203
6.1.	Explicit Environmental Policy	205
6.1.1.	Explicit Policy: Environmental Impact Assessment	206
6.1.2.	Explicit Policy: Environmental Adaptation and Management Programme	208
6.1.3.	Explicit Policy: Annual Declaration	209
6.1.4.	Explicit Policy: Specific Obligations	209
6.1.5.	Explicit Policy: Clauses referring to Environmental Quality	210
6.1.6.	Explicit Policy: Monitoring Programme	211
6.1.7.	Explicit Policy: Preliminary Environmental Evaluation	211
6.1.8.	Explicit Policy: Environmental Management Mining Guides	211
6.1.9.	Explicit Policy: Maximum Permissible Limits for Gas Emissions	212
6.1.10.	Explicit Policy: Maximum Permissible Limits for Liquid Effluents	212
6.1.11.	Explicit Policy: Policy Declarations	212
6.2.	Implicit Environmental Policy	215
6.2.1.	Implicit Policy: Guarantee Regime for Private Investment	216
6.2.2.	Implicit Policy: Law of Promotion of Investment in the Mining Sector	218
6.2.3.	Implicit Policy: Central Government Production Policy for the Mining Sector	218
6.2.4.	Implicit Policy: Tax Exonerations and Benefits	219
6.3.	Mining Sector Institutional Framework	220
6.3.1.	General Direction for Environmental Affairs	221
6.3.2.	General Direction for Mining	223
6.4.	Mining Sector Regulatory Framework	224
6.5.	Conflicts in the Institutional and Regulatory Framework	227
6.5.1.	The Judiciary and the Ministry of Energy and Mines	227
6.5.2.	Local Governments and the Ministry of Energy and Mines	229
6.5.3.	The Executive branch: Inter-Sector Conflicts	232
6.5.4.	The Ministry of Energy and Mines: Intra-Sector Conflicts	239
6.5.5.	Implications for Environmental Policy	240
6.6.	Preliminary Conclusions	244
VII.	The Problems in a Nutshell: MYSRL and Gold Mining in Cajamarca	246
7.1.	The Case	246
7.2.	Main Conflicts and its Consequences	252
7.2.1.	Economic and Social Conflicts: The Land Issue and Yanacocha	253

7.2.2. Environmental Conflicts	255
7.3. The Role of Stakeholders in the Conflicts	266
7.3.1. Compania Minera Yanacocha S.R.L.	266
7.3.2. The Citizens	269
7.3.3. The Executive Branch	272
7.3.4. The Parliament	275
7.3.5. Local and Regional Governments	277
7.3.6. The Peruvian Ombudsman	279
7.3.7. The Catholic Church	279
7.3.8. Non-Governmental Organisations	281
7.4. Responses to the Conflicts	285
7.4.1. Standing to Sue for Environmental Damages	285
7.4.2. Institutional Arrangements	291
7.4.3. Social Responsibility of MYSRL in Cajamarca	292
7.5. Implications for Environmental, Mining, and Public Policies	294
7.6. Preliminary Conclusions	297
VIII. Conclusions and Recommendations	299
IX. References	306
X. Annexes	315
Annex 1: List of Interviews 2001 and 2003	315
Annex 2: List of Visits 2001 and 2003	316
Annex 3: Interview Guide	317

LIST OF ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific states
ADEX	Asociacion Nacional de Exportadores
AFP	Aseguradora de Fondos de Pensiones
AIDSESP	Asociacion Interetnica para el Desarrollo de los Pueblos de la Selva
AP	Accion Popular
APRA	Alianza Popular Revolucionaria Americana
BA	Bureaucratic authoritarianism
BID	Banco Interamericano de Desarrollo
BNRM	Bureau National de Reseaux Minéralogiques
BTI	Bertelsmann Transformation Index
BUO	Business-Umbrella Organisation
CAEM	Centro de Altos Estudios Militares
CAO	Compliance Advisory Ombudsman
CAR	Comision Ambiental Regional
CAS	Country Assistance Strategy
CBO	Community-Based Organisation
CCD	Congreso Constituyente Democratico
CDC	Centro de Datos para la Conservacion
CEDAS	Centro de Desarrollo y Accion Social
CENTROMIN-PERU	Empresa de Minerales del Centro del Peru
CI	Conservation International
CMARN	Codigo del Medio Ambiente y los Recursos Naturales
CNDH	Coordinadora Nacional de Derechos Humanos
CODELCO	Corporacion del Cobre de Chile
CONACAMI	Coordinadora Nacional de Comunidades Afectadas por la Minería
CONAM	Consejo Nacional del Ambiente
CONAP	Consejo Nacional de Pueblos Amazonicos
CONFIEP	Confederacion de Instituciones Empresariales Privadas del Peru
COOPERACCION	Accion Solidaria para el Desarrollo
CORECAMI	Coordinadora Regional de Comunidades Afectadas por la Minería
CSO	Civil Society Organisation
CTAR	Comite de Transferencia de la Administracion Regional
DGAA	Direccion General de Asuntos Ambientales
DGAS	Direccion General de Aguas y Suelos
DGE	Direccion General de Electricidad
DGH	Direccion General de Hidrocarburos
DGM	Direccion General de Minería
DICAPI	Direccion de Capitánias, Puertos e Intendencias
DIGESA	Direccion General de Salud Ambiental
EA	Evaluacion Ambiental
EC	European Commission
ECASA	Empresa Comercializadora del Arroz Sociedad Anonima
ECOVIDA	Educacion para la Vida
EIA	Environmental Impact Assessment
ELECTROPERU	Empresa de Electricidad del Peru
ENCI	Empresa Nacional Comercializadora de Insumos
ENTELPERU	Empresa de Telecomunicaciones del Peru
EPA	Eliminacion de Pasivos Ambientales
EPA	US Environmental Protection Agency

ESAN	Escuela Superior de Administracion de Negocios
EU	European Union
EVAP	Evaluacion Ambiental Preliminar
EVAT	Evaluacion Ambiental Territorial
FAO	Food Organisation Programme
FARN	Fundacion Ambiente y Recursos Naturales
FEDAPAZ	Fundacion Ecumenica para el Desarrollo y la Paz
FIM	Frente Independiente Moralizador
FOE	Friends of the Earth
FONAM	Fondo Nacional del Ambiente
FONAVI	Fondo Nacional de Vivienda
FONCODES	Fondo de Compensacion para el Desarrollo
FPCN	Fundacion Peruana para la Conservacion de la Naturaleza
FREDEMO	Frente Democratico
GEF	Global Environmental Facility
GDP	Gross Derived Product
GMI	Global Mining Initiative
GNI	Gross National Income
GNP	Gross National Product
GRADE	Grupo de Analisis para el Desarrollo
GRUFIDES	Grupo de Formacion e Intervencion para el Desarrollo
GSO	Grassroots-support Organisation
HDI	Human Development Index
IACHR	Inter-American Court of Human Rights
IADB	Inter-American Development Bank
IDEA-PUCP	Instituto de Estudios Ambientales de la Pontificia Universidad Catolica del Peru
IEP	Instituto de Estudios Peruanos
IFC	International Financial Corporation
IFDA	International Foundation for Development Alternatives
IIED	International Institute for Environment and Development
ILO	International Labour Organisation
IMARPE	Instituto del Mar del Peru
IMF	International Monetary Fund
INAN	Instituto de Asesoría Normativa
INAPMAS	Instituto Nacional para la Proteccion del Medio Ambiente y la Salud
INC	Instituto Nacional de Cultura
INCAAP	Instituto para la Capacitacion Popular
INEI	Instituto Nacional de Estadistica e Informatica
INIA	Instituto Nacional de Investigacion Agraria
INRENA	Instituto Nacional de Recursos Naturales
IOG	Institute on Governance Canada
IPC	International Petroleum Corporation
ISI	Import Substitution Industrialisation
ISO	International Standards Organisation
IU	Izquierda Unida
IUCN	The World Conservation Union (formerly International Union for Conservation of Natural Resources)
JNE	Jurado Nacional de Elecciones
LIDEMA	Liga de Defensa del Medio Ambiente
MDG	Millennium Development Goals

MEF	Ministerio de Economía y Finanzas
MEM	Ministerio de Energía y Minas
MINAG	Ministerio de Agricultura
MINERO-PERU	Minera del Peru
MINPECO	Empresa Comercializadora de Minerales del Peru
MINSA	Ministerio de Salud
MRTA	Movimiento Revolucionario Tupac Amaru
MSO	Membership-support Organisation
MYSRL	Minera Yanacocha Sociedad de Responsabilidad Limitada
NGO	Non-Governmental Organisation
NIC	Newly Industrialising Countries
NM-C90	Nueva Mayoría-Cambio 90
NOVIB	Nederlandse Organisatie voor Internationale Bijstand (now Oxfam Novib)
NPO	Non-Profit Organisations
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
ONERN	Oficina Nacional de Evaluación de Recursos Naturales
ORDEZA	Organización de Desarrollo de la Zona de Ancash
OSINERG	Organismo de Regulación de la Competencia del Sector Energía
OSIPTEL	Organismo de Regulación de la Competencia del Sector Telecomunicaciones
PAHO	Pan-American Health Organisation
PAMA	Programa de Adecuación y Manejo Ambiental
PCP	Partido Comunista del Peru
PESCAPERU	Pescados del Peru
PETROPERU	Petroleos del Peru
PPC	Partido Popular Cristiano
PNUD	Programa de las Naciones Unidas para el Desarrollo
PREPCOM	Preparatory Commission
PROFONANPE	Fondo Nacional para las Áreas Naturales Protegidas por el Estado
PROMPERU	Consejo de Promoción del Peru
PRONAMACHS	Programa Nacional de Manejo de Cuencas Hidrográficas
PUCP	Pontificia Universidad Católica del Peru
RAP	Red Ambiental Peruana
SAP	Structural Adjustment Programme
SEDACAJ	Servicios de Agua y Alcantarillado de Cajamarca
SENAMHI	Servicio Nacional de Meteorología e Hidrología
SENASA	Servicio Nacional de Sanidad Agraria
SIA	Sistema de Información Ambiental
SIN	Servicio de Inteligencia Nacional
SINANPE	Sistema Nacional de Áreas Naturales Protegidas por el Estado
SL	Sendero Luminoso
SNA	Sociedad Nacional del Ambiente
SNI	Sociedad Nacional de Industrias
SNMPE	Sociedad Nacional de Minería y Petróleo
SNP	Sociedad Nacional de Pesquería
SPDA	Sociedad Peruana de Derecho Ambiental
SPPC	Southern Peru Copper Corporation
TC	Tribunal Constitucional
TGC	Tribunal de Garantías Constitucionales

TI	Transparency International
TINA	There Is No Alternative
TNC	The Nature Conservancy Trust
UN	Unidad Nacional
UN	United Nations
UNALM	Universidad Nacional Agraria La Molina
UNC	Universidad Nacional de Cajamarca
UNCED	United Nations Conference for Environment and Development
UNCHE	United Nations Conference on Human Environment
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UN-ECLAC	UN Economic Commission for Latin America and the Caribbean
UNEP	United Nations Environment Program
UNEP-ROLAC	UNEP Regional Office for Latin America and the Caribbean
UNES	Consortio Union para el Desarrollo Sustentable
UNESCAP	United Nations
UNI	Universidad Nacional de Ingenieria
UNO	Union Nacional Odriista
UP	Universidad del Pacifico
UP	Union por el Peru
UPC	Universidad Peruana de Ciencias Aplicadas
USA	United States of America
USAID	United States Agency for Development
VAT	Value Added Tax
WCED	World Commission on Environment and Development
WSSD	World Summit on Sustainable Development
WWF-Peru	World Wildlife Fund for Nature-Office Peru
ZEF	Zentrum für Entwicklungsforschung

LIST OF TABLES

Table 1:	Peru Human Development Index 2004
Table 2:	Peru Human Development Index Trends 1975-2000
Table 3:	Peru General Indicators 1990-2002
Table 4:	Peru Poverty and Social 2002
Table 5:	Peru Key Economic Ratios and Long-Term Effects
Table 6:	Peru Millennium Development Goals
Table 7:	Peru Status Index Transformation to Market-Economy Based Economy
Table 8:	Peru Management Index Political Achievements for Market-Economy Based Economy
Table 9:	Peru Governance Indicators
Table 10:	Peru Existent Species of Fauna and Flora 1990-2001
Table 11:	Peru Extension of Natural Protected Areas 2001
Table 12:	Peru Mining and Oil Production 2000-2004 (Annual Variation)
Table 13:	Timeline of Environmental Incidences attributed to MYSRL (1993-200)

DEUTSCHE ZUSAMMENFASSUNG

Von den UN Konferenzen in Stockholm über Rio bis nach Johannesburg sind Fragen der nachhaltigen Entwicklung Teil der Politikgestaltung auf der internationalen und nationalen Ebene geworden. Die Frage, wie Umweltschutz mit wirtschaftlichem Wachstum in ein Gleichgewicht gebracht werden kann, ist Gegenstand politischer Programme auf der ganzen Welt. Für Länder wie Peru haben Umweltfragestellungen neue Perspektiven eröffnet, insbesondere wie natürliche Ressourcen gemanagt werden können, während zugleich die Armut bekämpft und wirtschaftliches Wachstum erreicht wird.

Peru, eines der Länder mit der reichhaltigsten biologischen Vielfalt in der Welt, ist in eine Situation geraten, in der es wirtschaftliches Wachstum im Kontext der Globalisierung sowie drastischer Reformen des Staates managen muss. Peru ist eines der neun Länder, die sich das Becken des Amazonas teilen, es hat 84 von 101 Klimazonen der Welt und es steht mit an erster Stelle im Hinblick auf Genen und Arten Vielfalt. Peru ist flächenmäßig das viertgrößte Land in Lateinamerika und der Karibik, bezogen auf die Bevölkerungszahl liegt es an fünfter Stelle mit annähernd 25.6 Millionen Einwohnern. Es hat eine duale Wirtschaft mit relativ modernen Sektoren in der Küstenebene und einer Überlebenswirtschaft im Andenhochland und im Amazonasbecken. Peru ist weltweit einer der führenden Produzenten an Silber, Gold, Kupfer und anderen Mineralien, auch ist es die zweitgrößte Fischfangnation. Obwohl das Bruttoinlandsprodukt (GNP) pro Kopf rund US \$ 2.390.00 beträgt, wird mehr als die Hälfte der Bevölkerung als arm eingestuft. In ländlichen Gegenden, welche fast 30 Prozent der Gesamtbevölkerung umfassen, leben mehr als Zweidrittel aller Peruaner in Armut, während über die Hälfte davon als extrem arm angesehen werden.

Wege, um den politischen und wirtschaftlichen Krisen in den achtziger Jahren zu begegnen, waren ein Prozess der wirtschaftliche Stabilisierung, strukturelle Reformen und die Reform des Staates, welche in Peru seit 1991 unternommen werden. Anhängige Fragestellungen auf der Reformagenda staatlichen Handelns sind noch immer die Reform des Justizwesens und die Vollendung der Reformen der Exekutive. Die Implementierung der Reformen auf der nationalen Ebene implizierte die Annahme eines neuen institutionellen und rechtlichen Rahmens. Diese Reformen umfassten die Liberalisierung des Marktes, die Privatisierung von staatseigenen Unternehmen und die Liberalisierung des Handels. Umwelt Institutionen Umweltrecht haben einen Platz in diesem Rahmen gefunden.

Der Transformationsprozess beruht auf einem Paradigmenwechsel ausgehend von dem Versuch, den wirtschaftlichen und politischen Systemen der europäischen Wohlfahrtsstaaten nachzueifern (weit verbreitet in den sechziger und siebziger Jahren) hin zu einem liberalen politischen und wirtschaftlichen System, das den von der Chicago School of Economics in den achtziger Jahren empfohlenen Weg verfolgte. Im Falle Perus bewirkte das Scheitern des Versuchs einer erfolgreichen, auf die Bekämpfung der Armut abzielenden Wirtschaftspolitik, eine Schwächung jenes Systems, das die politischen Parteien aufrecht hielt und führte zu seiner Atomisierung und endgültigen Auflösung. Auf der anderen Seite ist Peru im

politischen Bereich eine Demokratie in Übergang, die Säulen des politischen Systems und die demokratischen Institutionen, die es verkörpern, weiter stärken muss.

In Peru wurden Fragestellungen einer nachhaltigen Entwicklung zuerst auf der Ebene der Institutionen und der gesetzlichen Bestimmungen behandelt. Die Regierung des Präsidenten Fujimori (1990-2000) erachtete die Einbeziehung von Fragestellungen der Umweltgerechtigkeit als Bestandteil eines modernen Ansatzes staatlichen Handelns, da die Integration in die moderne Weltwirtschaft das ultimative Ziel darstellte. In vorherigen Regierungen hatte die Umweltpolitik im Hintergrund gestanden, sie war allenfalls im Rahmen des Umgangs mit den natürlichen Ressourcen und der Politik bezüglich Naturschutzgebiete aufgekommen. Die Regierung Belaúnde (1980-1985) setzte den von den Militärregierungen eingeschlagenen Weg fort, bei dem Umweltfragestellungen innerhalb des Bereichs des Agrarsektors behandelt worden waren. Wasser und Boden wurden als wichtig erachtet im Hinblick auf die Agrarpolitik und die Erweiterung der ländlichen Gebiete. Die Regierung García (1985-2000) änderte diese Richtung nicht dramatisch mit Ausnahme der Veranlassung eines Gesetzes über Umwelt und natürliche Ressourcen durch das Parlament.

Einer der Sektoren, der sich am meisten auf die Einführung von Umweltregelungen anpassen musste, war der Bergbau. Abbauaktivitäten im Bergbau haben historisch zu den wichtigsten wirtschaftlichen Aktivitäten in Peru gezählt; es ist möglich, diese Tradition bis in vorkoloniale Zeiten zurückzuverfolgen. Peru besitzt 16 Prozent der Weltreserven an Silber, 15 Prozent der Reserven an Kupfer und 7 Prozent der Weltreserven an Zink, sowie wichtige Anteile an den Reserven anderer strategischer Mineralien. Bergbau ist ein kapitalintensives Betätigungsfeld und für gewöhnlich hat er in den Regionen, in denen er sich entwickelte, bedeutende Auswirkungen entfaltet. Die in den neunziger Jahren veranlassten Reformen hatten zum Ziel, die Ressourcen innerhalb des Bergbaus ausländischen und nationalen privaten Investoren zu öffnen, die im Austausch mit günstigen Steuerbedingungen und Gewinnmöglichkeiten die notwendigen immensen Beträge investieren würden, um einen Sektor zu entwickeln, der nach zehn Jahren Bürgerkrieg stagnierte. Im Jahr 2000 arbeiteten nicht weniger als zweiundsiebzigtausend Menschen im Bergbausektor. Der Kupferbergbau und der Goldbergbau waren in der vergangenen Dekade am größten und stellten zugleich den wichtigsten Teil der peruanischen Exporte aus dem Bergbausektor. Im Hinblick auf die Produktion von Gold im Bergbau ist Peru der größte Produzent in Lateinamerika und der achtgrößte weltweit. Umweltpolitik im Bergbausektor wurde mit Zweifel betrachtet. Das Hauptargument lag darin, dass Umweltkonditionen zusätzliche Hindernisse darstellen, die das Land gegenüber anderen im Hinblick auf die Gewinnung von ausländischen Investitionen benachteiligt. Der bevorzugte Ansatz war, so wenig gesetzliche Bestimmungen wie möglich zu haben. Im Bergbau aktive Konzerne besaßen keine Motivation, kostspielige industrielle Erneuerungen auf sich zu nehmen und neue Techniken einzuführen. Nichtregierungsorganisationen (NGOs) im Bereich der Umwelt und in den Gemeindeverwurzelte Organisationen (CBOs) traten aktiv für einen soliden (rechtlichen) Rahmen zur Umweltpolitik im Bergbausektor ein. Das Interesse der Regierung galt indessen

nur dem wirtschaftlichen Wachstum, sogar auf Kosten von Belastungen für die Umwelt. Ihr Ansatz war, jedes größere Investitionsprojekt bezüglich des Abbaus von natürlichen Ressourcen in Peru zu fördern, im Besonderen im Bergbau und in den Sektoren Gas und Öl.

Das Thema dieser Arbeit ist die Untersuchung der Umweltpolitik im Bergbausektor im Kontext des politischen Übergangs in Peru. Diese Forschungsarbeit ist den Bereichen der Politikwissenschaft und der öffentlichen Politik zuzuordnen. Sie legt einen Fokus auf die Institutionen und Akteure, welche im Kontext der Umweltpolitik im Bergbausektor in Peru interagieren. Als Fallbeispiele werden die Konflikte gewählt, welche aufgrund des Goldabbaus im Norden Perus (Yanacocha, Cajamarca) im Zeitraum 1999-2004 aufkamen. Bedeutungsvoll ist, dass die politischen Auseinandersetzungen, die im gleichen Zeitraum angesichts des Übergangs von einer autoritären zu einer demokratischen Regierungsform im Land stattfanden, den Hintergrund der Untersuchung bilden. Die allgemeine Zielsetzung besteht darin, einen Beitrag zu einem besseren Verständnis der Rolle von Institutionen und Akteuren hinsichtlich der Gestaltung und Implementierung von Umweltpolitik, durch eine Analyse des dieser zugrunde liegenden institutionellen und rechtlichen Rahmens, zu leisten. Ziel dieser Arbeit ist es, dazu beizutragen, die Lücke in der wissenschaftlichen Forschung hinsichtlich der Frage zu schließen, wie sich die Implementierung von Umweltpolitik auf der nationalen Ebene im Kontext eines politischen Wandels vollzieht.

Diese Arbeit wird in ein im Kontext von Peru derzeit missachtetes Thema Einblick gewähren: Inwieweit sind Umweltprobleme in den allgemeinen Entwicklungsproblemen verwurzelt, mit denen das Land konfrontiert wird? Die Untersuchung soll einen Beitrag zur Diskussion über Umweltpolitik in einer unsicheren politischen Umgebung leisten und der Debatte über einen Reformprozess eines Staates – wie der Reformprozess, der in Peru in den letzten Jahren stattfand – Impulse gab. Letztendlich ist das Ziel, zu einem verbesserten Prozess der Politikgestaltung im Umweltbereich für Länder wie Peru beizutragen, die politische Instabilität unterworfen sind und für wirtschaftliches Wachstum vom Abbau natürlicher Ressourcen abhängig sind.

Diese Untersuchung wählt einen spezifischen Fall, um den Einfluss des Politik-Gemenges bei der Abfassung von umweltpolitischen Vorgaben für den Bergbausektor in Peru zu verdeutlichen. Das Fallbeispiel ist der Abbau von Gold in den nördlichen peruanischen Anden (Cajamarca), die von „Minera Yanacocha S.R.L.“ vorgenommen wird, einem Gemeinschaftsunternehmen der „Newmont Mining Co.“ (Colorado, U.S.A.), der „Compañía de Minas Buenaventura S.A.“ (Lima, Peru) und der „International Finance Corporation“ (IFC) der Weltbankgruppe. Yanacocha ist die zweitgrößte Goldmine der Welt.

Yanacocha war der Beginn eines Traums für die politische Elite Perus. Der Traum bestand darin, das Land in einen sicheren Hafen für ausländische Investitionen zu verwandeln. Inwieweit die Vollendung dieser optimistischen Ansichten eingetreten ist, insbesondere für die Menschen in Cajamarca, bleibt abzuwarten. Yanacocha ist mittlerweile der größte Goldproduzent Lateinamerikas, während Cajamarca vom viert ärmsten Department in Peru zum zweit ärmsten geworden ist.

Der Fall Yanacocha vereint unter anderem Fragen des Zusammenspiels zwischen Behörden auf der nationalen sowie der regionalen und lokalen Ebene, öffentliche Partizipation und Beschwerden, das Zusammenspiel von Macht und Lobbygruppen, Umweltschäden mit internationalen Auswirkungen, Umweltfragestellungen als Auslöser für politische Ansprüche, die Beteiligung ausländischer Investoren, die von internationalen Finanzinstitutionen unterstützt werden.

Eine Untersuchung von Peru lohnt sich, da die Institutionen und gesetzlichen Bestimmungen bezüglich der Umwelt im Kontext eines reformierenden Staates und politischer Instabilität festgelegt wurden. Peru hat mit dem Bergbausektor einen wirtschaftlichen Bereich, der Umweltinteressen konfliktreich gegenüber steht. Im Rahmen der Untersuchung des peruanischen Goldabbaus können wichtige Schlussfolgerungen in Bezug auf die Ausgestaltung und Implementierung von Umweltpolitik und Umweltrecht im Kontext von politischen Veränderungsprozessen gezogen werden. Aus diesem Grunde ist das Fallbeispiel ideal, um zu ergründen, inwieweit die Realisierung einer erfolgreichen Umweltpolitik unter Reform- und Transformationsprozessen möglich ist.

Aufgrund der wirtschaftlichen Bedeutung des Bergbaus in Peru und wegen der verschiedenen und oft konträren Interessen, die auf dem Spiel stehen, ist eine Fallstudie für die Analyse der institutionellen und rechtlichen Rahmenbedingungen für die Umwelt in Peru relevant, da sie die Verbindungen zwischen politischen und wirtschaftlichen Fragestellungen sowie Umweltproblemen veranschaulicht und wichtigen Schlussfolgerungen für die Zukunft ermöglicht. Ferner ist der Bergbau ein Sektor, der fortlaufend Selbsterneuerung (bezüglich Techniken und Materialien) erfordert, um sich neuen Umweltzielen anzupassen. Der Bergbausektor zeigt zudem unterschiedliche Interessen sowie die Macht- und Entscheidungsprozesse (bezüglich Politik und Umwelt), auf die für gewöhnlich die Entscheidungen hinsichtlich des Bergbausektors aufgrund der bereits erwähnten wirtschaftlichen Bedeutung auf der höchsten Ebene getroffen werden.

Kapitel 2 bietet eine Analyse der Bausteine des theoretischen Gerüsts, das das Konzept der „Umweltpolitik“ behandelt. Dabei werden Schlüsseldefinitionen vorgestellt und diskutiert. Das Ziel besteht darin, die Zusammenhänge zwischen diesen Definitionen zu analysieren, um den Stellenwert der „Umweltpolitik“ für Entwicklung zu verdeutlichen. Zugleich beschreiben die Ausführungen die Spannungsfelder zwischen den verschiedenen theoretischen Ansätzen sowie die Folgen einer Aufnahme der nachhaltigen Entwicklung in die öffentliche Politik.

Im Kontext der Umweltpolitik stellt das alternative Entwicklungskonzept (alternative development) die Grundlagen für eine partizipative, auf den Menschen bezogene, genderbewusste, einen Bottom-up-Ansatz verfolgende, dezentralisierende, Macht- und Einfluss stärkende, demokratisch-pluralistische und nachhaltige Politik, die Ausdruck in einem allen Bürgern verantwortlichen institutionellen und gesetzlichen Rahmen finden sollte.

„Mainstream Development“ wurde Entwicklung als ein auf der Wirtschaft beruhendes Konzept verstanden. Dabei meinte Entwicklung „Wachstum“, zudem galt allein das

„wirtschaftliche Wachstum“ als der am besten geeignete Indikator für die Fortschritte eines Landes im Hinblick auf die Erreichung der Entwicklungsziele. Die Betonung lag auf Wachstum und nicht auf Gleichheit. In späteren Jahren schloss das vorherrschende Entwicklungskonzept zahlreiche Elemente ein, welche einem anderen Verständnis von Entwicklung zugrunde liegen, insbesondere die Stärkung von Macht und Einfluss (empowerment), die Partizipation, die Geschlechtergleichheit und die Nachhaltigkeit. Vorwiegend in diesem neuen Kontext wird Umweltpolitik konzipiert und implementiert; dies könnte mehr Raum für Verantwortlichkeit, Transparenz und die Stimme der Bürger in Angelegenheiten bezüglich der Umwelt schaffen.

Stakeholder im Hinblick auf Umweltpolitik sind die Ansammlung der Akteure, die von einem spezifischen auf die Umwelt bezogenen Problem, Konflikt oder einer auf die Umwelt bezogenen Situation betroffen sind. Diese umfassen die für Umwelt Angelegenheiten zuständigen Behörden der Regierung, Unternehmen und private Gremien/Verbände sowie Individuen, die an Aktivitäten teilnehmen, welche die Umwelt betreffen (z.B. NGOs, CBOs, BUOs [business umbrella organisations, Unternehmerverbände], etc.). Diese verschiedenen Akteure werden einen enormen Einfluss auf die Ergebnisse und Konsequenzen der Umweltpolitik in einem Land haben, und dementsprechend werden ihre Entscheidungen die Türen für den Erfolg oder Misserfolg öffnen oder schließen. Umweltpolitik bezieht sich in Bezug auf Institutionen auf die Strukturen, welche die Organisationen und Gremien/Verbände entwickeln und formen, sowie auf Regeln, Normen und Strategien hinsichtlich der Umwelt, welche innerhalb oder jenseits der Organisationen wirken.

Partizipation ist eng mit Demokratie, Stärkung von Macht und Einfluss sowie Verantwortlichkeit verbunden. Partizipation wird auf zweifache Weise definiert: durch einen Fokus innerhalb des Konzepts auf Fragen der Kommunikation, des Zugangs, und der Dezentralisierung, sowie im Zusammenhang mit Macht: Ein Prozess, durch den die Stakeholder die Kontrolle über Entwicklungsinitiativen sowie über die einschlägigen Entscheidungen und Ressourcen beeinflussen und teilen.

Good governance (gutes Regierungs- und Verwaltungshandeln) bezieht sich auf die Art und Weise, in der von Macht und Einfluss beim Managen der wirtschaftlichen und sozialen Ressourcen für die Entwicklung eines Landes Gebrauch gemacht wird. Good governance setzt voraus, dass Partizipations- und empowerment Prozesse stattfinden, um die Stakeholder für ihre im Namen der Bürger getroffenen Entscheidungen verantwortlich zu machen. Soziale Verantwortung ist das neueste zur Verfügung stehende Mittel, um eine effiziente Politikgestaltung sicherzustellen. „Good governance“ ist partizipativ, Konsens orientiert, verantwortlich, transparent, aufgeschlossen, effektiv und effizient, gerecht und nicht ausgrenzend und folgt dem Prinzip der Rechtsstaatlichkeit (rule of law).

Damit Entwicklung menschlich und nachhaltig sein kann ist es erforderlich, dass sie auf die Menschen bezogen ist. Ferner muss sie die wirtschaftliche Entwicklung, die soziale Entwicklung, die Kontrolle über die Umwelt und die politische Stabilität (Demokratie, Menschenrechte, Rechtsstaatlichkeit, Geschlechtergleichheit) integrieren, sowie das Prinzip

der Berücksichtigung der Interessen nachfolgender Generationen und das Vorsorgeprinzip beachten. Umweltpolitik im Kontext von nachhaltiger Entwicklung umfasst kein anderes Ziel als eine Hilfestellung zur Erreichung jener höheren Ziele zu geben, bei denen die Bürger die Hauptadressaten sind.

In Kapitel 3 wird eine historische Perspektive vorgenommen, um die Einbringung von Umweltfragestellungen im lateinamerikanischen Kontext zu analysieren. In Lateinamerika wird die Qualität der Umwelt in ländlichen und urbanen Gegenden noch immer ernsthaft bedroht. Abholzung, Bodenerosion, urbane Luftverschmutzung und ökologische Verschlechterung der Küstenlandschaften zählen zu den schlimmsten auf der Welt. Diese Probleme büren der Gesellschaft bedeutende Kosten auf (z.B. Externalitäten und ein ineffizienter Gebrauch von natürlichen Ressourcen). Die Kosten dieser Probleme fallen im Wesentlichen für die Armen an, die gleichzeitig von den natürlichen Ressourcen im Hinblick auf ihren Lebensunterhalt stark abhängig sind. Neben den augenscheinlichen Auswirkungen auf die Gesundheit kann die Verschlechterung des Umweltzustands zu anderen sozialen Problemen führen, wie eine zunehmende Ungleichheit und soziale Unzufriedenheit.

Vor der Stockholm-Konferenz im Jahr 1972 wurden Umweltfragestellungen im Kontext des Umweltschutzes oder im Rahmen anderer Sektoren betrachtet, die Auswirkungen auf Umwelt hatten. Es setzte sodann eine Entwicklung ein, die von einem Umweltschutz ausging, der sich nur um den Schutz einzelner Ressourcen, Gegenden oder Arten bemühte, hin zu einem Umweltschutz, welcher die jeweiligen ökologischen Prozesse um diese Gattungen, Gegenden oder Ressourcen herum berücksichtigte.

In einer zweiten Phase, die mit der Veröffentlichung des Brundtland-Berichts 1987, und – äußerst bedeutend – mit der *Nuestra Propia Agenda* (BID/PNUD1990) einsetzte, erfolgte eine Entwicklung ausgehend von einem Schutz der Umwelt hin zu einem Management der Umwelt. Neben der für die zukünftige Ausgestaltung und Implementierung der Politik eine Schlüsselrolle einnehmenden Identifizierung der wichtigsten Umweltprobleme der lateinamerikanischen Region kam dem Konzept des Umweltmanagements eine zentrale Rolle zu. Letzteres besitzt als Bausteine die Umweltpolitik, das Umweltrecht und die Umweltverwaltung; es ist das wichtigste Mittel zur Erreichung der Ziele einer nachhaltigen Entwicklung innerhalb der Politik.

In einer dritten mit dem „Erdgipfel“ (Rio 1992) beginnenden Phase wurde das Konzept der nachhaltigen Entwicklung vollständig als ein wesentlicher Bestandteil in den Bereich der Ausarbeitung von politischen Konzepten eingegliedert, welches alle Teile der Öffentlichkeit durchdringt. Dies unterscheidet dieses Konzept von dem Ansatz des vorherigen Zeitraums, in dem noch immer von einem sektoralen Standpunkt des Managements natürlicher Ressourcen ausgegangen wurde. Diese Entwicklung hat eine Einbeziehung von anderen wichtigen Konzepten bewirkt, wie good governance, Partizipation und empowerment. In den vergangenen Jahren wurde dem privaten Sektor (und den Partnern) eine zunehmende Bedeutung beim Erreichen einer nachhaltigen Entwicklung zugeschrieben. „Public-private-partnerships“ sind ein wichtiges Instrument eines solchen Ansatzes.

In Kapitel 4 wird nach einer Einführung in das politische System Perus der politische und wirtschaftliche Hintergrund Perus im Lichte des Reformprozesses des Staates diskutiert, der in den neunziger Jahren parallel zur Einführung einer an der Umwelt orientierten Politik eingeleitet wurde. Die Autorin nimmt das Jahr 1992 als Bezugspunkt, da dies das Jahr des jüngsten Staatsstreichs (*coup d'état*) in der Geschichte Perus war, der von einer Regierung vorgenommen wurde, welche die bis dato radikalsten Reformen umgesetzt hatte. Dieses Jahr ist ein entscheidender Wendepunkt, um das politische und wirtschaftliche System vor und nach der strukturellen Neuausrichtung zu analysieren.

Wie die Analyse des politischen Systems des Landes verdeutlicht, sind keine demokratischen Elemente im peruanischen System tief verwurzelt; dass eine Wirtschaftsreform nicht *per se* eine Lösung für strukturelle Probleme bietet, deren Lösung aufgrund historischer und politischer Umstände verschleppt wurde. Die Herausforderung für die Gesellschaft Perus besteht darin, ein Gleichgewicht zwischen der Nachfrage und dem Verlangen nach einem demokratischen und integrierenden System sowie den Vorteilen von freier Marktwirtschaft und Liberalismus zu finden. Die Gefahr liegt darin, dass wenn die politische Klasse keine wirtschaftlichen Reformen in überzeugender Weise hervorbringt, die Demokratie populistischen und autoritären Tendenzen geopfert würde, die eben dies anbieten.

Das politische System, das sich in den neunziger Jahren entwickelte, war am Personenkult orientiert; die politische Macht konzentrierte sich im Amt des Präsidenten. Top-down-orientierte und vertikale Formen der Regierung waren nicht neu, aber Fujimori beanspruchte diese in einem neuen Umfang, um die demokratischen Institutionen zu schwächen, die eine ausgleichende Funktion übernehmen sollten. Macht und Einfluss der exekutiven Gewalt stiegen gegenüber den anderen Gewalten. Die neue Verfassung des Jahres 1993 mit ihrer Ein-Kammer-Struktur stellte lediglich mehr Unterstützung für die Regierung Fujimori bereit, da die Mehrheit wie eine bloße Verfahrensebene zur Zustimmung zu einer Gesetzgebung handelte, die zumeist von der Exekutive selbst eingebracht wurde. Falls notwendig war der Kongress bereit, sich über das politische System zur Verteidigung der Regierung Fujimori hinwegzusetzen, sogar wenn dies bedeutete, die internationalen Verpflichtungen Perus zu Menschenrechtsfragen zu verletzen und gegen die eigene Verfassung zu verstoßen. Die Justiz wurde geschwächt und hat sich noch immer nicht vom massiven Ausmaß Einflussnahme der Exekutive erholt.

Trotz der unterschiedlichen wirtschaftlichen Orientierungen in der Politik der aufeinander folgenden Regierungen in Peru (entweder liberal oder interventionistisch) war die politische Entwicklung des Landes über das vergangene Jahrhundert hinausgehend durch die Beharrlichkeit einer autoritären Tradition und entsprechenden Herrschaftsformen charakterisiert. Das Land entwickelte keine starken demokratischen Traditionen und Institutionen sowie keine demokratische Kultur. Die Schwäche der repräsentativen Institutionen schuf einen Raum für das Aufkommen populistischer Regierungsstile, welche die politische Instabilität erhöhten und den wirtschaftlichen Wachstum hemmten.

In Bezug auf die vor 1992 vorgenommenen wirtschaftlichen Reformen kann festgestellt werden, dass eine auf das substituieren von Importen abzielende Politik zur Erreichung von Wachstum sowie heterodoxe Modelle, um die wirtschaftlichen Krisen in Angriff zu nehmen, keine greifbaren Resultate vorbrachten, die in verbesserte Lebensbedingungen der Bevölkerungsmassen resultieren. Die zunehmende Ungleichheit bezüglich der Verteilung des Einkommens und die anwachsende Armut ebneten den Weg für eine Infragestellung des politischen Systems sowie für eine Atomisierung und ein mögliches Abhanden kommen des politischen Parteiensystems im Land. Dies wiederum führte zum Aufkommen von populistischen politischen Bewegungen, die einen zentralen Platz auf der politischen Bühne und innerhalb der Politikgestaltung im Land übernommen hatten.

Die in den neunziger Jahren unternommenen neoliberalen Reformen ebneten den Weg für eine fast vollständige Umgestaltung der staatlichen Struktur, die einen außerordentlichen Einfluss auf die gegenwärtige politische und wirtschaftliche Situation des Landes ausgeübt hat, da diese Reformwege zu einem Konsensus zwischen den politischen und wirtschaftlichen Eliten des Landes führten. Die erste Stufe (Stabilisierung und strukturelle Neuausrichtung) und die zweite Stufe (Reform des Staates) des Reformprogramms wurden reibungslos ohne politische Opposition umgesetzt, wenngleich zu sehr hohen sozialen und politischen Kosten. Die dritte Stufe des Programms (institutionelle Reformen) stellte die Regierung Fujimori vor Probleme, da *good governance* und Transparenz Voraussetzungen der Reformen waren und diese Tatsache widersprach den zunehmend autoritären Regierungspraktiken des Präsidenten.

Während der Regierungszeit Toledo vorgenommene Versuche, einen Konsens für die Umsetzung der Politik im Land zu erreichen, führten zu gemischten Resultaten. Immerhin wurde auf dem Papier eine Einigung zwischen den wichtigsten politischen Kräften erzielt. Die Ablehnung von *good-governance*-Indikatoren aber widersprach den positiven Werten auf der makroökonomischen Ebene. Eine Kluft zwischen diesen beiden Ebenen der Politik könnte eine Entwicklung des Landes in den kommenden Jahren behindern und zudem einen Rückfall zu populistischen Praktiken antreiben.

Die auf die letzten fünf Jahre bezogenen Indikatoren über Peru zeigen (UNDP „Human Development Report 2005“), dass sich ein Trend bei der Handhabung staatlicher Angelegenheiten entwickelt hat. Auf der einen Seite scheint die Regierung bezüglich wirtschaftlicher und sozialer Fragen recht erfolgreich zu sein. Der Betrieb des alltäglichen Staatsapparats scheint einen Status einer „Business as usual“-Logik erreicht zu haben, die aber nicht auf der Ebene der alltäglichen Politik präsent ist. Gleichzeitig scheinen auf der politischen Ebene und der Ebene der Regierungsführung häufige Umwälzungen und Instabilität ein negatives Ausmaß angenommen zu haben; dies wird durch die Rangstufen und Werte bezüglich „*good governance*“, Korruption und Fragen der Transparenz verdeutlicht.

Der Reformprozess – wenngleich auf der makroökonomischen Ebene und bezogen auf einige spezielle soziale Indikatoren positiv – hat es nicht geschafft, den ärmsten Teil der peruanischen Gesellschaft zu erreichen. Die extreme und relative Armut haben in der vergangenen Dekade zugenommen. Fragen hinsichtlich „*good governance*“ und Transparenz

stehen im Land noch immer an ihrem Beginn. Versuche werden von verschiedenen Institutionen unternommen, um die Regierungsinstitutionen und Politiker hinsichtlich ihrer Handlungen zu bewerten und verantwortlich zu machen.

In Kapitel 5 wird der institutionelle und rechtliche Rahmen bezüglich der Umwelt des Landes analysiert. Die Gremien und Organe des Staates, die ein Mandat für Umweltfragestellungen besitzen, bilden den institutionellen Rahmen hinsichtlich umweltpolitischer Angelegenheiten dieses Landes. Diese Institutionen sind wiederum eng mit den gesetzlichen Bestimmungen verbunden, welche die Mandate mit Inhalten füllen. Der umweltrechtliche Rahmen wird verstanden als die Gesamtheit der Gesetze und rechtlichen Bestimmungen, welche die Leitlinien einer Umweltpolitik festlegen und somit eine offizielle Norm des Landes darstellen. Dokumente der Politik sind Teil der Inhalte und Basis umweltrechtlicher Bestimmungen.

Der auf die Umwelt bezogene institutionelle Rahmen in Peru wurde mit dem Hintergrund dieser grundlegenden Schwierigkeiten und Schwächen des politischen Systems erstellt. Die Verhältnisse haben für das Umweltsachen nur in spezifischen Situationen eine vorteilhafte Rolle gespielt – dann, wenn dynamische Politiker einen zentralen Platz auf der politischen Bühne einnahmen oder wenn finanzielle und personelle Ressourcen für die Funktionäre und für die Beamten zur Verfügung standen. Die Justiz entwickelte eine umweltrechtliche Praxis und Rechtsprechung, ist aber von Problemen der Korruption, Ineffizienz und einem Mangel an personellen und finanziellen Ressourcen geschwächt. Die Exekutive in Peru hat durch das Amt des Premierministers und durch die Ministerien die Oberhand innerhalb der Umweltpolitik. Das diesbezüglich geschaffene Organ CONAM (Consejo Nacional del Ambiente) hat aber ein schwaches Profil, dadurch konnte es nicht sein vollständiges Potenzial als die für die Umwelt zuständige Autorität im Land entwickeln. Die regionalen Regierungen müssen noch immer ihre eigenen internen Strukturen und rechtlichen Bestimmungen in Bezug auf die Umwelt entwickeln, genauso wie es die Gemeinden in der Vergangenheit gemacht haben. Letztere sind sichtbarer und pro-aktiver bei der Reaktion auf Umweltprobleme gewesen, die ihre Gemeinden betrafen.

Der rechtlichen Rahmen für die Umwelt in Peru lässt ein von der Logik bestimmtes System erkennen, dessen Implementierung schrittweise vollzog. Die Integration von Umweltfragestellungen ist in einer sanften Art mit dem Auftauchen der Probleme umgegangen, die in einem durch seine Formalität gekennzeichneten juristischen System zu erwarten waren. Die wichtigste Frage entstand durch die Kompetenzstreitigkeiten zwischen den Bereichen; aufgrund der Unterschiede hinsichtlich der effektiven Macht ging es dabei darum, welcher Sektor die Oberhand behält. Die Rechtsprechung bezogen auf Umweltfragen hat sich als neues Instrument erwiesen, um Umweltrechte mittels einer unter Druck stehenden Justiz zu verteidigen, die chronisch von Problemen der Einmischung und einem Mangel an Ressourcen betroffen ist. Nichtsdestotrotz ist es der Justiz gelungen, einen respektablen Bestand an Entscheidungen zu produzieren, die jetzt die Aktivitäten und Unterlassungen der „Stakeholder“ im Umweltbereich in Peru beeinflussen.

Kapitel 5 analysiert weiter die Umweltpolitik, die als Teil des Reformprozesses des Staates in den neunziger Jahren im Land eingeführt wurde. Im Hinblick auf eine explizite und implizite Umweltpolitik ist es wichtig, die Auswirkungen zu berücksichtigen, welche letztere auf die Implementierung und Ergebnisse von ersterer entfalten kann. In Peru kommt es häufig vor, dass eine implizite Politik die gewünschten oder erzielten Ergebnisse einer expliziten Umweltpolitik verändern oder zerstören kann.

Die Entwicklung der staatlichen Umweltpolitik und der Umweltpolitik der Regierung in Peru verläuft parallel. Auf der einen Seite kommt die staatliche Umweltpolitik in Peru durch politische Dokumente der höchsten Ebene zum Ausdruck. Die Identifizierung der Probleme begann mit einem von ONERN (Oficina Nacional de Evaluación de Recursos Naturales, 1986) erstelltes Umweltprofil von Peru, gefolgt vom Bericht über Peru für die Konferenz für Umwelt und Entwicklung der Vereinten Nationen (United Nations Conference on Environment and Development, UNCED, 1992). Auch der Bericht von Peru für den Weltgipfel über nachhaltige Entwicklung (World Summit on Sustainable Development, WSSD, 2002) zeigt die Entwicklung von einer vom Umweltschutz geprägten Sichtweise zu einem verstärkt an der Entwicklung der Umwelt orientierten Ansatz auf, bei dem Fragestellungen der Armut schrittweise aufgenommen wurden. Auf der anderen Seite befolgt die Umweltpolitik der Regierung in Peru nicht notwendigerweise die Leitlinien, welche von der staatlichen Umweltpolitik aufgestellt wurden.

Die Charakteristik der staatlichen Umweltpolitik und der Umweltpolitik der Regierung in Peru lässt sich dahingehend beschreiben, dass die Intensität und Richtung der Handlungen der Regierung an der Macht den Verpflichtungsgrad der betroffenen spezifischen Regierung gegenüber der staatlichen Umweltpolitik anzeigen. Auf der nationalen bzw. allumfassenden Handlungsebene haben die beiden Politikansätze und dementsprechend die Handlungen und Vorgehensweisen zumeist übereingestimmt. Auf der regionalen Ebene oder der Ebene der erweiterten Handlung waren die Ergebnisse gemischt. Wenn die ökonomischen Interessen des Landes auf dem Spiel stehen neigt die Regierungspolitik dazu, nachgiebiger zu sein. Sind Umweltgüter betroffen, bei denen wirtschaftliche Interessen weniger einflussreich sind, waren die Ergebnisse ermutigender. Auf der Ebene einer spezifischen oder fokussierten Handlung sind die Resultate in Anbetracht der wechselnden Umstände und Sichtweisen der Politik weniger ermutigend gewesen, die zunächst als für die Umwelt positiv betrachtet wurden und sich Jahrzehnte später als umweltschädlich erwiesen.

Alle Handlungen der Regierung verfolgen, wie gezeigt, dasselbe Ziel bezüglich der Umwelt. Gleichwohl bilden diese noch keine einheitliche Umweltpolitik, wie dies auf der Grundlage der allgemeinen Politikäußerungen zunächst beurteilt werden kann. Außerdem beeinträchtigen das Fehlen einer einzigen Behörde oder Institution für Umweltbelange, die über Zwangsmaßnahmen und eine zentralisierte Organisation verfügt, sowie der Mangel an finanziellen Ressourcen das Erreichen von Kohärenz bei den unternommenen Aktivitäten und führten zu einer Überschneidung von Ressourcen und Anstrengungen. Nichtsdestotrotz muss

bemerkt werden, dass all diese Aktivitäten einen sehr positiven Effekt auf die Armen haben könnten, falls die Ziele erreicht werden.

Der Bestand an umweltpolitischen Instrumenten in Peru reicht aus, um ein dauerhaftes und umfassendes Umweltmanagement zuzulassen. Der Mangel an finanziellen Ressourcen sowie der politische Wille der Regierungen, staatliche Eingriffe in Bezug auf die wirtschaftlichen Aktivitäten des Landes zu vermeiden, führen jedoch dazu, dass größtenteils die Kontrolle über Umweltschäden in den Händen der wirtschaftlichen Akteure liegt.

Die Bedeutung der Stakeholder in der Umweltpolitik hat in den letzten Jahren zugenommen. Ein weites Feld sowohl an staatlichen als auch privaten Akteuren zeigt sich freimütig, wenn Umweltkonflikte und -probleme auftreten. Ihre unterschiedlichen Interessen und Standpunkte haben nicht nur die Umweltdebatte bereichert sowie dazu beigetragen, dass diese Debatte in einem richtigen Licht in den Medien und in der öffentlichen Meinung dargestellt wird. Vielmehr haben sie das Niveau der Diskussion verbessert und einen Beitrag dazu geleistet, dass die Umweltpolitik zu einem integralen Bestandteil der allgemeinen Politik in Peru wurde.

Kapitel 6 stellt den Bergbausektor und die Umwelt in Peru vor. Bergbau-Aktivitäten in Peru konzentrieren sich geographisch auf die Wüsten der Südküste und entlang des Hochlands der peruanischen Sierra, in Höhen von mindestens 3000 m über dem Meeresspiegel. Die Gegenden sind für gewöhnlich entlegene Orte, wo keine anderen industriellen Produktionsaktivitäten stattfinden. Die Verschmutzung der Flüsse, des Grundwassers und die Luftverschmutzung sind jedoch in diesen Gegenden beträchtlich.

Der Einfluss der Experten des Bergbaus auf die peruanische Umweltpolitik basiert auf der Stärke dieses Sektors im Vergleich zu anderen Sektoren und seiner Bedeutung für die Entwicklung des Landes in wirtschaftlicher Hinsicht. In den letzten Jahren kann Peru über positive makroökonomische Zahlen berichten, die sich auf den Exportwert von mineralischen Ressourcen stützen.

Die explizite Umweltpolitik im peruanischen Bergbausektor zielt auf eine Beseitigung der durch die Bergbauaktivitäten hervorgerufenen Probleme ab, während zur gleichen Zeit Selbstregulierung und Kontrolle durch privatisierte Projekte angestrebt werden. Instrumente der Befehlsgewalt und der Kontrolle sind noch immer die am meisten bevorzugten. Die Probleme entstanden wegen der fehlenden öffentlichen Partizipationsmechanismen in den administrativen Verfahren des Ministeriums. Ein Versuch ist unternommen worden, jene in Verfahren des EIA (environmental impact assessment) und der PAMA (programas de adecuación de manejo ambiental) einzubeziehen, aber dabei wurde nicht in einer zufrieden stellenden Art und Weise auf die Anfragen und Forderungen der Bürger geantwortet, die in den meisten Fällen auf andere Instrumente zurückkamen, um Druck auf die Staatsgewalt im Hinblick auf ihre Anliegen auszuüben. Die Politik konzentrierte sich ferner auf die Kontrolle der Umweltverschmutzung und die Ausstöße an der Quelle der Emissionen und nicht auf die Auswirkungen. Dies hat zu Problemen mit anderen Sektoren mit Kontrollkompetenzen geführt. Hinzu kommt, dass sich die Privatisierung von Projekten und Plänen zur Kontrolle

als unzulänglich und kontrovers aufgrund der widersprüchlichen Vertrags- und Zahlungsmodalitäten erwiesen hat. Implizite Umweltpolitik im Bergbausektor in Peru basiert auf den Prioritäten der allumfassenden Politik, die von der Exekutive umgesetzt wird. Dies bedeutet, dass wirtschaftliche Gesichtspunkte Vorrang gegenüber Umweltgesichtspunkten haben.

Der institutionelle Rahmen bezüglich des Bergbaus bestätigt in der Praxis die Oberhand der Exekutive. Diese Verhältnisse sollten explizit in die rechtlichen Bestimmungen mit der Intention einer Vermeidung von Grauzonen aufgenommen werden, welche die politische Stellung der beiseite gelassenen Regierungsbehörden weiter schwächen. Der Rechtsrahmen hinsichtlich des Bergbaus ist einer der vollständigsten der Exekutive in Peru. Er hat jedoch keine klare Regelung des Verhältnisses der Unternehmer im Bergbau gegenüber den Gemeinden, die von den Projekten betroffen sind. Rechtliche Bestimmungen, welche die Anliegen der Bürger umfassen, sollten aufgenommen werden.

Die innerhalb des institutionellen und rechtlichen Rahmens aufkommenden Konflikte spiegeln nur die Hauptschwierigkeiten der Politik wider, die angegangen werden sollen. Die Vorherrschaft der Exekutive und ihre Intervenieren in die Zuständigkeiten und Kompetenzen anderer Sektoren sowie Organe und Gremien kann nur mit einem engen Verständnis über das „wie“ einer Ausübung der öffentlichen Politik erklärt werden. Dies wird durch die Auswirkungen dieser Konflikte auf die allgemeine Situation des Sektors verdeutlicht. Anstelle eines soliden Managements zur Konfliktlösung kommen Eskalation und sogar Gewalt auf. Zusätzliche Kosten, Unsicherheit auf der Ebene der Beziehungen zu privaten Investoren und ein Glaubwürdigkeitsmangel gegenüber den Bürgern sind die Konsequenzen.

In Kapitel 7 wird das Fallbeispiel des Goldabbaus durch die *Minera Yanacocha Sociedad de Responsabilidad Limitada* (MYSRL) in den peruanischen nördlichen Anden analysiert. Dies ist ein Beispiel der Probleme, welche von groß angelegten Bergbauprojekten herrühren. Yanacocha galt als Beginn einer goldenen Ära für den Bergbau in Peru. Im Gegenteil dazu hat sich die Situation zu einer Vielfalt von Konflikten zwischen der Bevölkerung, dem Bergbaukonzern und dem Staat entwickelt, teilweise aufgrund fortwährender sozialer und wirtschaftlicher Forderungen der Menschen, die danach streben, ihre Lebensbedingungen zu verbessern und ein Recht auf Gestaltung ihrer eigenen Entwicklung zu bekommen. Der Abbau von Gold in Cajamarca zeigt, dass sich positive makroökonomische Zahlen nicht notwendigerweise in besseren Bedingungen für die Bevölkerung in denjenigen Gegenden ausdrücken, in denen Bergbauaktivitäten vorgenommen werden.

Das Yanacocha-Bergbau-Projekt bedeutete den Aufstieg von Peru in die Gruppe der größten Goldproduzenten und -exporteure der Welt. Derzeit steht der Abbau der immensen Goldvorräte erst am Beginn. Das Yanacocha-Projekt war außerdem die erste wichtige große Investition in den Bergbau im Land seit den siebziger Jahren und bedeutete dementsprechend die Wiedereingliederung Perus in die globale Wirtschaft nach den Jahren mit Paria-Status, der durch die negativen wirtschaftlichen und politischen Bedingungen der achtziger Jahre hervorgerufen worden war. Die durch die Bergbauaktivitäten von MYSRL provozierten

Konflikte in Cajamarca sind die logische Konsequenz der Lücken in der Umweltpolitik bezogen auf den Bergbausektor. Ineffektive Handlungen des Staates zuzüglich einer aggressiven Einstellung des Unternehmens haben lediglich die Entfremdung und Ablehnung der Bürger von Cajamarca ausgelöst, effektiv wurde die soziale Lizenz zur Betätigung entzogen.

Die in diesem Kapitel analysierten Konflikte sind nur die Spitze des Eisbergs der Umweltkonflikte, die sich seit dem Beginn der Aktivitäten von MYSRL in Cajamarca angehäuft haben. Die Vorfälle zeigen allein praktisch die Misserfolge bei der Umsetzung der Umweltpolitik im Bergbau auf. Die Tatsache, dass derzeit ähnliche Konflikte in anderen Teilen des Landes (Antamina und Espinar sind die jüngsten Fallbeispiele) ausbrechen, machen die dringenden Notwendigkeit nicht nur einer Reform der Politik, sondern auch – dies ist sogar äußerst bedeutend – einer Reform der Rolle der Staatsbeamten, welche mit der Anwendung dieser Politik beauftragt sind, deutlich.

„Stakeholder“ auf der lokalen und regionalen Ebene sind im Hinblick auf die Ausrichtung der Konflikte in Cajamarca wichtig gewesen. Es muss berücksichtigt werden, dass die Aussprache zwischen ländlichen und urbanen Akteuren eine neue Dimension in den Konflikt gebracht hat. Aufgrund des Zentralismus und der Oberhand der Exekutive im politischen System Perus standen die Beschwerden und Klagen der Menschen in Cajamarca solange nicht auf der nationalen politischen Agenda, bis ländliche und städtische Bürger die Kräfte gegen MYSRL bündelten. Hinzu kommt, dass Stakeholder daran beteiligt waren, den auf die Umwelt bezogenen Konflikten (und den mit diesen verbundenen sozialen und wirtschaftlichen Fragestellungen) an die Vorderfront bis zu dem Punkt zu verhelfen, an dem eine Infragestellung des angenommenen Entwicklungsmodells einsetzte. Diese ernsthafte Entwicklung kann zu autoritären Strategien zur Kontrolle und dem Erhalt des *Status quo* von der staatlichen Seite führen, wie in der zurück liegenden peruanischen Geschichte geschehen. Aus den Antworten der politischen Elite wird deutlich, dass dies kein gewünschtes Ergebnis der die Investitionen von ausländischem Kapital in die natürlichen Ressourcen des Landes zielenden Politik war. Die Gefahr besteht, dass die Unfähigkeit des Staates, diese Fragestellungen in Angriff zu nehmen, zu Unterdrückung und Menschenrechtsverletzungen führt – wie das Fallbeispiel der Cerro-Quilish-Konflikte zeigte.

Es hat verschiedene Versuche gegeben die Konflikte zu behandeln; sie sind aber wegen fehlende klarer Verpflichtung von Seiten der involvierten Akteure gescheitert. Der rechtliche Weg wurde von vielen Bürgern in der Hoffnung eingeschlagen, in der Justiz einen Hafen für den Schutz ihrer Rechte zu finden, der eben nicht vom Staat wie etwa von der Exekutive dargeboten wurde. Juristische Prozesse sind lang und ermüdend, aber bis jetzt konnten sie den Bürgern wirkungsvoll eine Antwort unterbreiten und deren Rechte gegenüber dem Staat und der MYSRL bestätigen. Da diese Urteile jedoch nicht umgesetzt werden kann, kann dies als bloßes Lippenbekenntnis betrachtet werden. Angesichts der Geschichte der Diskriminierung der ländlichen Gemeinden in Peru ist dies eine äußerst wichtige symbolische Geste, die ihre Rechte als Bürger des Landes anerkennt – eine Tatsache, die vom Staat und

von der MYSRL beim Umgang mit der Bevölkerung ignoriert worden war. Institutionelle Vereinbarungen haben sich bezüglich der Behandlung von Konflikten und bei der Suche nach friedlichen Lösungen als ineffektiv erwiesen. Sie dienten lediglich kurzfristig dem Ziel einer Besänftigung der Bevölkerung, eine Strategie, die schließlich gescheitert und davon überrollt wurde, dass sie ihre Rechte vor den Behörden und Institutionen der lokalen, regionalen und nationalen Ebene behaupteten. Versuche von MYSRL, Fragen der sozialen Verantwortlichkeit in ihre Agenda zu integrieren, stehen erst am Beginn. Das Unternehmen brauchte dreizehn Jahre, bis es sich in eine Richtung bewegte, die andeutete, was eine Politik sozialer Verantwortlichkeit in Cajamarca sein könnte. Die Newmont Mining Corporation, der größte Anteilseigner des Unternehmens, hat diese Strategien in anderen Ländern mit relativ großem Erfolg umgesetzt. Es wäre angemessen, ähnliche Strategien in Peru durchzusetzen.

Im Lichte der Konflikte in Cajamarca müssen die Umweltpolitik, die Politik hinsichtlich des Bergbaus und die öffentliche Politik überdacht werden, um schlüssige Rahmenbedingungen zu schaffen, mit denen wirksam für private Investitionen geworben werden kann, und die zugleich nicht die Bürger gegenüber den privaten Investoren ungeschützt lassen. Die Einbeziehung von Partizipation, empowerment, good governance und Verantwortlichkeit in das politische System Perus ist eine Pflicht, damit die Demokratie in einer Gesellschaft Wurzeln schlagen kann, die noch immer viel überwinden und erreichen muss, um wirkungsvoll das seinen Bürgern gegebene Versprechen auf Entwicklung einzulösen.

I. INTRODUCTION

The emergence of a new international agenda has been instrumental in linking economic, social, and environmental issues. Environmental concerns have been in the forefront of policy agendas, forcing governments to comply with new priorities, by implementing at the national level international environmental agreements and treaties. Consequently, the process of globalisation has led countries to homogenise their economic frameworks to match common markets development. In the context of the reforms implemented in Latin America during the eighties and nineties, this meant to unleash market forces, including environmental issues in the process as well.

From Stockholm, via Rio, to Johannesburg, sustainable development issues have become part of policy making at the international and national levels during the last three decades. The question of finding a balance between environmental protection and economic growth is a priority in policy agendas around the world. For countries like Peru, environmental matters brought an array of new perspectives for managing its natural resources, while combating poverty and pursuing economic growth.

At the global level, international financial institutions have proposed the most important policies regarding economic development in developing countries. They have been instrumental in policy design, advisory, and outcome monitoring to ensure a liberal consensus in the international economic agenda. The direction marked in the integration of sustainable development into economic and social issues guided governments in their attempts to tackle economic growth and poverty alleviation.

The concept of ‘sustainable development’ refers to social, economic, political, and environmental factors concurring to improve people’s livelihood, including a participatory development approach. In the last years, initiatives to implement such a concept at the international, national, regional, and local levels have been strongly encouraged. In developing countries, the integration of environmental concerns has meant a shift in policymaking processes. The participatory approach is new for countries with top-down and centralised government approaches like Peru, which has gradually incorporated the sustainable development concept into its national policies since the nineties. Decision makers have yet to tackle the friction among economic growth, poverty alleviation, and environmental conservation aims.

Peru, one of the countries with the largest biological diversity in the world, encounters a situation in which it needs to manage economic growth in the context of globalisation and to continue the implementation of a drastic reform of the state. Moreover, Peru is one of nine countries sharing the Amazon River basin, one of the last resorts of natural resources for

Mankind. Furthermore, the country has 84 of the 101 climates of the world, and it ranks among the first in diversity of species, genes, and resources (Republica del Peru Ministerio de Relaciones Exteriores 1992, CONAM 2001.) Therefore, from an international perspective, occurrences in the country concerning its natural and environmental resources are worth study.

Peru is the fourth largest country in size in the Latin American and Caribbean region and the fifth in population, with approximately 25,6 million inhabitants. It has a dual economy manifested in a relatively modern sector on the coastal plains parallel to a subsistence sector in the mountains and tropical regions of the interior. Peru is a leading world producer of silver, gold, copper, and other minerals, and the second largest fishing nation (World Bank 2003.) Although GNP per capita is around US\$ 2,390,00, more than half of the population is classified as poor (INEI 2002.)¹ In rural areas, which encompass almost 30 percent of the total population, more than two out of every three citizens live in poverty, while over half counts as extremely poor.

The reform process in the Peruvian case refers to a paradigm change from an attempt to implement a system based on the economic and political systems of European welfare states (prevalent in the sixties and seventies) to another anchored on the liberal political and economic system inspired by the Chicago School of Economics in the eighties. The reason for the failure of the implementation of such welfare state in Peru, is a topic to be answered by another dissertation. It should be stated that in Peru, the failure in the implementation of successful economic policies targeting the poor during the eighties ended undermining the political party, leading to its eventual demise. On the other hand, in the political realm, Peru is a democracy in transition that still needs to strengthen the pillars of the democratic institutions that embody the political system.

Before President Fujimori came to power (elected in 1990), Peru had two democratically elected governments under the Constitution of 1979. This Constitution was brokered under the Constitutional General Assembly elected in 1978. In that election, APRA (centre-left orientation), a party originated in the twenties, won the majority, followed by AP (centre-right affiliation) and PPC (Christian-democrat affiliation). The Left (split in several parties) obtained also representation, albeit in minor numbers.² APRA sought to (and managed to) put into the Constitution the economic and political values and ideals of European welfare states

¹ According to INEI, in 2001, 14,6 million Peruvians (54,8 percent of the population) had income insufficient to acquire a minimum basket of goods and services. Population below the extreme poverty line is 24, 4 percent. For explanation on methodology and concepts see INEI Home Page: www.inei.gob.pe

² The Left was divided due to the different ideological tendencies, degree of radicalism and loyalties, e.g. Leninists, Maoists, pro-Moscow, pro-Beijing, etc.

of the seventies. Those arrangements, however, fell short, as most of the party's original political manifesto had been implemented by the corporatist-minded military regime that governed the country between 1968 and 1980. However, there was a lot of symbolic value in the Constitution of 1979, taking into account that APRA and its members had been persecuted during decades and experienced exile through military and right-conservative governments in Peru alike since the thirties.

In 1980, after twelve years of military regime (under two presidents, at first, General Velasco Alvarado and afterwards, General Morales-Bermudez Cerruti) elections took place in May where AP and its candidate, the deposed (in 1968) former president Fernando Belaunde Terry, obtained an overwhelming majority. Although oriented more to the right than to the left of the political spectrum, President Belaunde government agreed on most of the contents of the Constitution of 1979, especially on the welfare state (called “*economia social de mercado*”) and the irreversibility of the land and agrarian reform carried out by General Velasco Alvarado government after 1974. However, the international economic outset did play against AP political aims, as the debt crisis continued slapping the country's economy at the beginning of the eighties. Added to this, international market prices for Peru's main exports (minerals and fisheries) fell dramatically during the same period. Furthermore, in 1982, the “El Nino” weather crisis heavily affected the country and its economy with millions in material and personal losses. Nevertheless, the most serious damage to the AP and President Belaunde's government during the period was the emergence of the armed struggle waged by the Maoist-inspired movement *Sendero Luminoso* (Shining Path) and later by the *Movimiento Revolucionario Tupac Amaru* (MRTA) and the subsequent internal war, which it was to last more than fifteen years. Political violence changed completely the political and economic landscape of the country and, at the same time, contributed to the dissolution of the political party system anchored in the Constitution of 1979, at the end of the eighties, provoking the emergence of populist non-party affiliated leaders like President Fujimori.

In 1985, APRA finally won elections after sixty years of political struggle to get into power³. The enthusiasm of the Peruvian people was immense as, finally, it was considered justice has been done and APRA, the people's party, would govern. Led by a charismatic

³ It has to be pinpointed that APRA had won an election during the fifties but the military at that particular time did not allow the party to take power, staging a coup de etat led by General Manuel Odría instead. During the forties, a government supported by APRA (led by President Jose Luis Bustamante y Rivero) was ousted after only 3 years. The party was doomed by the military, which declared it as “enemy of the state and the Peruvian people” and vowed never to allow APRA or its supported candidates to assume power, even if they would won democratic elections. This “military veto” was considered “waived” when APRA won the election in 1985 and the military did not act against the people's will. The origin of the veto of the military is traced to the assassination of military President Jose Luis Sanchez Cerro in the thirties, executed by a radicalised APRA militant.

leader, President Alan Garcia Perez, however, the hopes of the masses were left unfulfilled. APRA's government was characterised by erratic economic management and contradictory political decisions. APRA was overburdened by the historical and political developments in the country. When they came into power, the party had no more promises to deliver (i.e., land reform, nationalisations, and government-steered development) as the previous military and AP governments had implemented many of the building blocks of its historical political manifesto. Added to that, corruption, nepotism, cronyism, clientelism, and related practices plagued the prestige and image of the party. However, the main damage was again occasioned, first, by the heterodox economic policies that led to hyperinflation between 1987 and 1991, and, second, by the war strategy against SL and MRTA, which gained even more momentum as human rights violations and rampant violence spread all over the country.

The economic development of Peru was marred by the political and external developments afore described which led to a gradual worsening of the overall conditions. During the government of Mr Belaunde Terry (1980-1985), efforts were made to re-schedule the debt service, which had increased rapidly in the last years of the military government (i.e. public expenditure, including weaponry). However, the "El Nino" weather phenomenon in 1982 destroyed all intentions to put in order the national finances. In fact, in 1984, President Belaunde's government stopped complying with its international financial obligations, waiting for the results of the next general elections (1985) and leaving the next government to reach new agreements with the international financial institutions. Military and police expenditure also increased due to the internal war against SL and MRTA.

During President Garcia Perez's government (1985-1990), attempts were directed to reach an agreement with the economic elite of the country (represented through their business-umbrella organisations) to promote investment by national private investors. International investors had restrained from investing in the country due to the internal war, therefore, the only possibility to reinvigorate the economy was to obtain resources from national groups. However, the agreement was not fulfilled by the parties (government and investors), and on the contrary, the economy continued shrinking steadily. The APRA government, weary of implementing liberal policies, decided to carry on a heterodox economic programme based on public investment to propel growth. This was based solely on printing currency to cover the fiscal deficit occasioned by such investments, which consequently provoked hyperinflation in an unseen scale. In a difficult situation, APRA announced it would stop paying the debt service in 1987. The country was declared in default before the IMF, the World Bank, the Paris Club, and other financial bodies. As a result, Peru was not able to receive loans and the debt service could not be re-scheduled. Waiting for the next general elections to take place (1990),

APRA kept things quiet and did not take further measures to alleviate the economic crisis with the exception of a “wait-and-see” approach. Prices rose and goods disappeared from the market. Black market and racketeering practices were rampant. In addition, the war with SL and MRTA seemed to be at its highest.

This economic and political background paved the way to the emergence of a charismatic leader like President Fujimori (1990-2000) whose main political asset was being an outsider, apparently untouched, and not contaminated by the “old politics” ways prevalent in the country. The political system was in shambles for its incapacity to counter the economic crisis and the internal war. The first victims of this state of chaos were the political parties, which almost disappeared from the electoral map in the 1990 general elections. The stage was set for the appearance of a different kind of political leaders and movements, which were keen in presenting themselves as new and not belonging to the “old system.”

The eighties meant also a big challenge for the mining sector. During the seventies, under the fostering of the military government and based on a geopolitical understanding of economic policies as an element of national security, huge amounts were invested in the nationalised mining companies. Concurrently, the military government secured the opening of the Toquepala and Cuajone mine sites, some of the biggest copper mining investments in the world, through Southern Peru Copper Corporation, a subsidiary of ASARCO (Phelps group). However, both the debt crisis and the declining prices of the metallic minerals in the world market during the eighties did not help to secure an enabling environment for the mining sector, setting the pace for a crisis, which was worsened by the internal war waged by SL and MRTA.

Sendero Luminoso did target specifically the mining sector from the beginning of its armed struggle. The main reason was that the most important mining operations were located in the Central and Southern Andes regions. Those areas were home to the population targeted by SL as constituency, the poorest of the poor among the “*campesinos*” of Peru, as well. Therefore, Sendero’s strategy was to attack mining compounds stealing dynamite and explosives, paving the way for the withdrawal of those companies, threatened in their security and investment. Convoys carrying supplies to mining compounds were assaulted regularly; their contents robbed or destroyed in the place so that to debilitate their operations. Through their official pamphlet “*El Diario*,” SL made public “black lists” denouncing mining companies and their executives as representatives of “the international capital exploiting the Peruvian people and robbing the country of its riches.” As a result, international companies shut down or scaled down their operations in the country, no new investments took place during almost the whole decade and the mining sector fell into an ailing state from which it only started to

recover in the nineties, after the reforms of President Fujimori's government (favouring private investment) were implemented.

A way of responding to the political and economic crisis described above was the process of stabilisation, structural reform, and reform of the state that took place in Peru starting from 1991. More than a decade later, it continues. Pending issues in the agenda of reform of the state are a comprehensive reorganisation of the Judiciary branch and the completion of restructuring in the Executive branch. It has been an explicit commitment of the Peruvian government in its successive Letters of Intent to the IMF that the privatisation process would continue, stressing on public services, infrastructure provision and land tenure, as well as health and education sectors privatisation. In such context, as long as the international institutions provided funding, Peruvian governments have committed to the implementation of the reforms with a short interruption (1998-2000) during the years before Mr Fujimori demise from power.

In view of new policies implemented at the international level and the increasing influence of environmental groups (and like-minded associates) in Peru, the introduction of sustainable development issues took place at the level of institutions and regulations (i.e., policy papers and drafts) in the country as well. The government of President Fujimori (1990-2000) considered that it belonged to a modern approach of state affairs the inclusion of issues of environmental justice, as the integration to the modern world economy was its ultimate goal, and such issues were understood in that context.

During previous governments, environmental policy had been in the background, emerging only through natural resources and natural protected areas policies. Mr Belaunde Terry government continued the path set by the former military governments, where environmental issues were tackled within the realm of the agrarian sector. Issues of water and soils were considered important *vis-à-vis* agricultural policies and the widening of the agrarian border. Mr Garcia Perez government did not change such direction dramatically with the exception of prompting the sanction of a Code of Environment and Natural Resources through the Parliament. Works for such important new legislation started in 1987 with the appointment of a special commission of experts, which were to present its results to the appropriate Committee in Parliament. The Code was approved in 1989 but it did not enter into force until President Fujimori took power in 1990.

Again, one of the sectors that had to adapt the most to the introduction of environmental issues was mining. Historically, mining extraction activities have been the most important economically in Peru and it is possible to trace such tradition from pre-colonial times. Peru possesses 16 percent of the world reserves of silver, 15 percent of reserves of copper, 7

percent of the world reserves of zinc, and important volumes of reserves in other strategic minerals. Mining is an intensive activity in terms of capital and usually it triggered important impacts in the regions in which it had been developed. The reforms prompted by President Fujimori government had as aim to open mining resources to foreign and national private investors that, in exchange of favourable tax and revenue conditions, would invest the huge amounts necessary to develop a sector which was languishing after ten years of internal war. In year 2000, no less that 72 thousand people were working for the mining sector, as either workers or employees. The copper and gold mining sectors have been the busiest during the last decade and represent the most important part of the Peruvian mining exports as well. In terms of gold mining production, during the same period, Peru is consistently the largest producer in Latin America and the eight largest worldwide (INEI 2004, MEM 2004.)

Environmental policies in the sector were regarded warily. On the part of affected mining groups, there was the opinion that a new burden to their activities was being implemented and, hence, foreign investors would restrain from coming to the country, putting Peru in disadvantage. The approach most favoured was to have as few regulations as possible and to encourage self-control. Most Peruvian mining groups were not motivated to undertake costly industrial renewal and re-engineering techniques to adapt to the new obligations. At the same time, environmental NGOs and CBOs actively advocated for a sound environmental policy framework for the mining sector. The eventual danger posed by the activities of those organisations (i.e. boycotts, advocacy, resistance, etc.) made mining groups reconsider their position. Meanwhile, the government centred efforts in achieving economic growth, even at the cost of environmental liabilities. The approach was to facilitate every large investment project on natural resources extraction in Peru, particularly in the mining, gas and oil sectors.

Due to the economic importance of mining in the Peruvian context and because of the different interests at stake, a case study for the analysis of the institutional and regulatory framework for the environment in Peru is of the utmost relevance. It exemplifies the links between political and economic issues and environmental problems. Moreover, mining is a sector that requires continued self-renewal (on techniques and materials) to adapt to new environmental goals. Furthermore, the mining sector is a showcase to observe and analyse the balance of interests, power and decision-making processes (relating to public policy and environment), as usually the decisions on the mining sector are taken at the highest level of political decision, as a consequence of its importance for the country's economy.

This research takes a specific case to present the influence of the political setup in the drawing of environmental policies for the mining sector in Peru. The case study is gold mining extraction in the Peruvian Northern Andes (department of Cajamarca) carried out by Min-

era Yanacocha Sociedad de Responsabilidad Limitada (MYSRL), a joint venture of Newmont Mining Co. (51,35 percent, Denver, Colorado, U.S.A.), Compañía de Minas Buenaventura S.A. (43,65 percent, Peru), and the International Finance Corporation (IFC) of The World Bank Group (5 percent.) Yanacocha is the second biggest gold mine in the world (the biggest being in Tanzania), covering about 9 thousand hectares.

The Yanacocha case brings together issues of interaction between government agencies at the national and at the regional and local levels, public participation and grievances, interaction of power and lobby groups, environmental damages with international repercussions, environmental issues as a trigger for political claims, foreign investment involvement added to international financial institutions assistance, among others. Hence, it is relevant for the purpose of this research.

Yanacocha was the beginning of a dream for the Peruvian political elite. The dream was to transform the country in a haven for foreign investment, bringing development all along. In how far the accomplishment of those optimistic views has occurred, especially for the people of Cajamarca, is yet to be seen. Yanacocha is now the largest Latin American gold producer, while Cajamarca from being the fourth poorest department in Peru at the beginning of MYSRL operations has gone to become the second poorest at present.⁴

1.1. Aim, Objective, Research Questions, and Hypotheses

The topic of this research is to study environmental policies under political transition in the mining sector in Peru. This research is set up in the fields of political sciences and public policy. The research focuses on the institutions and actors interacting in the context of public policies for the environment in the mining sector in Peru, taking as case study the conflicts emerged through gold exploration in Northern Peru (Yanacocha, Cajamarca) during the period 1999-2004. Significantly, the research has as background the political struggles emerged during the same period, due to the transition from an authoritarian to a democratic government in the country. The overall objective is to contribute to a better understanding of the role of institutions and actors in the design and implementation of environmental policies through an analysis of the institutional and regulatory framework underlying such policies.

⁴ See the National Map of Poverty of 2000, FONCODES web page: www.foncodes.gob.pe (October 2002.)

1.1.1. Aim and Objective

The aim of this research is to contribute in filling the gap in the academic research on how the implementation of environmental policy at the national level takes place, under political transition. This research will provide insight on a presently disregarded topic in the Peruvian context, as the ways in which environmental problems are rooted in the overall development problems the country faces, and the grievances emerging from those, i.e., on long-standing social structures. The research shall contribute to the discussion on environmental policy in unstable political settings, adding inputs into the debate on the process of reform of the state, as it has been the proposition in Peru during the last ten years. The final aim is to contribute to an improved policy making process in the environmental field, taking into account the case of countries that, like Peru, are subject to political instability, and at the same time are dependant on natural resources exploitation for economic growth.

This dissertation has as objective to study the consequences of the pledge of developing countries to sustainable development policies, taking as case study the mining sector in Peru. In doing so, focus will be given to the analysis of the environmental policy conveyed for the integration of such sustainable development concerns into the political agenda up to December 2004.

In the context of the mission of ZEF, this objective is framed in the aim of giving scientific support to the implementation of Agenda 21 and of contributing to a sustainable development, which ensures a life in human dignity for everyone.⁵

1.1.2. Research Questions

1. What is the theoretical background underlying environmental policy?
2. What role the historical and political contexts play in the introduction of the sustainable development concept into environmental policy in Peru?
3. What are the main characteristics and problems of environmental policy in Peru?
4. What are the characteristics and problems of the Peruvian environmental institutional and regulatory framework?
5. How the conflicts at the inter-sector and internal levels influence the outcomes of the general and sector (mining) environmental policies?

⁵ As stated by Prof. M. Huber, Rector of the University of Bonn, in a letter to the UN Secretary-General B. Boutros-Ghali, 1 April 1996.

6. How the Yanacocha gold mining project influences the policy outcomes of the general and sector (mining) environmental policies?
7. How political transition has contributed to changes in environmental policy in Peru?
8. What are the policy suggestions for the future at the general level and in the mining sector?

1.1.4. Hypotheses

1. The process of reform of the state has been an instrument by which international institutions have proposed environmental considerations into national policy agendas. The policy framework that has as aim economic growth embeds those environmental policies.
2. The sustainable development concept brings new elements into the discussion on environmental policy (i.e. public participation, right to information) that translate into policy instruments that should be included into policy frameworks.
3. Environmental policy in Peru crosscuts the state organisation and is fragmentary, contributing to low implementation and enforcement levels.
4. Conflicts among stakeholders emerge because of the process of establishing environmental policies. Those have open the door to political claims that go further than what policy makers are able to offer and accept, provoking the softening of reforms and an incomplete implementation of policies.
5. The introduction of environmental policies in production sectors, dominant in the economy of a country, as mining is in Peru, causes conflicts that weaken the position of both, policy makers and the implementing and enforcing state institutions, leading to uncertainty on the results and achievements of environmental policy.
6. The Yanacocha case study shows that the promise of development brought by large-scale projects in natural resources does not necessarily generate an expected positive impact on the population.
7. Major tensions and an escalation of conflicts between mining companies and local citizens affect negatively both sides and environmental policy implementation.
8. Political transition processes form an enabling environment for the introduction of innovative policies within environmental institutional and regulatory frameworks, in spite of the pitfalls and instability of the overall system.

1.2. Context of the Research

The context of this research comprises the role of policy making in environmental conflicts, the incorporation of the environmental factor in the processes of decision and policymaking, the interface between environmental policies and citizens expectations and the place of environmental issues in the development framework of a country. Additionally, the conflict between economic and financial interests versus environmental interests, and the conflict on the benefits produced by mining activities surround the topic as well.

Studies about the impact of the structural reforms applied in Peru started since the implementation of stabilisation measures (1990) (Paredes and Sachs 1991.) Later, the analysis focused on perspectives for the future of the country, stressing on implementation (Gonzales de Olarte 1996, Beaumont 1997.) Thereafter, the functioning of institutional reforms after the stabilisation and the reform-of-the-state phases was analysed. Some of those studies also include discussions on the final aim of the reforms for the future of the country (Starn, Degregori and Kirk 1995.) The study of those issues goes further than the objectives of this research, but the discussion on the topic embeds them, as a point of reference in terms of ideology and as a viewpoint in terms of analysis. The modernisation of the mining sector has been one of the building blocks of the process of reform of the state in Peru, and therefore, the evolution in the sector cannot be taken out of the context of the analysis of structural reform and its effects in the country.

Studies on environmental policy and the institutional and regulatory framework for the environment in Peru started after the process of reform at the government level stressed on institutional reform. Think-tank institutions, universities, and independent researchers carried on case study and sector research. Especially, it should be mentioned the project "Agenda Peru" (1999-2002), and the international project "Mining, Minerals and Sustainable Development" (by IIED, carried on in its Peruvian component by GRADE, Glave and Kuramoto 2001). Those research efforts have paid special attention to the issues of reform of the state and the introduction of sustainable development policies in the mining sector in Peru, albeit stressing the macroeconomic and political economy issues. Further, it is worth considering SPDA policy papers (produced in the period 1999-2004), Proterra books, and policy papers (produced during the period 1999-2004), and IDEA-PUCP publications on environmental law. These research efforts have paid attention to the institutional and regulatory framework for the environment in Peru, stressing the political and legal issues related. In addition, the UNECLAC has carried out extensively studies on mining policies in Peru and Latin America, with and without emphasis on the environmental issues related to mining activities (Campo-

donico Sanchez 1999, Kuramoto 2000, Pasco-Font 2000.) The latter research has provided an overview of the situation and advances of environmental policies in the mining sector, and the specifics of the economic impact of the activities for the overall development of the region.

In the last years, studies related to the environmental conflicts produced by mining activities in Peru have been carried on as well, concentrating especially on case studies and research on mining sites known already for their environmental impacts (Southern coast and Southern and Central Andes). For the case of the pollution provoked by the activities of SPPC, we refer to the several studies produced by Asociacion Civil Labor Ilo (Balvin Diaz and Lopez Follegatti 2002). The latter's studies were pioneering in the field, providing an array of issues that arise and are related to environmental conflicts, e.g. decentralisation, and participation of civil society, among the most important. For the case of pollution produced by mining activities in the Junin area, we refer to the several publications of CooperAccion. The latter's research has focused on economic studies of the consequences of the environmental liabilities of mining activities, stressing on scientific monitoring, conflict resolution, and community empowerment. Moreover, for the case of the pollution provoked by the mining activities of Minera Yanacocha in Cajamarca we refer to the studies, articles, and advocacy campaigns of OXFAM America, FOE, and Project Underground. The latter research and activities has centred in documenting the economic, social, and environmental consequences of mining activities, using the input as basis for political action at the grassroots level.

In recent years, published studies on the conflicts emerged as consequence of the Yanacocha mining exploitation increased, due partly to the escalation of the situation in the region of Cajamarca. Here, the studies carried on by FEDAPAZ (Leyva and Jahnke 2002), GRUFIDES (Arana 2002), and Ecovida should be mentioned. This research has focused in the political and legal issues related to environmental conflicts in the area, linking its findings to issues of human rights and social justice, and the questioning of the model of development prevailing in the country at present. Likewise, the Yanacocha conflict has been subject of research for some organisations dedicated to communication and development which have produced written and graphic material (video and photography) on the issue, among them a documentary by Asociacion Guarango Cine y Video (Cabellos and Boyd 2002), which received several prizes and mentions since its premiere.

The body of work mentioned, in being so close to the events and political upheavals of Peru, has concentrated on the facts, pursuing on the most an accurate in-depth analysis of the situation. However, due to the rapid change in scenarios taking place, it is very difficult to say that there is a last word in the issue of mining and sustainable development in Peru. This dissertation takes as background the body of work produced up to the present related to issues of

mining and environment in Peru. It assembles the different points of view and analysis emerged in the last ten years, putting together each of the aspects related to environment, mining, and public policy in the country. Further, the selected case study embodies the full set of problems arising from environmental conflicts caused by mining activities, illustrating the pitfalls of environmental policy in the context of a process of reform of the state in a country in transition. In fact, no similar research effort has been attempted up to date for the case of Peru, from the point of view of political sciences and public policies. In the light of new mining sites openings and recently evolving conflicts on environmental policies, it is important to study and analyse the case. In the aforementioned context, this dissertation draws a line and analyses the actual situation, pursuing to look forward at what is up and coming in environmental policy in the Peruvian mining sector, while at the same time offering a survey of the challenges to come in the next years.

1.3. Justification of the Research Problem

The process of reform of the state has been an instrument by which international development and financial institutions proposed the inclusion of environmental considerations into national policy agendas. The implementation of reforms, at the national level, implied the adoption of a new institutional and regulatory framework that reflected new policies and goals. Those reforms included market liberalisation, privatisation of state-owned enterprises and trade liberalisation. Environmental institutions and regulations have found a place in such framework. Therefore, it is important to know the role they accomplish in the achievement of a balance among economic growth, poverty alleviation, and environmental conservation objectives. Such assessment can give us means for improving policy and decision-making.

The Peruvian case is worth studying, as environmental institutions and regulations have been set up in the context of a state under economic reform, political transition, and instability conditions. Peru has an economic area in the mining sector, which is obviously at odds with the environmental interests of the state. To study the case of the Peruvian gold mining can give us important lessons on which to draw for the design and implementation of environmental policy and law in the context of political transition processes. For such reason, it is an ideal ground for exploring in how far successful environmental policies are possible to achieve under reform and transition circumstances.

1.4. Contents of the Dissertation

The division of chapters of this dissertation covers three issues. First, it deals with the theoretical discussion on environmental and sustainable development issues in the context of policymaking (Chapters I to III). In these chapters, attention is given to the methodological aspects of the dissertation, the theoretical building blocks of environmental policy (development, public policy, public participation and good governance, and sustainable development), and the evolution of environmental affairs in Latin America (from environmental protection to sustainable development, via environmental conservation and management). The second issue covers the Peruvian case and its complexity (Chapters IV to VI). In these chapters, the discussion centres on the political and economic context of Peru, environmental policy in the country, the Peruvian political system, the Peruvian framework for the environment, and the mining sector and the environment. The third theme is the case of the Yanacocha mining development in the Northern Andes of Peru (Chapter VII). In this chapter, the case, stakeholders, conflicts, responses to the conflicts and consequences are analysed. Finally, conclusions and recommendations wrap up the analysis in the dissertation (Chapter VIII.)

1.5. Methods

In this dissertation, the researcher uses methods coming from the social sciences and political sciences fields. Additionally, legal methods for the analysis of the regulatory issues concerning environmental policies are used as well.

In the case of methods coming from the social sciences, indicators, semi-structured interviews and questions, and observation in the field are used. The indicators taken as basis for this dissertation are the World Bank indicators (World Development Indicators Database) related to the economy and the Millennium Development Goals up to 2004, and the UNDP indicators (Human Development Report 2004) related to the Human Development Index. Moreover, it makes use of the Bertelsmann Stiftung indicators for transition to democracy and market freedom in the world (Bertelsmann Transformation Index 2003); and, the Peruvian national indicators compiled by the INEI (statistical information for the period 2001-2004) related to the economy, social conditions and the mining sector respectively. In addition, information coming from Transparency International Corruption Index (up to 2004), and the World Bank Governance Indicators Database (up to 2004) has been considered.

In the case of semi-structured interviews and questions, the following elements were considered. First, the potential of participatory methods and techniques to extract insider in-

formation in a context of relative distrust, due to the conflicts occurring at the time of the field visits, was the reason for their selection. Second, the kind of interviewed stakeholders, in most cases key actors holding high positions and representing important interests, made it necessary to approach the issues in a flexible way, giving them the opportunity to express their concerns while, at the same time, ensuring that the dialogue remained generally focused on the topic of the dissertation.

The types of interview used were informal conversational interviews and interview guide approaches⁶ (Mikkelsen 1995: 102-103.) The first type was used when interviewing insiders who felt constrained to give their opinions on the issues subject of the dissertation for various reasons openly (i.e., political retaliation.) The second type was used when interviewing high-ranking policy (and decision) makers, as well as key stakeholders, having as common characteristic to be in the position of answering the questions on the issues matter of the dissertation in a relative open manner. Concurrently, the interviews undertaken were of two types: individual interview and key informant interview⁷ (Mikkelsen 1995: 104-105.)

The interviews were carried on in Spanish during the time of the field visits (August-December 2001 and March-April 2003.) The questions asked were built around the following building blocks: a list of sub-topics and key questions, existing information from reports on the topic, and direct observation. Interviews to individual persons took no longer than one-and-a-half hour. Some interviews were recorded, while most had notes as main output. For further detail, see the Annexes of this dissertation.

The analysis of the interviews was mainly based upon content analysis and discourse analysis. As the focus of this dissertation is a topic, the analysis started with the description of variations in the answers to common questions asked. The main purpose was to recognise processes and linkages in the data while, at the same time, analysing causes, consequences and relationships. Furthermore, conceptualisation and logical presentation of the results of the interviews in the context of the factual findings in the field were the guiding principle to revise and analyse the information. Additionally, content and discourse analysis were also used for the evaluation of primary political and policy sources used in this research, i.e., political discourses, policy documents, and policy statements.

⁶ Following Patton (1990: 288-289), in informal conversational interviews “questions emerge from the immediate context and are asked in the natural course of things.” In the case of the interview guide approach, “topics and issues to be covered are specified in advance, in outline form” and the interviewer “decides sequence and wording of questions in the course of the interview.”

⁷ Following Mikkelsen, individual interviews “are undertaken with an opportunity sample of purposely selected respondents to obtain representative information. If the interviews are part of the exploratory process, the sample should be as differentiated as possible. Interviewing a number of different people on the same topic will quickly reveal a range of opinions, attitudes, and ‘strategies’.” As for key informant interviews, the aim is to “obtain special knowledge. Key informants have special knowledge on a given topic.”

Regarding methods from the field of political sciences, we refer to the methods used in comparative politics for presenting and analysing the Peruvian political system (Kesselman, Krieger and Joseph 2000: 3-25). The levels of analysis refer to political institutions, political culture, and political development. Strong attention is paid to the issue of the democratic idea in developing countries. A typology of political systems is used so that the Peruvian case is put into perspective in relation to other countries and political systems. The characteristics of democracy are used as baseline for describing and assessing the Peruvian political system. Finally, the issues of democratic transition and democratic consolidation as accounted by Linz and Stepan (1996: 7) are used to explain further the challenges posed by the unstable conditions of Peruvian democracy.

Methods coming from the legal discipline were used to analyse the contents of primary legal documents: the Constitution of Peru, general and sector laws, and sector regulations. The method used was the Cartesian method of induction-deduction based on the logical discussion of the tree of problems related to each topic subject to question (Rubio Correa 1989.)

Another complementary tool used was observation in the field, which took place during the field visits carried on by the author of this dissertation in 2001 and 2003. The objectives of the field trips were:

1. To collect written and oral information, valuable and relevant to the objectives of the dissertation.
2. To interview persons and organisations directly and/or indirectly involved in the issues of mining, environment and the Yanacocha conflict in Peru.
3. To visit the site of the Yanacocha conflict in Cajamarca.

The first field trip took place from August to December 2001. The researcher travelled to Lima and Cajamarca. During the visit, the author interviewed key individuals (researchers and stakeholders), visited public and private offices involved in the issues of the dissertation (Ministries, NGOs, CBOs, BUOs, university institutes), and collected primary and secondary sources important for the research (visiting libraries and documentation centres). Moreover, the author carried on a visit to the site of Minera Yanacocha and surrounding rural communities as well (Bambamarca, Chota, Cutervo), and participated in encounters and meetings with *ronderos* and peasants organisations. During this visit, the author met also community leaders and NGO experts in the city of Cajamarca directly involved with the Yanacocha conflict. An expert seminar in Lima gathering lawyers and legal advisors of the most important mining companies operating in Peru was attended as well.

The second field trip took place in March-April 2003. The researcher travelled to Lima. During this visit, the author undertook similar activities to the ones carried on during the first visit and the comparison and analysis of the changing scenarios as first reviewed during the 2001 visit.

The field visits were carried on with the collaboration of two Peruvian non-governmental organisations: Proterra (based on Lima) and INCAAP (based on Cajamarca). These organisations provided material support translated into helping with travel arrangements, co-ordinating interviews with key individuals and organisations, and providing important written and oral information and sources on issues relevant to this dissertation.

1.6. Sources

In this dissertation, the author used primary and secondary sources available mostly in English and Spanish. Additional literature was in German and French. In the case of primary sources, the author used regulations (general and sector), laws (general and sector), official statistics (international, national, sector and regional), official and non-official homepages (government and non-government), interviews (to key individuals, attached or not to organisations), insider information (from stakeholders and national experts), and official reports and documents (from national and sector bodies).

Most sources were available in Spanish and collected in Peru. Moreover, other sources were collected at and from libraries, government and non-government offices, and from the internet (homepages), i.e., The World Bank, UNDP, and UNEP. Furthermore, interviews took place in the offices of the interviewed (Lima and Cajamarca) or during the trip to the Cajamarca region (informal encounters and while visiting places). Exchange of information with experts in Germany working on development and/or mining issues in Peru took place as well (officer at Misereor and researcher on issues of gold in Cajamarca from Freiburg). Additionally, the author attended an expert seminar organised by UPC (Lima) were legal advisers of the most important mining companies operating in Peru (including Minas Buenaventura S.A., Yanacocha Peruvian stakeholder) exposed their viewpoints on legal, environmental, and community issues.

For secondary sources, the author used books, periodicals, reports, and newspapers. Most of this information was available in Spanish and English. Additional sources were in German and French. In Germany, sources were collected at ZEF library (Bonn), IUCN documentation centre (Bonn), the InWent Documentation Centre (formerly DSE) in Bonn, the libraries of the University of Bonn, and the Informationstelle Peru (Freiburg). In Peru, the

sources were collected at and from PUCP library (Lima), the documentation centre of IDEA-PUCP (Lima), Proterra documentation centre (Lima), MYSRL (Cajamarca), SPDA documentation centre (Lima), SNMPE documentation centre (Lima), FEDAPAZ (Lima), Asociacion Civil Labor Ilo (Lima), INCAAP (Cajamarca), CONAM (Lima) Ministerio de Energia y Minas (Lima), Ministerio de Salud (Lima), INEI (Lima), WWF-Peru (Lima), CooperAccion (Lima), CONACAMI (Lima), and OXFAM America Office for South America (Lima). The author made also use of information provided by international NGO campaigns, like FOE, Project Underground, and OXFAM America.

The selection of sources found during the dissertation process was enough for the purposes of this research. However, it must be underlined the abundance of material concentrating in facts as reports, working papers and the like, while academic papers and literature on mining and environment issues in Peru were less available. In such context, this dissertation fills a gap regarding academic publications on environmental policy and mining in developing countries.

1.7. Limitations

The time limit of this dissertation takes into consideration facts and developments, which took place until December 2004. Issues occurred thereafter were not considered for the purposes of this research. In addition, it is important to note the lack of academic literature on the topic produced in Peru, which could have provided a broader analytical approach to the issue of gold mining production from a Peruvian perspective. Experts in the country concentrate mostly on the empirical issues related to the conflicts.

II. THE BUILDING BLOCKS OF ENVIRONMENTAL POLICY

This chapter presents an analysis of the theoretical building blocks that inform the concept of “environmental policy.” In doing so, key definitions will be presented and discussed: “development,” “public policy” (including “stakeholders” and “institutions,”) “participation,” “good governance,” and “sustainable development.” The aim is to analyse the linkages among those definitions to understand the place of “environmental policy” in development. At the same time, this elaboration shows the tensions among the different theoretical approaches and the consequences of the incorporation of sustainable development into public policies.

2.1. Development: From Alternative to Mainstream

Since the adoption of the Millennium Declaration by the UN General Assembly (2000),⁸ the distinction lines between alternative and mainstream development have been gradually blurred. Notwithstanding, those contrasting concepts, and the discussion arising from them, help to understand further both the concept of sustainable development and its related theoretical issues.

2.1.1. Alternative Development and the “Bottom-Up” Approach

The concept of alternative development has been widely discussed since its appearance in the 1970s. The rise of civil society as a collective actor and the call of intellectuals to

⁸ The Millennium Development Goals: Goal 1 targets: halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day, and to halve, between 1990 and 2015, the proportion of people who suffer from hunger. Goal 2 targets to ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. Goal 3 targets to eliminate gender disparity in primary and secondary education preferably by 2005 and to all levels of education no later than 2015. Goal 4 target: reduce by two-thirds, between 1990 and 2015, the under-five mortality rate. Goal 5 target: reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio. Goal 6 targets to halt by 2015, and to have begun to reverse, the spread of HIV/AIDS, and have halted by 2015, and begun to reverse, the incidence of malaria and other major diseases. Goal 7 targets: integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources; halve, by 2015, the proportion of people without sustainable access to safe drinking water. By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers. Goal 8 targets to develop further an open, rule-based, predictable, non-discriminatory trading and financial system; to address the Special Needs of the Least Developed Countries; to address the Special Needs of landlocked countries and small island developing states; deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term; in cooperation with developing countries, to develop and to implement strategies for decent and productive work for youth; in cooperation with pharmaceutical companies, to provide access to affordable, essential drugs in developing countries; and, in cooperation with the private sector, to make available the benefits of new technologies, especially information and communications. Source: UNDP Human Development Report 2004.

rethink the meaning of development are closely related to it.⁹ The origins of “alternative development” can be traced in the “new” social movements of ecology, peace, and woman that arouse from the popular movements of the sixties. At the same time, intellectuals all over the world in successive meetings started to delineate what it would be called later the “Third System Project.”

The landmark meetings that put together those advocating another meaning of development were the Stockholm Conference on the Human Environment (1972) (which led to the establishment of UNEP), and the Cocoyoc (Mexico) seminar on “Patterns of Resource Use, Environment and Development Strategies” (convened in October 1974 at the behest of UNEP and UNCTAD.)¹⁰ Cocoyoc brought together two major strands of the alternative development movement: those who had argued that priority attention should be given to satisfying the “basic needs” of people for food, water, and shelter rather than growth-maximisation, and those who were concerned with the “outer limits” of the planet’s resources and its environment to sustain such growth (Friedmann 1992: 2.)

In 1975, the Swedish Dag Hammarskjöld Foundation published a pamphlet with the provocative title “What now? Another Development,” which further contributed to the discussion. Mainstream models of development and the policies based on them were challenged for failing to address the question of mass poverty and sustainability. Finally, in 1976, many of the participants of the earlier meetings and projects came together to establish IFDA in Nyon, Switzerland, being their principal purpose to launch the so-called Third System Project. In its progress report, “Building Blocks for an Alternative Development Strategy,” the Third System Project took an innovative step by recognising the different scales at which development occurs: local, national, global, and “Third World.” Local space was regarded as the most significant for “people’s creative unfolding” (IFDA 1980: 12.)

Another landmark occurred in 1983, when the UN General Assembly appointed the World Commission on Environment and Development “to propose long-term environmental strategies for achieving sustainable development by the year 2000 and beyond” (WCED 1987: ix.) This time the discussion opened by the publication of the Brundtland Report focused on sustainability, being that environmental issues were achieving the status of a global concern. Thus, alternative development acquired a new edge.

⁹ For a further history and discussion on the origin of the concept, see Friedmann (1992: Chapter 1) and Brohman (1996: 206-208.)

¹⁰ Cocoyoc brought together experts from all parts of the world, including Wassily Leontief, Vladimir Kollontai, Josef Pajestka, Ignacy Sachs, Juan Somavia, Mahbub ul Haq, Enrique Iglesias, Rodolfo Stavenhagen, Maurice Strong, Shigeto Tsuru, and Samir Amin.

As dissatisfaction with the mainstream models became widespread within the development community during the early 1970s, many international and bilateral aid agencies began searching for alternative, more “people-oriented” approaches. Efforts were made to uncouple the direct, exclusive relationship between growth and development to make room in development programmes for other considerations, such as distributional equality and poverty alleviation, basic-needs provisions, and the adoption of appropriate technologies. Programmes promoting decentralised patterns of development were given prominence, and emphasis was shifted to projects directly targeting the poor, especially in rural areas. The consequence was the redefinition of the aims of development towards fostering fairer distributions of income and resources, encouraging local participation, and promoting small-scale projects employing socially and environmentally appropriate technologies. The final aim was to achieve rapid and more appropriate forms of development using the latent energies and creativity of the poor through encouraging “self-help” and participatory decision-making (Brohman 1996: 203-204.)

The concept of alternative development emerged then as a contestation to the mainstream concept of development, which is rooted in unlimited economic growth as the only mean to achieve welfare. This “another development” is concerned with basic needs and endogenous development. The claim is for an alternative development paradigm of equitable, participatory, and sustainable development. In this view, “participation” and “empowerment” are essentially functions of process, not models (Holcombe 1995: 1.) Alternative development is characterised as people-centred, gender-conscious, participatory, bottom-up, decentralising, empowering, democratic-pluralist, and sustainable.¹¹

Alternative development arose from the disillusion of the results of mainstream development in poverty alleviation (Friedmann 1992: 8). Its most important foundations are human rights recognition and moral values. In this sense, social and economic development is not the end, but the means for achieving significant changes in the living conditions of the poor, looking for the self-development of people as human individuals, and enabling them to exercise fully their rights and capabilities as citizens and members of a social community.¹² Alternative development stresses mainly the situation of the marginalised and poor groups of the society.

¹¹ See also Carmen 1996, Hettne 1995, Hobart 1993, Nederveen Pieterse 1996, and Rahman 1993.

¹² See also Lindblom and Woodhouse (1993: 109).

For the application of alternative development principles to current policies, the presence of a strong state¹³ is necessary, as catalyst of the political claims of the different social groups, and as allocator of resources in a country (Friedmann 1992: 35). That means the recognition of the differences and commonalities of the diversity of social groups, and the assumption that their claims are considered as equal as those of the others are. This also implies the existence of a state that is accountable, and capable to act with autonomy while, at the same time, is legitimised and rooted in the community of citizens.

Alternative strategies favour a direct, targeted, approach to alleviate poverty and reducing inequalities, rather than waiting for the “trickle-down” effects of growth to occur (Brohman 1996: 217.) The “bottom-up” element in the alternative development concept refers to the fact that development is to be drawn or shall emerge from the people who are supposed to benefit of the implementation of development. The communities, organised or not, will provide the direction of the “development investment” (understood in a wider context, not only considering financial issues). They know better their own needs, thus providing lines that will help maximise resources in a specific context. That is what participation means in the context of alternative development. Hence, the nexus of alternative development and participation is regarded in the context of the presence of the state and its implementation of policies and mandates. Participation offers the citizens an opportunity to influence decision-making and to empower themselves, while for the state, it is an opportunity to address the demands of its constituents.¹⁴

The process of self-determination and self-help, and the subsequent appropriation of development within the communities is part of what is called “empowerment.” In discussing empowerment, a definition of power is needed. For Lukes, power has three dimensions (Lukes in Stone 1993: 45). The first one is the ability to influence the outcome of specific decisions. The second relates to the ability to influence the agenda,¹⁵ or the menu of choices from which any specific decision is made. The last one refers to the ability to influence consciousness, namely to define core ideas, shape people’s wants and tastes, frame issues, and define the standards of proof for evaluating claims to knowledge. Hence, empowerment

¹³ As understood by Friedmann, the need for a strong state does not mean a call for authoritarian practices, but for a state able to provide all social groups with a space for their claims and, most important, for a solution to them.

¹⁴ So far, it is argued that participation in development originates in alternative development, as stated in the Dag Hammarskjöld report (What now? Another Development, 1975), the Cocoyoc (Mexico) seminar on ‘Patterns on Resource Use, Environment and Development Strategies’ (1974), and the ‘Third System Project’ (Swiss International Foundation for Development Alternatives, 1976.)

¹⁵ On referring to agenda, we agree with Chang (1993: 9) in that the public agenda consists of all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority.

would thus mean the ability to effectively influence policy making at all levels. At its broadest, empowerment can be understood as the expansion of freedom of choice and action (The World Bank 2002b, Malena, Forster, and Singh: 2004: 5.) Ultimately, alternative development cannot be understood without empowerment, and in that regard, it is highly political and ideological. Furthermore, in the context of alternative development, “participation” and “empowerment” are essential to poverty alleviation (Holcombe 1995: 3.)

In addition, alternative strategies regard the local scale as especially important to a broad, human-centred approach to development in which non-material needs and quality-of-life considerations are prominent alongside concerns for material welfare. The local level is most important because it was thought to be the place where personal and societal developments interacted most powerfully. Local participation was another issue that received utmost attention and alternative strategies focused on enhance people’s opportunities to select, design, and manage development projects at the community level. Finally, self-reliance was also included. The concept of self-reliance stressed the need to reduce external dependence by making more effective use of own resources (Brohman 1996: 217-220.)

The link between alternative development and sustainable development is discussed in the context of the concept of sustainability within this chapter. From the perspective of environmental policy, the alternative development concept provides the foundations for participatory, people-centred, gender-conscious, bottom-up, decentralising, empowering, democratic-pluralist, and sustainable policies, which shall be expressed in an institutional and regulatory framework accountable to all citizens.

2.1.2. Mainstream Development and the “Trickle-Down Approach”

Since the early post war period, the central focus of mainstream development strategies has been economic growth and the top-down diffusion of development impulses (Brohman 1996: 201.) Later, mainstream development was understood as the concept of development emerged through the ‘Washington consensus’, meaning with it the economic policies of the international financial institutions based at Bretton Woods, instrumental in introducing structural reform programmes in developing countries in the last thirty years. This is mainly an economic-based concept, understanding development as “growth” and, furthermore, as “economic growth,” as indicator of the advances of a country in the achievement of development goals. Growth is treated mainly as a function of investment with incremental capital-output ratio and desired growth rates. The process of economic growth characteristically is thought to follow a series of ‘stages’ which would ultimately spread benefits to all, thereby

alleviating poverty and inequality. The diffusion of technology and other attributes of modernisation would allow the benefits of development to “trickle-down” to the neediest sectors of society (Brohman 1996: 201.)

“Structural adjustment programmes” were the main tool to implement the mainstream model, which meant the introduction of a series of measures based in the laissez-faire and liberal doctrines of the nineteenth century, revised after the war by schools like Chicago in what was called neo-liberalism. The factors that led to this neoclassical resurgence were, among others (Kay 1993: 692):

- i. The crisis of the welfare state and Keynesianism in developed countries spawning “Thatcherism” in the UK and “Reaganomics” in the USA.
- ii. The failure of self-reliant development strategies and Third World socialism in countries like Tanzania, Mozambique, Kampuchea, Chile, and Nicaragua, as foremost examples.
- iii. The success of the newly industrialising countries (NICs) in South-East Asia, so-called “Asian tigers.”
- iv. The debt crisis and the new vulnerability of many developing countries driving them to accept or submit to the structural adjustment programmes (SAPs) of the World Bank and IMF.
- v. The collapse of ‘real existing socialism’ in Eastern Europe and its countries’ embrace of the neo-liberal message.

The principal provisions were deregulation, the privatisation of government-owned enterprises, elimination and reduction of tariff and non-tariff barriers to overseas imports, measures to promote export production, devaluation of national currencies to cheapen exports, and “getting markets to work properly” by removing subsidies and establishing the “correct” set of relative prices that would permit efficient, long-run growth (Griffin 1989.) All those measures would lead to the desired economic growth of the country and the benefits of it would thus gradually reach the poorest segments of society.

The World Bank stated its primary emphasis as follows (Michalopolous 1987: 39): mobilisation of domestic resources through fiscal, monetary, and credit policies (including interest rates); improving efficiency of allocation and resource use in the public sector (including rationalisation and divestiture of public enterprises); trade regime reforms; other pricing reforms; and, “institutional reforms supportive of adjustment with growth.”

Helleiner (1992: 39-40) interprets the Bank approach in a two-fold fashion. In terms of short run policies, the concept translates into monetary and fiscal orthodoxy, appropriate real exchange rates, positive real interest rates, and liberal approaches on external account. In terms of a long-run development strategy, the Bank urges: export expansion and eventual

overall outward orientation, in the capital as well as current account; the liberalisation of import barriers and an approach toward unified import incentives; and maximum reliance upon markets rather than government ownership or direction in the domestic economy. Overall, the prime emphasis is on price incentives and “getting the prices right,” and the underlying presumption is that in a world of pervasive imperfections, markets can normally be trusted to achieve that objective better than governments.

In this context, the “trickle-down” element draws, in the first place, from the directions made by governments through their officials: a top-down decision-making process. Those directions will provide the basis for every decision, not necessarily taking into account the communities concerns and needs. At the same time, the approach draws from the economic growth of the country, assuming that capital accumulation will improve the situation of the poor, in the mid and long terms. It is discussed neither where this accumulation takes place nor who owns it. Eventually, those riches will “pour down” into society (the trickle-down effect) benefiting the whole. Therefore, disparities in income distribution are not considered. The priority is to achieve economic growth not equality.

Development, in the mainstream approach, is viewed as a top-down process in which important decision-making is controlled by major international institutions in cooperation with local Third World elites. From the outside, international and national ‘experts’ (technocrats) conceived and designed development projects. The people to whom these projects are addressed exist mainly in the abstract as socioeconomic indicators. Popular participation is restricted to organised meetings in which outside experts “brief” local people about the objectives and activities of the projects (Brohman 1996: 202.) While, no development strategy explicitly aims for non-egalitarian development, mainstream strategies have implicitly assumed that inequalities, in both socioeconomic and regional terms, are a necessary price for growth.

The mainstream concept of development has been the motor of projects and programmes implemented by governments around the world during decades and, it continues to be the main force in poverty alleviation and economic policies. Issues of participation and gender are included only within a controlled set up. Issues of empowerment are still not fully considered at the level of national policies, albeit being worked at the level of projects. Communities are still seen as recipients and collaborators rather than partners in development, on an equal standing.

Development, in its mainstream concept, could only be achieved through market economy policies, which should reflect their overall results in the macroeconomic numbers of a country. From this point of view, privatisation, open markets, and a small state are a requisite for development and, at the same time, the power forces to achieve development. Neverthe-

less, by 1992, neo-liberalism has reached its zenith, as the end of the Cold War did not mean the end of the development problems of the world system, the periphery, and the poor. As stated by Helleiner (1992) and Kay (1993: 692,) structural adjustment as a tool had in its inner some paradoxes that lately led the promoting agencies (e.g. IMF, World Bank) to rethink their strategies, which meant adapting the concept of development in including elements of alternative strategies. Those paradoxes were:

- i. While SAPs proclaimed to curtail the role of the state drastically, their successful implementation required an even greater state intervention to carry out the reforms and to quell any social protest these might provoke. Furthermore, with SAPs, the intervention of the international financial institutions into national affairs heightened through the conditions countries should fulfil in order to be certified and be eligible to SAPs.
- ii. Structural changes entailed drastically rolling back the state by radically reducing government expenditure (especially in welfare,) privatising state enterprises, eliminating subsidies and protectionism, and liberalising markets, as well as switching from inward-oriented to outward-oriented development strategies. This call for structural change mirrors the call of the original “world-system” “structuralists” (like Wallerstein)¹⁶ although they meant a different thing when recognising the importance of structural factors in development.

The political side of development, including issues of democracy, good governance, and accountability, started to be gradually included during the nineties. However, there was a previous attempt, during the seventies, to incorporate elements of “another development” into the mainstream strategies. An important landmark for mainstream development and its gradual incorporation of elements of alternative development was, in 1973, the presidential address of Robert McNamara to the World Bank annual meeting when he expressed the view that the mainstream development strategies of the 1950s and 1960s had made an unacceptably small impact on Third World poverty and inequalities. Under the direction of Hollis Chernery (1974,) the World Bank Development Research Centre began to adopt a new development approach called “redistribution with growth.” Redistribution and growth were treated as complementary rather than contradictory elements of development. Sustainable growth would require redistributive policies and targeted programmes for the poor during the initial stages of development, instead of relying on trickle-down mechanisms for spreading the benefits of growth. Priority was given to employment creation and basic-needs provisions rather than economic growth *per se*. To maximise job creation, emphasis was placed on small and medium agriculture and the informal sector (Brohman 1996: 204.) Albeit those new emphases,

¹⁶ For an overview of the world-system perspective, see Shannon (1989.)

redistribution with growth did not mean a break with the mainstream development model but rather a modification of it. Additionally, it has to be underlined that this new accent only was actively promoted during the McNamara period at the World Bank. Afterwards, the mainstream model based in neo-liberal economic policies was retaken in full.

At the same time than the World Bank's "redistribution with growth" approach, ILO adopted the so-called "basic-needs approach." The concept was formally placed on the international development agenda at a 1976 ILO World Employment Conference in which the participants adopted a "Declaration of Principles and Program of Action for a Basic Needs Strategy of Development." As elaborated by ILO, the basic-needs concept put equal emphasis on growth and redistribution. Albeit it focused on the needs of the poor, it was not opposed to rapid growth in the modern sector and it sought to strike a more balanced approach to development. Basic needs were defined as minimum requirements of private consumption (e.g., food, shelter, clothing); essential services of collective consumption (e.g., electricity, water, sanitation, health care, education, public transport); participation of people in decisions affecting their lives; satisfaction of basic needs within a broader framework of basic human rights, and employment as both a means and an end (Brohman 1996: 205.) The ILO's version of basic needs concentrated on harnessing local resources and providing the poor with the means to fulfil their development potential. It also acknowledged the need for structural (internal) change in the development patterns of developing countries to meet the basic needs of the poor.

The process of international conferences promoted by the UN during the nineties (Rio, Vienna, Cairo, Beijing) has led to the mainstreaming of certain elements of the alternative development concept (i.e., human rights, gender, participation, empowerment, sustainability, decentralisation.) Furthermore, the Millennium Development Goals and the recent spread of the rights-based approach¹⁷ have reinforced the inclusion of issues of empowerment and participation within the mainstream, which are now taken for granted, as part of its discourse. Therefore, it can be said that an adaptation or incorporation into a reshaped mainstream development concept and strategies has taken place during the last years. This standpoint is reflected in the numerous policy documents published by international organisations and inter-

¹⁷ Rights-based approaches to development draw from notions of citizen's and information rights, enshrined in constitutions, and the broader set of human rights. To monitor and protect those rights are aims of development because the fulfilment of the rights to access to information, food, housing, social security, education, freedom of association and speech, among others, would mean the fulfilment of the objectives of development.

national financial institutions during the nineties (i.e. World Bank World Development Reports, UNDP Human Development reports, etc.)¹⁸

2.2. Public Policy: The Role of Stakeholders vs. the Role of Institutions

As the core of this dissertation is based on the regulatory and institutional framework pertinent to environmental policy, stakeholders and institutions analysis was selected as backbone element to approach that framework. In the analysis of stakeholders and institutions, a most relevant issue is the interactions and interconnections between them. Those bindings provide the playing field or ‘action arena’ for the design and implementation of public policy, including environmental policy. It is through stakeholders within the government that any reform process will be mediated (The World Bank 2001: 1.)

Stakeholders and institutions are embedded in what is called ‘public sector management.’ That is the capacity of the public sector to perform its functions. It comprises the structures and agencies, processes and organisational links, individuals and incentive structures, culture and orientation used by the public sector to perform its tasks (Holmes and Krishna 1996: 29.) Public sector management has as by-products policy development and implementation. The work of the public sector is made up by a ‘policy cycle’, which goes from policy formulation and evaluation to sector plans to programs and projects (Holmes and Krishna 1996: 30.)

2.2.1. Stakeholders

In entering the conceptual discussion related to stakeholders, it is necessary to discuss some other concepts closely related. On the concept of elite, the author refers to the discussion pointed out by Lindblom and Woodhouse (1993: 84), who include in it, members of interest groups along with high-level governmental officials and business executives. Elite would refer to groups that are small, in relation to the whole citizenry and that exercise greatly disproportionate political influence. Elite policymaking often runs parallel to corporatist policy making.

Following Grindle and Thomas (1991: 59 and 195), policy elites are political and bureaucratic officials who have decision-making responsibilities in government and whose decisions become authoritative for society. The term is interchangeably with “decision makers,”

¹⁸ See Synopsis of the World Development Reports from 1995 to 2005, www.worldbank.org.

“policy makers,” and “policy planners.” Their nature falls into a grey area, being neither purely rent-seekers nor solely dedicated to the achievement of state interests. Policy elites often articulate goals for their societies and for the activities of the state and strategize about how change can be introduced (Grindle and Thomas 1991: 5.)

In defining interest groups, the author refers to Lindblom and Woodhouse (1993: 75.) Following them, the author agrees in that a more accurate definition can be drawn from the activities those groups develop, rather than from their characteristics, are those are too heterogeneous to find commonalties in a general way. Therefore, “interest-group activities are interactions through which individuals and private groups not holding government authority seek to influence policy, together with those policy-influencing interactions of government officials that go well beyond the direct use of their authority.”

To understand the role of interest groups in policymaking, it is necessary to distinguish between pluralist and corporatist systems of representation. This differentiation is based on the dichotomy between groups that serve their members versus groups that serve the state. It will be possible thus to locate those groups into their place in policy making in a specific context. It is necessary to warn that there are no “pure types” of systems of representation. It is actually possible to find both pluralist and corporatist systems up to different degrees in a representative democracy system. The old distinction, in the sense that pluralism was a characteristic *per se* of democracy and corporatism of authoritarian regimes is not applicable anymore. In fact, grey areas are found in a democratic system more often. Bianchi (2001: 4) defines pluralist groups as “spontaneous creations of their leaders and members – they come into being without the need for prior approval from the government.” In turn, corporatist groups are “public bodies that are created by statute, supervised by a parent ministry, and financed with state funds.”

Having said this, stakeholders are defined as those affected by the outcome (negative or positive), or those who can affect the outcome of a proposed intervention (World Bank 1996: 125). Both, the internal stakeholders (within the organs of the public sector) and the external ones (who in theory own the public sector but are on the outside) are sides of the same token. In how far stakeholders, specially the external, can be equated to civil society will depend from the starting point of the analysis of what is civil society.

Following Uphoff (1995): civil society includes mainly voluntary and self-help oriented people’s associations and membership organisations, but not NGOs, as these do not have a constituency and are accountable only to themselves and their donors, not to the people. Conversely, CBOs are part of civil society because these are based on the community and are people’s-owned organisations. Therefore, problems emerge when civil society is depicted

as mainly NGOs, which is not necessarily the case. Some NGOs might be part of civil society when they share CBOs or grassroots organisations characteristics, but, in most cases (as it occurs in Latin America,) such is not the case. In that regard, it is not possible to equate civil society to stakeholders, even not to the external ones.

Wils (1998) defines NGOs as “non-governmental private non-profit organisations in third world countries staffed by (semi) professionals who are full-time engaged in the design, implementation of development projects, programs, and policies with and for the poor.” In this definition, NGOs are differentiated from welfare- and relief-providing organisations, governmental institutions, profit-oriented consultancies and enterprises, and parties in the South, as well as organisations in the North. Furthermore, Wils separates NGOs from social movements (power seeking, often single-interest, movements with hardly any organisation), civic associations (business), and voluntary organisations (more political-oriented pressure groups). Whereas it can be agreed to the separation of the last two, it can be questioned if all kinds of social movements should be excluded.¹⁹

Thomas Carroll’s framework of intermediary NGOs (1992) is also useful to analyse why not all NGOs are part of civil society. He distinguishes between grassroots-support organisations (GSOs) and membership-support organisations (MSOs).²⁰ Both are civic developmental entities providing services-allied support to the disadvantaged at the local level. They build links between the latter and the often-remote levels of government, donors, and financial institutions and such entities provide services to other organisations that support the poor or do co-ordination or networking activities. Whereas GSOs formulate their own priorities and are accountable mainly to donors and national laws and regulations, MSOs, in principle, represent and are accountable to their membership groups and organisations.

Whereas GSOs coincide with Wils definition, MSOs do not. For instance, umbrella-organisations of peasant co-operatives or associations of self-employed home-workers could be defined as NGOs if they undertake similar activities to GSOs. In addition, some popular movements²¹, being membership support organisations of grassroots groups, like the

¹⁹ See also Korten (1990) framework for NGOs where second-generation NGOs match with Wils definition. A critique of the framework is based on several cases where NGOs are part of two generations. However, the differentiation of the four generations gives a good framework for analysis, because it shows the heterogeneity of approaches of NGOs. In Tandon’s (CIDA 1989) framework, NGOs would be empowerment NGOs, and support NGOs.

²⁰ Tandon (1987) defines intermediary NGOs in the sense of Carrolls’ GSO, not including however MSOs.

²¹ Popular movements are to be distinguished from social and new movements as far as they include organisations in non-economic issues. “The term popular is commonly used to represent a range of economically marginalized, politically disenfranchised, and culturally threatened groups, including many indigenous populations, informal sector members, landless and land-poor peasants, and the under- and unemployed” (Stephen 1992 quoted in Brohman 1996:258).

movimento sem terra (MST) in Brazil, offer similar services to their members like GSOs (reaching from awareness raising and education, via skills training courses to credit and sales support programs). Pearce (1996) criticises Carroll's definition of MSOs as too broad. Carroll does not define the kind of services to be supplied to the members and the definition of the target group as the 'disadvantaged at the local level' is too general as it is not limited to the poor. Consequently, typical labour unions fit into his definition of MSOs as well. Pearce divides between popular and social movements on the one side and intermediary NGOs on the other. This can also be discussed as popular movements, in the Latin American context, are much bigger than NGOs, but some Asian NGOs, like BRAC and the Grameen Bank, have enormous size as well, sometimes comparable with the numbers of popular movements.

Another helpful distinction to deepen into the concept of NGO is the one between operational ("technocratic") NGOs and advocacy NGOs. Operational NGOs are primarily engaged in designing and implementing projects, whereas advocacy NGOs mainly defend or promote a specific cause (The World Bank 1996.) Some NGOs do both lines of activities. Following this definition, advocacy NGOs are considered part of civil society more than operational NGOs, although the hybrid character of many of them may lead to confusion. Hence, the constituency factor is important to consider an NGO as part of civil society or not.

In the context of this dissertation, NGOs as part of civil society will be considered in the context of the definition given by Wils, being empowering or supportive-intermediary GSOs, but supplemented by MSOs, which focus on a development-oriented support of their member groups and organisations consisting of poor people.

The relation between internal and external stakeholders is dynamic. In it, neither technical expertise is the exclusive ground of internal stakeholders, nor do they renounce to any role in decision-making (Holmes and Krishna 1996: 31). Internal stakeholders, as public representatives, not only provide information, but also act as negotiators, assessing the feasibility of citizen inputs (Tolentino 1995: 141.) The degree of interaction and positive results will depend on an enabling environment, combined with a firm political will. The impact of the interaction will depend on the effectiveness of the public sector in managing the process, provided that institutional mechanisms are set up to improve the willingness and capacity of the different social groups (Holmes and Krishna 1996: 34-35). In the case of developing countries, external stakeholders neither have the same access to power, nor represent a homogeneous set of interests. This fact gives internal stakeholders the opportunity to play power games to weaken external stakeholders' claims before governmental bodies.

The main role of the stakeholders is as mediators and advocates. Groups of stakeholders, both within and outside the government, mediate and advocate access to resources

and power and produce forms of stratification and obstacles to empowerment (The World Bank 2001: 1.) It is at this level of practice that stakeholders are targets of lobby from inside and outside institutions. This process is inevitable and irreversible.

It is necessary to emphasize that in whatever role they find themselves, stakeholders have both a room for manoeuvre and a set of choices available.²² In how far those factors may extend or not, it will be conditioned by the stakeholders' actions and societal factors surrounding public issues.

Environmental policies, in terms of stakeholders, mean the array of actors who have a stake in a specific environmental problem, conflict, or situation. Those include government agencies in charge of environmental affairs and private bodies and individuals participating in activities affecting the environment (i.e., NGOs, CBOs, business-umbrella organisations, trade unions, etc.)

2.2.2. Institutions

On referring to institutions, it is necessary to take into account the difficulties involved in studying, identifying, measuring, and even defining them, as mentioned by Ostrom (1999: 36.) The definition of institutions is contested in the social sciences. Under neo-liberal theorists, institutions are regarded as structures for addressing collective actions problems. Institutions have therefore a broader definition than that of simple organisations, embedded in regime theory. On the other side, theorists of constructivism have a broader concept as they align norms with institutions, viewing them from the perspective of institutions as normative context themselves (Reich 2003: 11.) Notwithstanding, constructivists also have a narrower definition when they apply their concept to the study of international organisations in the context of international relations (a concept narrower than in the case of regimes). In this last view, international organisations are seen as autonomous and authoritative bodies generating norms, not as embodying norms themselves (Reich 2003: 12-13.)

Following the approach of the institutional analysis and development framework, the term "institution" can refer to many different types of entities, including organisations, but it is used mainly meaning the rules used to structure patterns of interaction within and across organizations. On the other side, albeit institutions are supposedly visible as public bodies that can be physically located, they are indeed invisible.

²² Both elements conform what Grindle and Thomas call "policy space." A policy space consists of the range of options that could be introduced without major adverse consequences for policy makers, the regime, or the reform itself (Grindle and Thomas 1991: 8.)

In understanding institutions as the ‘rules, norms, and strategies adopted by individuals operating within or across organisations’ (Ostrom 1999: 37), the following should be defined. In the context of the institutional analysis and development framework, rules are defined as ‘shared prescriptions mutually understood and predictably enforced in particular situations by agents responsible for monitoring conduct and for imposing sanctions.’ Norms are ‘shared prescriptions that tend to be enforced by the participants themselves through internally and externally imposed costs and inducements’. Strategies are meant as ‘the regularised plans that individuals make within the structure of incentives produced by rules, norms, and expectations of the likely behaviour of others in a situation affected by relevant physical and material conditions.’

Moreover, institutions can be perceived as invisible in being shared concepts, existing in the minds of the participants and, very often, considered implicit knowledge (rather than an explicit and written form.) Even in their simplest expressions, institutions are used to allocate resources to participants according to rules devised in tough bargaining situations over time.

Environmental policy, in relation to institutions, refers to the structures that form organisations and bodies, and to the environmental rules, norms, and strategies operating within or across organisations.

2.3. Participation and Good Governance

These concepts are closely related to the theoretical issues surrounding the discussion on sustainable development, being considered conditions for its achievement. Moreover, these are considered inherent to the concept of democracy and thus inseparable for the achievement of development goals.

2.3.1. Participation

The terms ‘participation’, ‘participatory approaches’, ‘public participation’, ‘citizen participation’ and ‘popular participation’ are used to refer to the same phenomena: namely, the integration of the constituents into all or some stages of the policy making cycle (problem identification, decision, administration, design, management, implementation). It is not meant here the term “participatory democracy,” as used to refer to the election of political authorities via universal vote at all levels. However, public participation cannot occur outside of a democratic context.

In that line, participation in democracy shall occur at two levels: a political and an economical one. Fowler (1992: 2) considers that participation in democracy at the political level requires a fundamental condition: that 'the people' who comprise the polity are able to control those who rule, or otherwise exercise authority, in their name. Concurrently, participation in democracy at the economic level refers to the fair distribution of economic power through broad participation in the control of productive assets (understood as access to markets open for all, e.g. self-help groups) and the exercise of collective bargaining power (Korten 1990.) Both sides of participation in democracy will lead to empowerment.

Przeworski (1991: 11) expresses the idea of democracy as multiple political forces competing inside an institutional framework. Hence, democracy represents a standoff or equilibrium among political contenders for power, in which no specific group can gain sufficient strength to control the outcomes alone.

Robert Dahl's model of democracy is taken as a basis by alternative development advocates to establish the concept of "inclusive democracy" closely linked to the aforementioned "participation in democracy." Dahl (1971: 3 and 1990: 221) sets three fundamental dimensions of democracy: the existence of freedom, political competition (public contestation), and political participation (inclusiveness.) In addition, Dahl's concept of "polyarchy" helps establishing the criteria for classifying countries in transition from less democratic to more democratic systems. In the case of the latter, more participation should normally occur.

Following this line, Friedmann (1992: 74-76) argues that inclusive democracy is understood to rest on the legitimate powers of an actualised citizenship or of responsible membership in a politically constituted community. Democracy, in his vision, implies that the people organised into political communities are the ultimate source of sovereign power over their life spaces, which, in the modern era, constitute precisely bounded territories. As the "executive organ" of the political community, the state is sovereign over its territory only by extension of the people's sovereignty. The state is accountable to the community for all its actions. Political community refers to a virtual power that becomes an actual one only when it struggles over and articulates particular claims (i.e., inequality, poverty, discrimination.) In this perspective, political power is seen as a form of collective self-empowerment that, when exercised by the poorest, might ultimately contribute in the fight against poverty. The political claims for an inclusive democracy, in Friedmann's view, focus on three interrelated struggles: strengthening the meaning and reality of the political community; devolving effective state power to regional and local levels of governance; and increasing the political community's autonomy over its life space. It is in this space where the concepts of alternative development, participation, empowerment, and democracy come together.

Concurrently, from the point of view of the state, for a political system to qualify as democratic, a country must have the following characteristics (Kesselman, Krieger, and Joseph 2000: 16-17): political accountability,²³ political competition,²⁴ political freedom,²⁵ and political equality.²⁶ In this scheme, the issue of poverty affects the democratic system from the outside and it is to be tackled through distributional politics (i.e., distribution of taxes, government economic priorities, government spending on social programmes) in a manner that best suits the material interests of the social groups who support a specific government. Hence, the state might enable the political community to participate when putting those distributional politics in practice. Simultaneously, the political community struggles before the state over a particular claim, as mentioned by Friedmann. The dynamic interface between the state and the political community is the background of every discussion of participation in democracy, and therefore, in development.

In the last years, a growing interest on incorporating participatory approaches into development policies has been noticeable. Some of the reasons pointed out have been²⁷ that participation is no longer perceived as a threat by governments. Participation has become an instrument for legitimisation, providing policies with long-run stability. Additionally, participation is considered a politically attractive slogan.

Participation is also regarded as economically attractive, to the extent that the poor become a reliable partner in assistance programs, consequently giving stronger basis for positive outcomes. Therefore, government and development agencies are able to use participation as a tool for ensuring good performance. In the same line, participation is perceived as an instrument of greater effectiveness, as well as a new source of investment, in the sense that it brings proximity among the actors in development, i.e. government, intermediary organisations, and civil society. That gives basis for stronger links between projects and peoples. Finally, participation is becoming a good fundraising device for both government and non-government

²³ “Formal procedures by which those who hold political power are chosen and held accountable to the people of the country. Usually, the main tool for accountability is regular, free, and fair elections in which the voters elect candidates for office.”

²⁴ “Political parties must be free to organise, present candidates for office, express their ideas, and compete in fair elections. The winning party must be allowed to take office, and the losing party must relinquish power through legal and peaceful means.”

²⁵ “All citizens must possess political rights and civil liberties. These include the right to participate in the political process, freedom of assembly, organisation and political expression (including the right to criticise the government), and protection against arbitrary state intrusion into citizens’ private lives. A judiciary not subject to direct political control is a common institutional means for safeguarding these freedoms.”

²⁶ “All citizens must be legally entitled to participate in politics (by voting, running for office, or joining an interest group), and their votes must have equal weight in the political process. Members of political, ethnic, or other minority groups must have equal rights as citizens.”

²⁷ For a further discussion on the reasons for incorporating participation in development, see Rahnema (1990: 202-204 and 1993: 117-121).

agencies, as the inclusion of such approach in their projects brings credibility. Added to the fact that, communities contribute with money and work. Meanwhile, the concept of participation serves private sectors (i.e. consulting agencies and corporations) in their latest drive toward the privatisation of development.

There is still much controversy on the concept of participation. Nevertheless, what it is clear at present is that it involves an assumption: it is legitimised by the reference to a 'good' cause. It seems that participation can be only considered meaningful if it serves causes that are justifiable on moral, humanitarian, social, and economic grounds (Rahnema 1990: 203). In our opinion, this also gives space for an ideological use of the concept as to discuss on moral assertions when talking development is thoroughly difficult.

Participation can be understood in two ways. A first level focuses the concept on issues of communication, access, basic needs, and decentralisation (Rahnema 1990: 204). A second level links participation to power: a process through which stakeholders influence and share control over development initiatives and the decisions and resources affecting them (Rahnema 1990: 204, World Bank 1996: 3.) While, ultimately, the allocation of values and resources is an essential function of the state and it underlies its most important decisions, the participation process can be a powerful instrument for redistribution. Participation is thus a condition to empowerment.

Hence, participation can be a learning process for empowering citizens. It changes their position from one of no or small influence to another of control of the different elements of the development process (World Bank 1996: 167), especially at the local level. Participation is seen as the most relevant way of involving people in activities affecting 'their development', and a guarantee that decisions concerning their lives would be taken in their best interest (Rahnema 1990: 209).²⁸

Participation, as a process, would fit more in the 'means' rather than in the 'end' label. In an alternative development perspective, participation must be empowering. Nevertheless, in the context of alternative development, participation is also regarded as an end in itself. This latter perspective is probably closer to the holistic approach of alternative development, though it is also most difficult to accomplish, as it implies changes not only in practices, but also in ideologies. Thus, participation is a means and an end for alternative development. As a mean, it can be grounded to a practical level. As an end, it can provide for a comprehensive philosophy and view of development. The way in which it can be used will widely depend on the state's political will, and the citizen's claims and capacity.

²⁸ This issue is linked closely with the concept of alternative development, previously discussed.

As a learning process, participation has a broader sense, giving the citizenship the opportunity to gain power. We must not confuse the latter sense, as in with the participatory appraisal model, which seeks to empower the poor based on the intervention of a third, coming from the “intellectual” or “formal” world. We disagree with that position and we emphasise the need of a critical standpoint on conceptualising participation as an intervention coming from the outside. We do think that the interaction between government and citizens implies the linkage of different worlds, which have risks, as co-optation. On the other hand, we consider that no ‘enlightened’ outsider can arrogate a monopoly in bringing awareness to people. Participation must be understood in the context of an internal and collective process, which brings people self-consciousness of their own strengths.²⁹

Popular participation is mainly concerned with involving, informing, and consulting the public in planning, management, and other decision-making activities, which are part of the political process. It assures that due consideration will be given to public values when decisions are made, providing the existence of available and adequate information (Tolentino 1995: 141.) The participation process can measure the intensity of political preferences. Additionally, from an economic standpoint, it can play a more important role in the valuation of externalities. It can identify cases of distributive injustices, provide values for non-priced benefits and costs, and bring new ideas and expertise into the decision process (Hyde 1985: 130-131), particularly, if the community is educated, informed, and organised.

Furthermore, participation in decision-making, implementation, and evaluation can be seen as a dimension of institutional capacity building. The latter also contains the identification and promotion of community needs, problems, and priorities; and, the monitoring and evaluation of the social and political trends and tendencies (de Coning and Fick 1995: 28). Participatory approaches can give estimable inputs to such capacity.

Additionally, public involvement can contribute to the creation of a more informed policy, providing a normative justification for governance. Other outcomes can be the fostering of social, psychological, and political empowerment; and, a more effective and efficient use of public agencies’ investment (Samuel 1996: 38, Steelman and Ascher 1997: 73.)

Participation is necessary for accountability, as it is one of the very few approaches, which helps to integrate citizens’ concerns in the elaboration of policies. It does not give solutions to all conflict situations, but it does give a space for the expression of social groups, which normally are not able to do so. In how far planned participation serves freedom, self-discovery, or creative action can only be possible to determine in a case-by-case analysis.

²⁹ On a discussion of participatory approaches from the perspective of PAR theorists, see Wignaraja (1992: 393). For a critical review of PAR, see Rahnema (1993: 123-125).

Some theorists, however, consider that that kind of participation would only serve its living source.³⁰

Ultimately, participation cannot be regarded as a panacea for all development problems. Solutions for long-time non-tackled poverty issues cannot be solved with mere symbolic open space for expression. Participation can only become empowerment if it brings respect for the multiple expressions of culture, ethnicity, race, and gender, which crosscut every level of the relation between people and governments. As it will be further analysed in this dissertation, participation is deemed essential to sustainable development.

2.3.2. Good Governance

In discussing good governance, attention should be paid to the concepts of governance in the background and the stress that those concepts put either on the outcomes of or on the causes or fundamentals of governance. Following Keefer (2004: 3,) it can be said that the definitions found in the literature tend to encompass either one or two of those aspects. Outcomes are expressed in the extent to which governments are responsive to citizens and provide them with certain core services, such as secure property rights and, more generally, the rule of law. Causes or fundamentals are expressed in the extent to which the institutions and processes of government give decision makers an incentive to be responsive to citizens.

The Institute on Governance (Canada) defines governance as “the traditions, institutions, and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern” (IOG 2004.) This definition falls into the category of causes or fundamentals.

For the OECD (2004,) governance relates to “institutions, policy making, and participation of civil society.” This definition straddles the outcome and institutional aspects. Following this, for the OECD good governance is established when public institutions act efficiently, providing an enabling environment for economic growth and development. Moreover, good governance requires the improvement of accountability and transparency of public sector agencies, concomitant with an effective fight against corruption.

The Ford Foundation views governance as the extent to which government institutions are “transparent, accountable, responsible and guided by the rule of law and dedicated to reducing inequality” (Ford Foundation 2004.) Here, again, another definition that focuses on the outcomes of governance.

³⁰ Rahnema 1990: 222.

UNDP refers to “democratic governance,” but its description of its goals implies that governance is the responsiveness of state institutions and processes to the needs of ordinary citizens (UNDP 2004.) The definition focuses on the outcomes.

IMF views good governance as encompassing (but not necessarily exclusive to) the rule of law, the efficiency and accountability of the public sector, and corruption (IMF 2004.)

The World Bank links governance intrinsically to public sector reform, characterising governance and public sector reform jointly as focused on “building efficient and accountable public sector institutions.” Governance, then, is the extent to which public sector institutions are accountable and capable of sustainable development. The emphasis, however, is on implementation or on administrative agencies of government rather than on the incentives of the political actors who sit atop them (The World Bank 2004.)

For the World Bank, there are three aspects inherent to governance:

- i. The form of the political regime.
- ii. The process by which authority is exercised in the management of a country’s economic and social resources for development.
- iii. The capacity of governments to design, formulate and implement policies and discharge functions.

The World Bank concept of good governance refers to a ‘public service that is efficient, a judicial system that is reliable and an administration that is accountable’ (Tolentino 1995: 137, Holtz: 2005.)

The elements described in the aforementioned definition can be deconstructed as follows. Referring to the efficiency of public services, very often, developing countries do not count with the appropriate means to monitor and evaluate their own activities, at the level of public services. The general impression is that efficiency as determined by policy makers does not necessarily match with citizens’ expectations. From the outset, it can be said that, the wider the gap between those two levels, the less efficient public service is, because, at the end, citizens are the sole and main recipients of public service.

To evaluate the reliability of the judicial system poses problems again at the level of the perceptions of the recipients of the judiciary services, on the first place. From an economic point of view, it would be enough if the judicial system is an appropriate support to the transactions in the economy, and it does not generate costs or delays for their achievement. This, without taking into account the kind of justice practiced, e.g. the groups of society benefiting from it and the advantages the status quo brings to them. However, very often when citizens consider that the purposes of justice are not being achieved, the judicial system as a whole is put into question and parallel forms of justice develop. Thus, a parallel system of justice,

which in most cases passes inadvertently, can be considered a symptom of an unreliable judiciary. In how far that system is used and extended can show us the depth of the problem at the level of the formal judicial system.

For the EC (1998: 7) governance describes the exercise of political, economic, and administrative power in the management of public affairs. In 1998, the EC defined “good governance” shortly as implying managing public affairs in a transparent, accountable, participative, and equitable manner showing due regard for human rights and the rule of law. Further, it encompasses every aspect of the State’s dealings with civil society, its role in establishing a climate conducive to economic and social development and its responsibility for the equitable division of resources. A larger definition of good governance refers to transparent and accountable management of all of a country’s resources³¹ for its equitable and sustainable economic and social development. Therefore, good governance implies the existence of competent and effective institutions respecting democratic principles and it extends the aims of democratisation into the sphere of resource management.

The EC dissects the concept of “good governance” in four related and complementary aspects overlapping with democratic principles (1998: 8):

- i. Equity and the primacy of law in the management and allocation of resources call for an independent and accessible judicial system that guarantees all citizens basic access to resources by recognising their right to act against inequalities. In the specific context of governance, this involves establishing a legal and regulatory framework that encourages private enterprise and investment.
- ii. The institutional capacity to manage a country’s resources effectively in the interests of economic and social development implies an ability to draft, implement, and supervise policies addressing the needs of the people. The government and civil society must be able to implement an equitable development model and guarantee the judicious use of all resources in the public interest. Building public and private institutional capacities is vital because it directly determines economic and social development, and especially the effectiveness of development co-operation.
- iii. Transparency, which entails being accountable and organising effective procedures and systems for monitoring the management and allocation of resources, implies that resource management is open to scrutiny and subject to controls. It is both a key factor in establishing trust between the various agents of development and a guarantee of institutional integrity.

³¹ The resources of a country, according to the EC, include human resources (knowledge, know how, and skills), natural resources, and internal and external economic and financial resources, including development aid.

iv. Public participation in the decision-making processes concerning the management and allocation of resources. Development without the participation of civil society is inconceivable. Participation calls for the various agents of development to exchange views on major decisions relating to the management and allocation of resources and development programming. This dimension also concerns the scope given to private initiative, enterprise, and civil society in development.

The EC, in its negotiations with the group of countries members of the Lome Agreement (ACP states,) introduced the definition of good governance in Article 5 of the revised fourth Lome Convention (1995) as an objective of cooperation for equitable and sustainable development. Further, in the EU-ACP Cotonou Agreement (2000), Article 9, Num 3, expands such definition as “the transparent and accountable management of human, natural, economic, and financial resources for the purposes of equitable and sustainable development.”³²

In 2002, the EC further polished the definition of good governance setting criteria as goals to be fulfilled by democratic states continuously. This is considered the basis for EU support to less developed countries. Countries shall respect human rights; enforce legal claims and facilitate effective access to judicial and administrative proceedings; provide access to information and protect the freedom of the press; be transparent, open, and accountable; respond adequately to civil society participation in decision-making processes, and mobilise effectively against corruption and terrorism (EC 2002.)

In the case of Peru, attention should be paid to efforts by the *Defensoria del Pueblo* (Peruvian Ombudsman) to elaborate an index of good governance for regional governments. The indicators used in the study reflect the approach to governance from the side of outcomes rather than causes.³³

Accountability

In the context of good governance, it is important to discuss the associated concept of accountability. The World's Bank policy discourse has included it for some time now. The 2001 World Development Report and the World Bank's empowerment framework recognise accountability as an integral component of “empowerment and hence poverty reduction” (The World Bank 2001c and 2002b.) The need for strengthening accountability relationships between policy makers, service providers, and clients is at the core of the 2004 World Development Report's argument for “making services work for the poor” (The World Bank 2004a.) In

³² See: europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf

³³ See: Peruvian Ombudsman website, www.ombudsman.gob.pe

addition, accountability of institutions is one of the three conceptual pillars of the emerging Social Development Strategy of the World Bank (The World Bank 2004b.)

Samuel (1996: 37) defines accountability as ‘to hold individuals and organisations responsible for their performance, which is measured as objectively as possible.’ It must be said that both, the objectivity of the measurement and, the meaning of performance cause the most problems to analysts and policy makers. Another definition stresses in the obligation of power-holders³⁴ to account for or take responsibility for their actions (Malena, Forster, and Singh 2004: 2.) Moreover, accountability is a consequence of the implicit “social compact” between citizens and their delegated representatives and agents in a democracy, being that a fundamental principle of democracy is that citizens have the right to demand accountability and public actors have an obligation to account. As Mulgan (2000) states, “those calling for an account are asserting rights of superior authority over those who are accountable.”

In addition, the concept of accountability can be defined narrowly or broadly. A group of scholars see accountability as an essentially ex-post phenomenon while others argue that principles of accountability should ideally be applied before, during, and after the exercise of public authority (Ackerman 2004, Malena, Forster, and Singh 2004: 3.)

Government officials and bureaucrats are accountable for their conduct and performance. They can and should be held accountable to obey the law and not abuse their powers, and serve the public interest in an efficient, effective, and fair manner. All states have some form of mechanism in place to promote or ensure accountability of public servants. Systems of accountability that are internal to the state are often referred to as “horizontal” mechanisms of accountability (Schedler, Diamond, and Plattner 1999.) Goetz and Gaventa (2001) classify them in:

- i. Political mechanisms (e.g., constitutional constraints, separation of powers, the legislature and legislative investigative commissions);
- ii. Fiscal mechanisms (e.g., formal systems of auditing and financial accounting);
- iii. Administrative mechanisms (e.g., hierarchical reporting, norms of public sector probity, public service codes of conduct, rules and procedures regarding transparency and public oversight), and;
- iv. Legal mechanisms (e.g., corruption control agencies, ombudsmen and the judiciary.)

Traditionally, efforts to tackle the challenge of accountability have tended to concentrate on improving the so-called “supply-side” of governance using methods such as political

³⁴ “Power-holders” refers to those who hold political, financial, or other forms of power and include officials in government, private corporations, international financial institutions and civil society organisations (Malena, Forster, and Singh 2004: 2.)

checks and balances, administrative rules and procedures, auditing requirements, and formal law enforcement agencies like courts and the police. These “top-down” accountability-promoting mechanisms have met with only limited success in many countries, developed or developing (Ackerman 2004.) As a result, newer measures such as the setting up of independent pro-accountability agencies like vigilance commissions and ombudsman have been tried, and in other cases, public institutions have been privatised or services contracted to the private sector in an attempt to bring market-based accountability into the public sector.

More recently, increased attention has been paid to the “demand side” of good governance that is to strengthen the voice and capacity of citizens (especially poor citizens) to demand directly greater accountability and responsiveness from public officials and service providers. Enhancing the ability of citizens to engage with public servants and politicians in a more informed, direct and constructive manner is what the social accountability practices of the World Bank are looking for. Moreover, the World Bank concept of social accountability pursues to make a link with the associated issues of governance, empowerment, and rights-based approaches to development (Malena, Forster, and Singh 2004: 1.)

For Malena *et al.* “social accountability” is defined as an “approach towards building accountability that relies on civic engagement, i.e., in which it is ordinary citizens and/or civil society organisations that participate directly or indirectly in exacting accountability.” In a public sector context, social accountability refers to a broad range of actions and mechanisms that citizens, communities, independent media, and civil society organisations can use to hold public officials and public servants accountable.

Social accountability mechanisms are referred to as “external” or “vertical” mechanisms of accountability. The most important “vertical” mechanism in a democratic state is elections. Elections, however, are a very loose instrument to hold governments accountable because they still only allow citizens to select among a limited number of individuals or political parties. More importantly, they do not offer citizens the opportunity to express their preferences on specific issues, to contribute in a meaningful way to public decision-making or to hold public actors accountable for specific decisions or behaviours.

The World Bank enlarges the mechanisms of social accountability when it includes among them a broad range of actions and mechanisms (beyond voting) that citizens, communities, civil society organisations (CSOs) and independent media can use to hold public officials and servants accountable (Malena, Forster and Singh 2004: 3.) These include a variety of citizen or civil society-led actions such as public demonstrations, protests, advocacy campaigns, investigative journalism, and public interest lawsuits. Recent tools include participatory data collection and analysis, participatory public policy making, participatory budgeting,

public expenditure tracking,³⁵ citizen monitoring and evaluation of public service delivery. These citizen-driven accountability measures complement and reinforce conventional mechanisms of accountability such as political checks and balances, accounting and auditing systems, administrative rules, and legal procedures (Malena, Forster and Singh 2004: i.)

Therefore, social accountability mechanisms are intended both to complement and to enhance conventional mechanisms of accountability. “Internal” (state) and “external” (social) mechanisms of accountability can and should be mutually reinforcing. “Transversal,” “hybrid” or “diagonal” accountability can be found when social accountability mechanisms are “institutionalised” or when the states own “internal” mechanisms of accountability are rendered more transparent and open to civic engagement (Goetz and Jenkins 2001.)

Wrapping up the definitions presented in this section, the author coincides with UNESCAP (2003) when in defining “good governance,” states the following characteristics: participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. Moreover, it ensures that corruption is minimised, the views of minorities are taken into account, and the voices of the most vulnerable in society are heard in decision-making. Furthermore, it is also responsible to all stakeholders as well as to the present and future needs of society.

Good governance has become to be a requisite for the achievement of sustainable development at all levels, and, at the same time thus, in practice, a condition for development aid. At the World Summit on Sustainable Development (2002), it was declared that: “good governance within each country and at the international level is essential for sustainable development.”

2.4. Sustainable Development: “Strong” vs. “Weak” Approach

The concept of ‘sustainable development’ refers to social, economic, environmental, and political factors concurring to improve people’s livelihood. In the last years, initiatives to implement such concept at the international, national, regional, and local levels have been strongly encouraged.

The concept of sustainable development was outlined in 1987 in the WCED Report, ‘Our Common Future.’³⁶ The Brundtland Report’s concept of sustainable development is

³⁵ Some NGOs and CBOs have started budget tracking in the context of rights-based approaches, as in the case of Save the Children, jointly with local partners, in selected countries in Africa.

³⁶ Created by the UN General Assembly to study and give proposals on global environmental and developmental problems. The Brundtland Commission Report assessed the situation, analysing causes, and giving

rooted in the “multilateralism and the interdependence of nations which require the restructuring of the international economic system of co-operation.” It defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their needs” (WCED 1987:8, 43).

In 1991, IUCN, UNEP and WWF published the document “Caring for the Earth: A Strategy for Sustainable Living”, where the concept of the Brundtland Report was criticised as ambiguous and open to a wide range of contradictory interpretations (Boer 1995: 112.)³⁷ “Caring for the Earth” defined sustainable development as “improving the quality of human life while living within the carrying capacity of supporting ecosystems.” This definition proves to be also problematic, for it can be interpreted as anthropocentric and utilitarian, taking the environment just as a resource in the hands of humans.

The mainstream interpretation of the concept, provided in “Caring for the Earth” (IUCN/WWF/UNEP 1991) suggests that, understanding development as economic growth, the concept is dynamic, because it implies changes in both society and environment for obtaining such growth. Those changes are any kind of activity for the achievement of economic growth that, consequently, will lead to development. The assumption is that the needs of the present generations are met and, consequently, the ability of the future generations to meet their own needs is held, and even improved, because of the new (technological and scientific) possibilities achieved in the process of economic growth. Later, the 1992 Rio Agreements added further, including not only economic but also social and political concerns in the understanding of sustainability.

A joint Brundtland Report and Rio Summit (Agenda 21 and Rio Declaration) interpretation of the sustainable development concept includes:³⁸

- i. Intra-generational and inter-generational equity: ‘equitable’ access to environmental resources both within the present generation as well as for the future generations;
- ii. The application of the precautionary principle; and,
- iii. The maintenance of biological diversity and biological integrity.

As we may see, the concept still was resource and environment centred.

From an economic and ecologic point of view, it is necessary to regard the concept of sustainable development as a dynamic one. The changes required to achieve economic growth

recommendations to the international community for dealing with the issue from a global, national, and regional perspective.

³⁷ “The confusion has been caused because sustainable development’, ‘sustainable growth’, and ‘sustainable use’ have been used interchangeably, as if their meanings were the same. ‘ Sustainable growth’ is a contradiction in terms; nothing physical can grow indefinitely; ‘Sustainable use’ is applicable only to renewable resources: it means using them at rates within their capacity for renewal” (IUCN/UNEP/WWF 1991: 10.)

³⁸ Boer (1995: 115.)

imply an interaction between society (human beings), and the environment (nature). Those changes are defined as activities, e.g. transformation, exploitation, or extraction. Such definition of interaction may be questioned when dealing with non-renewable resources, whose exploitation implies not only a change, but also the reduction or eventually the end of the corresponding stockpiles from the Earth. In the case of renewable resources, their exploitation at the current rates and the tendency to mono-cultivation (and genetic modification) would eventually reduce the available stockpile, which leads to the need to preserve such renewable resources in their original form for the future generations. The last consideration is put into question when a society needs to exploit such resources for its basic subsistence and survival.

The discussion in the aforementioned paragraph leads us also to focus on the debate on the concepts of ‘strong’ and ‘weak’ sustainability. In the case of natural resources, for the ‘strong sustainability’ approach it will never be possible to replace the stockpile of lost resources, although technological or scientific advances which eventually could find substitutes for those. For the ‘weak sustainability’ approach, it will always be possible to find replacements for lost resources, and for that purpose, efforts have to be made at all levels.

As noticed, the ‘strong’ sustainability approach directly brings us to the issue of consumption patterns, not addressed in the mainstream interpretation of sustainable development³⁹, being one of the most important in its discussion, and much related to the “needs” problem. However, it is very difficult to define the needs of the present generations, specially, when taking into consideration the differences between developed and developing countries, and when looking into the deep economic and social gaps in a given country. We can understand that such needs are, for instance, those considered in the UNDP indicators on Human Development. However, we cannot measure quantitatively, at the present state of the art, what we understand as the ability of the future generations to meet their needs, because we do not know what those needs will be. Politically, it is still a very difficult issue as those new generations are not-yet-borne. Therefore, they would not have a ‘voice’, unless law or regulations specifically would require so.

It has to be taken into account that both the “strong” and the “weak” sustainability approaches have two assumptions in common: first, that society will always be driven to test nature to her limits, and second, that the exploitation of nature should neither be maximized nor minimized, but ought to be optimised.⁴⁰ There is no scope here of an approach consider-

³⁹ As also noticed, the ‘weak’ sustainability approach is nearer to the mainstream interpretation of sustainable development. In that regard, it is not necessary to stop, diminish, or change the present consumption patterns, which mainly deplete the actual base of resources.

⁴⁰ See the discussion on these assumptions and “ecocracy” in Sachs 1997: 34-36.

ing self-limitation in consumption patterns or alternative views of the sustainable development concept not including capital, bureaucracy and science as its founding stones.

Sustainable development would require a political system securing effective citizen participation in decision-making (Salih 1998a: 3-4.) Furthermore, it shall include an economic system, able to generate surpluses and technical knowledge on a self-reliant and sustainable basis; a production system that respects the obligation to preserve the ecological base for development; a technological system that can search continuously for new solutions; and, an international system that fosters sustainable patterns of trade and finance. Finally, an administrative system, flexible and capable of self-correction, would also be needed.

The definition of sustainable development contained in the Brundtland Report has been questioned because reality has given evidence that economic growth does not necessarily mean the improvement of neither the living conditions of the poor, nor the environmental problems they suffer. In that sense, the Brundtland definition of 1987 can be considered as a starting point to build upon new practices, which contribute to the elaboration and implementation of sound environmental policies, taking into account citizens concerns.

Presently, sustainable development is defined as 'people centred', and consequently development organisations all over the world, like the UNDP or national development agencies, use the term 'sustainable human development.' Sustainable development should be rooted in the people. Following Holtz (2004) for development to be human and sustainable, it is necessary that it must be centred on human beings and has to integrate: economic development, social development, environmental stewardship, political stability (democracy, human rights, rule of law, gender equality), and be not just for today but also for the generations to come.

The evolution of the concept of sustainable development has to be understood in the context of the definition provided by the Brundtland Report and the subsequent developments in the international arena, mainly the 1992 Rio Summit, Rio+5 (New York 1997) and the 2002 Johannesburg Summit. It can be said that such evolution has been characterised by aggregation being that issues of democracy, human rights, and fundamental freedoms have been gradually incorporated in the framework and as conditions for the achievement of sustainable development. In Johannesburg 2002, the latest elements added were the process of globalisation and its challenges, good governance, and the fight against corruption (Holtz 2005.)

As it has been showed, the concept of sustainable development is broad and can be interpreted differently, and it can be used to support different interests, even those, which may oppose, as it happens with the state perspective, vis-à-vis the multiple ones of civil society.

2.5 Preliminary Conclusions

In the context of environmental policy, the alternative development concept provides the foundations for participatory, people-centred, gender-conscious, bottom-up, decentralising, empowering, democratic-pluralist, and sustainable policies, which shall be expressed in an institutional and regulatory framework accountable to all citizens.

Mainstream development was understood as an economic-based concept, whereas development meant “growth” and, furthermore, only “economic growth” was the most appropriate indicator of the advances of a country in the achievement of development goals. The stress was in growth and not equality. In later years, mainstream development has incorporated many of the elements that underlie the alternative interpretation of development, including empowerment, participation, gender, and sustainability (weak approach.) It is in this new context that environmental policies will be designed and implemented, which could bring more space to accountability, transparency, and the voice of the citizens in environmental affairs.

Environmental policies in terms of stakeholders mean the array of actors who have a stake in a specific environmental problem, conflict, or situation. Those include government agencies in charge of environmental affairs and private bodies and individuals participating in activities affecting the environment (i.e., NGOs, CBOs, BUOs, etc.) Those various actors will have a tremendous influence in the outcomes and consequences of environmental policy in a country, and therefore, their decisions will open or close the doors for success or failure.

Environmental policy, in relation to institutions, refers to the structures that form organisations and bodies, and to the environmental rules, norms, and strategies operating within or across organisations.

Participation is closely linked to democracy, empowerment, and accountability (itself an element of good governance.) Participation is defined in two ways: by focusing the concept in issues of communication, access, basic needs, and decentralisation, and, by relating it to power: a process through which stakeholders influence and share control over development initiatives and the decisions and resources affecting them.

Good governance refers to how power is exercised for the management of a country’s economic, human, natural, financial, and social resources for development. Good governance assumes that participation and empowerment processes take place in order to make stakeholders accountable for the decisions taken in the name of the citizens. Social accountability is the newest tool available to ensure efficient and policymaking. “Good governance” is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law.

For development to be human and sustainable, it is necessary that it must be centred on human beings and has to integrate economic development, social development, environmental stewardship, political stability (democracy, human rights, rule of law, gender equality), and taking into account the inter-generational and precautionary principles. Environmental policy in the context of sustainable development has no other aim than to help achieve those higher goals, being the citizens the main recipients of its mandates.

III. ENVIRONMENTAL AFFAIRS IN LATIN AMERICA

A historical perspective will be taken to analyse the introduction of environmental issues in the Latin American context. Following this, we concentrate on the main policy directions at each period, taking into account overlapping and processes that translated their effects into subsequent years. Therefore, in a first period, environmental issues addressed mainly the “pure” protection of species and ecosystems, taking into account human needs only partially. In a second period, they addressed natural resources management, combining the economic and environmental levels in a technocratic fashion. In a third period, they incorporated a holistic approach of environmental management, combining elements of public policy and the sustainable development concept, but still keeping the sector view of environment. Lately, countries strive for a full inclusion of the environmental element in public policy as a whole, crosscutting all areas of government, “sustainable human development.”

3.1. From Environmental Protection to Environmental Conservation

Before the United Nations Conference on Human Environment (Stockholm 1972), environmental issues were mainly focused on the applied sciences approach to natural resources. This meant the introduction of regulations for the protection of certain species of flora and fauna, and the reserve of extended geographical areas for purposes of extraction or research. Protected species were endangered or in extinction, reserved resources were stockpiles for future economic use or for pure protection. Hardly any consideration was given to the social, cultural, and economic factors surrounding environmental problems, which were regarded as scientific issues, not being necessarily in the field of politicians or policy makers.⁴¹ The pioneering activities of IUCN and WWF during the fifties and sixties exemplify the kind of interests and objectives championed by experts at the time.⁴²

An example of those lines of work was the creation of reserved resource areas and national parks. During the seventies, in Latin America, most countries had military governments that usually based those actions on nationalism. General Pinochet in Chile, military juntas in Argentina, Brazil, and Uruguay, General Stroessner in Paraguay, and military governments in Peru, Ecuador, and Bolivia are the most well known examples of this trend in the South

⁴¹ In the jargon of the professionals working in the natural resources and environment fields, the trend to protect only the species of flora and fauna was called in the English language “environmentalism”, while in Spanish the more ironic term “parquismo” (from parque = park), was used. In the literature, the term “environmental protection” can be found, usually in contrast or as counterweight to “environmental conservation.”

⁴² See, the history of these organisations at IUCN and WWF Home Pages (2004.)

America region. As part of a geo-political view of national interests, the protection of natural resources was considered a source of pride, in the case of national parks, or in the case of reserved resource areas, a means to control an income source, important to the economy. Most of the companies exploiting natural resources were state-owned, and either fully controlled or given in share to the military, especially in the case of oil, gas, and mineral resources.⁴³ In Peru, almost all natural resources extraction companies (PETROPERU, HIERRO-PERU, MINERO-PERU, and CENTROMIN-PERU) were nationalised by the military government of General Velasco Alvarado (1968-1974,) the only exception being SPPC.

Protection of resource areas or species became a symbol of nationalism, as in the case of the Antarctica in Chile and Argentina,⁴⁴ or the vicuña in Peru, Bolivia, and Chile.⁴⁵ Thus, the protection of species and natural areas was linked to a political agenda of control and allocation of natural resources. Nonetheless, this background should not hamper the fact that lines of action were being taken to establish a sort of environmental protection, although in the context of a non-environmental political agenda.

Stockholm 1972 brought for the first time environmental issues to the global arena as a problem to be taken into account and looked upon by the international community from a political viewpoint. The results of Stockholm 1972 motivated governments around the world, and, especially, in developing countries, to attempt the establishment of an institutional base in charge of natural resources and pollution problems (MacDonald and Stern 1997: 4.) Usually, this would take the form of a government body under sector guidance (most often production and health ministries in the case of Latin America.)⁴⁶ For the first time, efforts were made to develop organisations for addressing environmental problems and, at the same time,

⁴³ The revenues obtained were invested largely in the renewal of the military arsenal. In Chile, General Pinochet government maintained a tight grip in CODELCO, the copper extraction company, which was never nationalised, even not after structural adjustment programmes in the eighties. To this day, CODELCO continues belonging to the Chilean state. Similar cases occurred in Brazil and Argentina.

⁴⁴ Chile and Argentina are founder members of the Antarctica Treaty System, established in the fifties. Within the framework of the System, Agreed Measures for the Conservation of Antarctic Fauna and Flora was opened to signature in Brussels on 2 June 1964 (the treaty entered into force on 1 November 1982.) Because of the agreement, national legislation was established in both countries. The Measures were replaced in 1991 by the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol) adopted in October 1991, which entered into force in January 1998. Chile and Argentina went to great lengths to establish their claims to the Antarctica. In August 1973, an Argentine cabinet meeting was held in the area claimed by the country. In 1977, Chile's President General Pinochet spent a week in the Antarctica.

⁴⁵ In 1969, the countries adopted the Convention for the Conservation of the Vicuna, adopted in La Paz (16 August 1969.) The treaty was replaced by the Convention for the Conservation and Management of the Vicuna, which was adopted in Lima on 20 December 1979, and entered into force on 19 March 1982. As result of both treaties, sets of legislation at the national level were consequently established.

⁴⁶ In most Latin American countries, environmental attributions were given to traditional production agencies. Few established a Ministry of the Environment (only Venezuela in 1976). Other created inter-sector agencies depending directly from the Presidency (Argentina). The most environmentally minded established national systems for the environment (Brazil, Costa Rica, and Cuba).

to train civil servants and policy makers into the knowledge necessary to run those institutions.

The expertise in Latin American countries was fostered in a two-fold manner through training and specialisation, either from nationals who studied abroad or from expatriates who sought carrying research and work in developing countries. This process led to the formation of a group of experts who positioned themselves nationally and internationally, seeking the advance of environmental causes at the national level, in their countries of origin as well.⁴⁷

After Stockholm, environmental topics became a permanent issue in the international agenda. For this reason, the work of the specialised UN bodies (UNEP and UNDP) became instrumental in developing guidelines, promoting international environmental treaties, policy issues, and fostering partnerships with developing countries governments. This process had as direct consequence, national policy makers' awareness to their own environmental problems, helping them to formulate their new gained knowledge through environmental agendas and strategies (MacDonald and Stern 1997: 5.)

Before 1972, law systems in Latin American countries did include a type of environmental protection framework. However, such framework was designed to protect certain natural resources or to regulate the environmental effects of certain activities, as pollution. That was not sufficient to control the growing deterioration of environmental conditions. The environmental protection framework was made of regulations that did not have environmental goals but notwithstanding, did generate effects in the environment (*i.e.* civil, criminal, procedural, or administrative regulations in the field of private property, liability, and criminal responsibility.) The whole did not respond to a sustainable development point of view, as it was mainly about protection of natural resources, private property, or public goods. That fact explains the growing problems those frameworks caused when implementation took place.⁴⁸

⁴⁷ In Peru, it should be mentioned the cases of Antonio Brack, and Axel and Marc Dourojeanni. After studying abroad during the sixties, those experts came back to the country to work for national environmental agencies (INRENA.) Brack was responsible for the creation of the national system of protected areas. A. Dourojeanni was responsible for the water-management policy framework, still standing at present. M. Dourojeanni worked on environmental planning. Afterwards, they went to work for such bodies as the IADB (M. Dourojeanni,) the UNECLAC (A. Dourojeanni) and the UNDP (Brack Egg). From those international positions, they continued to be sought after for advice by politicians at the government level and experts at the non-government level, in both Peru and other Latin American countries.

⁴⁸ In Peru, Andaluz y Valdez (1987) carried on research surveying all environmentally relevant legislation issued in the country during the 20th century. This sort of normative corpus was called "casual environmental legislation" because, although its purpose was not environmental, it had however environmental effects or affected environmental goods. At the Latin American level, Raul Branes, formerly at UNEP-ROLAC (Mexico City), carried on similar surveys of existing environmentally relevant legislation in the region. In Argentina, FARN published a periodical containing academic articles and surveys on environmentally relevant legislation issued previously to the adoption of an environmental strategy.

Under the influence of the schemes adopted internationally, some Latin American countries sanctioned regulations with specific environmental contents and aims. The pioneering cases were Colombia (1974), Venezuela (1976), and Brazil (1981).⁴⁹ The key point in these regulations was that those had the character of “framework” legislation to be developed upon by specific procedures and mechanisms at the administrative level. At the same time, their sanction did not mean the derogation of the previous standing legislation. However, the process was regarded as the starting point for a further process of introduction of environmental law and policy at the national level.

UNEP and IUCN played a very important role in the transfer and sharing of knowledge from developed to developing countries, and led the jump from ‘protection’ to ‘conservation.’ The latter concept deemed major attention to ecological processes and ecosystems and not to a species as an isolated factor.⁵⁰ Issues of genetic diversity and sustainable use were added as well. Moreover, it meant the introduction of the concept of national and sub-national strategies for conservation. Furthermore, it introduced priorities for action at the national and international levels that are still twenty years later on the top of the international environmental agenda.⁵¹ The “World Conservation Strategy” was one of the building blocks of the future environmental strategies in the region.

Environmental conservation as proposed by UNEP and IUCN implied a revolution as, for the first time; a policy document on guidelines for conservation was addressed to policy makers around the world. At the same time, combining the expertise of the specialised UN bodies and international development community (multilateral development banks, national development institutions) to argue in favour of a world conservation strategy proved to be a powerful tool to catalyse the evolution in thinking produced since Stockholm. Most importantly, for the first time, the term “sustainable development” was used. In that sense, the “World Conservation Strategy” was a visionary document with unforeseen consequences at all levels.

As it was mentioned before, the combination of a group of national experts with international connections and the adoption of international policy documents at the national level

⁴⁹ Colombia: *Codigo Nacional de Recursos Naturales Renovables y de Proteccion al Medio Ambiente* (1974). Venezuela: *Ley Organica del Ambiente* (1976). Brazil: *Ley No. 6938 que dispone sobre Politica Nacional del Medio Ambiente, sus fines y mecanismos de formulacion y aplicacion y establece otras providencias* (1981). In a second level it should be mentioned the *Ley para la Prevencion y Control de la Contaminacion Ambiental* of Ecuador (1976).

⁵⁰ The most important document following this line was “The World Conservation Strategy,” authored by IUCN, UNEP, and WWF in 1980.

⁵¹ “The World Conservation Strategy” lists as priority areas for action at the international level: tropical rainforests and arid zones, a global program to protect areas rich in genetic resources, the world heritage, river basins, and international seas.

led to the institutionalisation of environmental issues through institutions and regulations and the development of tools for the implementation of conservation strategies. This process took place at a time of major economic and political changes in Latin America, mainly the widespread transition to democratic regimes at the beginning of the eighties, and the introduction of adjustment policies at all levels during the eighties and nineties (Keck 1994: 92.)

3.2. Environmental Conservation and Environmental Management

After ‘environmental conservation’ and ‘sustainable development’ set foot in policy agendas around the world, policy makers developed tools to implement its objectives through international, regional, and national conservation strategies.

A first step was the setting of conservation and environmental priorities for the Latin American region, especially through the work of UNECLAC, IADB, and UNEP-ROLAC. Those organisations, jointly with expert groups mentioned before, formed a strong starting cluster for the inclusion and development of a policy agenda in the region. Meanwhile, the expert group was enriched with new arrivals, which mainly came from the natural resources extraction, industry, and production sectors, and included this time not only technical or scientific specialists, but also lawyers and economists. Many of them, having worked for the mining or oil sectors, faced the inclusion of pollution or natural resources issues in their activities and were trained, accordingly, to face the new challenges posed by environmental strategies.

‘Environmental management’ was adopted as the most important concept for achieving conservation. It had three components: policy, law, and administration. From the process described above, the law area was the less developed in this evolution, and consequently, the adoption of regulations was promoted at all levels. “Environmental management” was defined as “human activities having as aim a rational environmental planning” (Brañes 1988: 20). Such environmental management could only take place as a public function or attribute. However and that made environmental management different, in essence, to other public functions, a great deal of citizen participation was needed.

‘Environmental policy’ is defined as the group of actions designed to achieve a rational environmental planning. ‘Environmental law’ is, from the perspective of environmental policy, an instrument used to set principles and their application mechanisms. ‘Environmental administration’ is formed by both the material management of the environment with the aim of rationally ordering it and, the administrative system set for that purpose (Brañes 1988: 20).

Following Brañes, environmental management is designed through environmental policy, it is implemented through environmental law, and it is set into practice through the material acts supported by the administrative systems in charge of the functioning of a rational environmental planning. Those administrative systems may include a component of popular participation (Brañes 1988: 20.)

Two regional policy documents were determinant in the inclusion of these new concepts and priorities. First, “*Nuestra Propia Agenda*,” published by IADB and UNDP in 1990, and second, “Sustainable Development: Changing Production Patterns, Social Equity and the Environment”, published by the UN-ECLAC in 1991.

The documents made a catalogue of the priority themes for Latin America, differentiating them from and linking them with global environmental issues (BID/PNUD 1990: 23.): soil use; human settlements environment; water resources; ecosystems and biological heritage; forest resources; sea and coastal resources; energy; mining resources; and industry. The international environmental issues relevant for Latin America were identified as shared river basins and ecosystems; acid rain; toxic wastes; conventional war; and ecological security. Finally, the so-called global environmental themes, pertinent to Latin America were atomic risk; global warming; drug traffic; loss of biodiversity; ozone layer destruction; pollution and exploitation of ocean resources; use of the Antarctica resources; and outer space use.

The identification of problems for the region was one of the building blocks of a regional environmental agenda that was later represented at international conferences (in opposition to other regional groups)⁵² and was the origin of a process of generalised introduction of environmental institutional schemes in most countries of Latin America. The main difference with the process that took place in the decade before was that, this time, there were clear environmental aims, objectives, and contents in and behind the proposals.

Blueprints for the design and implementation of environmental policy were poured from international organisations into national systems. After the definition of problems, the most important element was the building-up of a structure that could support the implementation of the new policies. In that regard, the set of structures was contained under the name “environmental management” which was going to be understood at its best at the national level. International environmental management would be a projection of what was done at the national level.

⁵² Latin Americans played an important role in the shaping of international definitions on environment, before Stockholm, and later during the preparatory conferences leading to the Rio Summit. See: Keck (1994: 92-93) and MacDonald and Stern (1997: 2.)

As the processes of economic and political reform continued at great pace in Latin America, the concepts of conservation, environmental management, and sustainable development were incorporated into national systems through a new institutional set-up and regulations. Concurrently to these events, the wave of democratisation and economic reform in Latin American societies brought also the emergence of non-governmental organisations specialised on environmental issues (MacDonald and Stern 1997: 8.) These NGOs played an important role in the incorporation of new issues into national policies, while being an actor in the process as well. NGOs acted as catalysers of interested groups of experts and citizens.⁵³

The preparatory process of the Rio Summit saw the highest point of NGOs involvement and influence. This was a two-way process. On one side, international environmental NGOs shared expertise and resources with counterparts at the national level (MacDonald and Stern 1997: 2.) The latter would lobby and influence government decision and policy making while the former would actively be involved in international conferences pursuing similar objectives. This strategy would lead to a high degree of participation of NGOs at Rio, the same that would be reflected in the results of the conference with many contributions coming from NGOs and civil society representatives.

A second process that was actively sustained by NGOs, before and immediately after Rio, was the drafting and approval of National Conservation Strategies in Latin America. This was the main technical tool through which environmental issues would effectively be implemented at a later stage of policymaking. Costa Rica, Peru, and Cuba were examples of this process (Lopez Ornat 1995: 12-13.)

3.3. Integration of Sustainable Development in Economic Development

This period extends from the Rio Summit up to the present. Immediately after Rio, a great deal of work was made by policy makers to incorporate the results of the Conference into national systems. To this effect, institutions were created, old ones were revamped, and new legislation, and regulations were sanctioned. Meanwhile, a process of integration of environmental concerns into the traditional models of economic development was taking place

⁵³ Environmental NGOs in Latin America organised themselves in specialised networks which had as main objective advocacy and diffusion. In some countries, networks became very influential, to the point that they were sought after by governments to advice on environmental reform, taking on a stakeholder role with considerable influence because of the specialised knowledge they possessed. In the case of Peru, during the eighties, RAP (Peruvian Environmental Network) was asked by the Peruvian government to be part of the Commission of Elaboration of the Code of Environment and Natural Resources. RAP, which counted with considerable legal expertise among its members, produced a draft version of the Code, which was taken as a basis for the legislation that was finally approved in Parliament in 1989. Similar cases occurred in other South American countries like Bolivia (LIDEMA) and Ecuador (IUCN Ecuadorian members organised as lobby network.)

(MacDonald and Stern 1997:1.) The latter took place in the form of environmental projects financed by international institutions (e.g., the World Bank and IADB) through their assistance programmes, either as part of a package or as special projects. Additionally, environmental clauses were included in the negotiation of economic programmes (IMF Letter of Intent,) in what was considered, at first, a new condition.

Earlier interpretations and applications of environmental management focused in two aspects: environmental management by companies⁵⁴ (e.g. ISO 14000) and environmental management through projects and programmes to assess and mitigate negative impacts and enhance positive ones (e.g. IADB, World Bank, UNDP) (Kessler, van Ginniken, Cornelissen and Romijn 2001: 2.) In addition, the inclusion of natural resources valuation in the national accounts has been discussed at length (e.g. IUCN, WWF, World Bank.)

Economic and environmental issues started to be handled together as connected concepts. In this process, institutions like the World Bank played a key role, setting priorities and providing financial support for programmes and projects at all levels. The objectives at this stage were:⁵⁵

- i. setting priorities for sustainable development,
- ii. mainstreaming the environment into national and sector decision making,
- iii. strengthening management capacity,
- iv. introducing market-based instruments, and
- v. promoting public-private partnerships to address urban-industrial pollution, land and forest degradation, green house gas emissions, and biodiversity loss.

As observed, the sustainable development concept was being incorporated as an essential component in the larger economic and development framework. To achieve the objectives mentioned above, the World Bank considered participatory processes as an essential component in the design and implementation of programmes and projects. From initial NGO involvement, those participation processes evolved to include grassroots and citizens organisations involvement (CBOs.)

In 1998, at its Eleventh Meeting (Lima, March 1998,) the Forum of Ministers of the Environment of Latin America and the Caribbean confirmed the strengthening of environmental management as a priority area, stressing the importance of the environmental dimension of public policies. The Forum also adopted a “Regional Environmental Action Plan” in

⁵⁴ It is referred to the assessment of the environmental externalities of economic production activities with the aim of controlling the environmental impact of activities, products, or services.

⁵⁵ See: World Bank (1998: 22 – 25.)

which a number of actions were set out to modernise environmental management institution and mechanisms (Kessler, van Ginniken, Cornelissen, and Romijn 2001.)

As a follow-up to the decision of the Forum, the IADB organised a “Ministerial Consultation on Environmental Management” at the Headquarters of PAHO in Washington, DC (September 1998.) Subsequently, the World Bank, with the participation of the IADB, held a workshop on institutional dimensions of environmental management in Santiago de Chile (October 1999.) The conclusion of these meetings was that there was a need to develop a new orientation on environmental management, including “a theoretical framework with an outline of the ideal cycle of environmental management. This cycle should consider the macro-conditions environmental policy and environmental priorities in government plans and programmes, instruments and governance.” In his speech during the opening ceremony of the September 1998 meeting, Enrique Iglesias, President of the IADB, mentioned the achievements of the previous decade in the management of natural resources and the environment. Those were identified as:

- i. Increased awareness and understanding of the impacts and costs of environmental degradation.
- ii. Initiatives undertaken by the private sector showing their sense of environmental responsibility.
- iii. Progress on the institutional and legal front.

A further step in the process of incorporation of sustainable development into economic and development policies is the link between environmental issues and poverty alleviation.⁵⁶ The case of urban pollution and quality of life in urban environments is the most visible link in this evolution (World Bank 1999: 24-27.) Issues of air quality management and the incorporation of the private sector in environmental care⁵⁷ became also additional objectives, including developing public-private partnerships in environmental management (e.g. increasing access to capital and technology for enterprises) to raise the effectiveness of implementing environmental policies.

⁵⁶ An example of the introduction of environmental issues into economic development models (as considered by international financial institutions) is, for instance, the preparation of Peru’s Country Assistance Strategy (CAS). A background paper analysing the country’s major environmental issues within a broad macroeconomic context led to proposals to carry out an environmental health analysis examining poverty and environmental health linkages (World Bank 2002a: 46.)

⁵⁷ In Latin America, more businesses have come to view the environment as an opportunity to add value to investment, gain competitive advantages, achieve higher margins through eco-efficiency, maintain and increase sales through positive images, and make a more efficient use of assets (Brugger et al.: 1998.)

During 2000-2001, the World Bank prepared an environment strategy for Latin America that established as development objectives for the region:⁵⁸

- i. Enhancing livelihoods and reducing vulnerability through sustainable natural resource management.
- ii. Improving health conditions affected by environmental factors.
- iii. Developing appropriate enabling frameworks for sound environmental management.
- iv. Facilitating equitable solutions to regional and global challenges.

At this stage, the globalisation process was already being noticed by the Bank and was taken as a framework for these new aims.

Additionally, the inclusion of “good governance” in the development model proposed by the World Bank and the IADB emphasised the role of competitive markets, government responsibility to manage the state (including environmental management,) and the importance of civil society. Pluralism, accountability, and transparency had to be integrated in the area of environmental policy and management (Kessler, van Ginniken, Cornelissen, and Romijn 2001: 2.) Again, elements inherent to the concept of sustainable development gradually became part of the models of development pursued by the international institutions in the region, including the negotiation of the conditions for loans, projects, and programmes.

These environmental processes and strategies are now part of the day-to-day schemes that policy makers in Latin America face. The possible lack of human resources was answered with the massive hiring of experts coming from NGOs and CBOs, and the further training of civil servants to face the new challenges. The results of these processes are yet to be evaluated. Notwithstanding, the incorporation of “sustainable development” into economic models of development has reached a point of no return.

3.4. Preliminary Conclusions

In Latin America, environmental quality in rural and urban areas is still under serious threat. Deforestation, soil erosion, urban pollution, and coastal degradation are among the severest in the world. Those problems impose significant costs on society (e.g. externalities and inefficient use of natural resources.) The costs of those problems fall mainly onto the poor, who at the same time strongly depend on natural resources for their subsistence. Apart from the obvious health impacts, environmental degradation may lead to other social problems, such as growing inequality and social unrest.

⁵⁸ See: World Bank 2001a: 36-39.

In a first phase, before the Stockholm Conference of 1972, environmental issues were viewed in the context of environmental protection or through specific non-environmental policies that had effects on environmental issues. An evolution occurred going from environmental protection, concerned only on isolated resources, areas, or species, to environmental conservation, which takes into account the ecological processes surrounding those species, areas, or resources.

In a second phase, going from the publication of the Brundtland Report in 1987 and, more importantly, of *Nuestra Propia Agenda* (1990,) an evolution from environmental conservation to environmental management took place. Apart from the identification of the most important environmental problems of the Latin American region, key to the future design and implementation of policies, the concept of environmental management took central place. The latter has as building blocks environmental policy, environmental law, and environmental administration, and it is the most important tool to achieve the objectives of sustainable development within public policies.

A third phase, starting from the Earth Summit (Rio 1992) saw the inclusion of the concept of sustainable development in full within the realm of public policies elaboration, as a substantial content of it, crosscutting all sectors of the public realm. That differentiates it from the approach of the previous period where the concept was still regarded from a sector point of view within natural resources management. This evolution has seen the incorporation of other important concepts such as good governance, participation, and empowerment. In the last years, increasing importance has been given to the private sector (and partners) and its role in the achievement of sustainable development. Public-private partnerships are the main instrument of such approach.

IV. POLITICAL AND ECONOMIC CONTEXT OF PERU

In the present chapter, after an analysis of the Peruvian political system, the political and economic background of the country is discussed, in the light of the process of reform of the state that took place during the nineties, parallel to the introduction of environmental policies in Peru. The author takes 1992 as a break point as the year of the most recent *coup-d'etat* in the history of Peru, carried out by a government that implemented the most radical reforms to date. Such date has acquired the meaning of a turning point to analyse the Peruvian political and economic system: before and after structural adjustment.

4.1. Peru as a Transitional Democracy: The Political System

In analysing the political system of the country, we use in this dissertation the levels of analysis proposed by Kesselman, Krieger, and Joseph (2000: 6-8,) where the starting point or unit is countries. The authors define countries (also often called nation-states) as comprising “distinct, politically defined territories that encompass political institutions, cultures, economies, and ethnic and other social identities.” Moreover, countries have historically been the most important source of a people’s collective political identity and they are the major arena for organised political action in the modern world. The levels of analysis attached to the definition of countries that are proposed by the authors are:

- i. Political Institutions. The formal and informal rules and structures relationships that organise power and resources in society.
- ii. Political Culture. Attitudes, beliefs, and symbols that influence political behaviour.
- iii. Political Development. The stages of change in the structures of government.

In addition, within a given country, the state is usually the most powerful cluster of institutions, and it arrogates itself the right to issue rules (laws, administrative regulations, and court decisions) binding for people within the country. At the same time, states shall be able to preserve enforcement (or coercive) powers both internally and with regard to other states that may pose challenges. Nevertheless, its survival and stability in the end require that the ruling regime have a level of political legitimacy, that is, a significant segment of the citizenry must believe that the state acts with moral authority. In turn, political legitimacy is greatly affected by the state’s ability to “deliver the goods” through satisfactory economic performance and an acceptable distribution of economic resources. Moreover, at present, legitimacy seems to require that states represent themselves as democratic in some fashion, whether or

not they are in fact. Hence, the concept of democracy and the democratic idea play an important role in classifying regimes as democratic or not.

Parting from the discussion on democracy exposed in Chapter 2 of this dissertation, where accountability, competition, freedom, and equality were defined as prerequisites of democracy (Kesselman, Krieger, and Joseph 2000: 16-18,) the above-mentioned prerequisites serve also as standards against which democracies can be measured and compared. Such standards can also help measure (albeit not precisely) the successes and shortcomings of established democracies in living up to democratic ideals and the process of democratisation in transitional democracies as well.

Durable and transitional democracies shall be differentiated as well, as the many examples of democratic reversals taught the sad lesson that achieving a transition to democracy is only the first step toward consolidating democracy. In order to reach a transition to democracy, a non-democratic regime must resign or be toppled, while, at the same time, the four prerequisites of democracy are achieved. To understand the process of consolidating democracy we follow the theoretical blocks proposed by Linz and Stepan (1996: 7.) The authors emphasise that to have a democratic regime, there must be first a viable state. After such hurdle has been surmounted, they state five conditions necessary to consolidate a democratic state or regime (Kesselman, Krieger, and Joseph 2000: 18-19):⁵⁹

- i. “[C]onditions must exist for the development of a free and lively civil society.”⁶⁰ Creating a “free and lively civil society” cannot happen at once. This highlights the gap that separates democratic transition from democratic consolidation.
- ii. “[T]here must be a relatively autonomous and valued political society.”⁶¹
- iii. “[T]here must be a rule of law to ensure legal guarantees for citizens’ freedoms and independent associational life.”⁶²

⁵⁹ For a similar analysis see also O’Donnell (1996: Chapter 7.)

⁶⁰ Civil society consists of self-organised groups, organisations, associations, and relatively independent citizens. A thick network of autonomous organisations constitutes a “school for democracy,” in which individuals gain experience in running their own affairs. A vibrant civil society also constitutes a source of independent power that can check arbitrary state action (Kesselman *et al* 2000: 18.) We refer also to the definition of previous society early presented in this dissertation.

⁶¹ By political society, Linz and Stepan mean those political institutions and processes (including political parties, electoral rules, and informal arrangements for forming government alliances) that enable the formal rules of the democratic political game to function. According to Kesselman *et al* (2000: 18), it is not sufficient to hold elections in order to ensure a democratic outcome, for example, if there are twenty or more candidates for a given position. Alternatively, if the political parties that gain representation in the legislature cannot form a coalition that allows a stable government to emerge. Alternatively, if rules prohibiting political corruption (e.g., bribing candidates) are either nonexistent or not enforced.

⁶² By rule of law, Linz and Stepan mean the need for clear, predictable, fair, and stable laws, if possible enforced by an impartial and powerful judiciary. They also describe this situation as constitutionalism. This situation minimises the chances of naked competition for power of outright chaos (Kesselman *et al* 2000: 18.)

iv. “[T]here must be a state bureaucracy that is usable by the new democratic government.”⁶³

v. “[T]here must be an institutionalised economic society.”⁶⁴

Linz and Stepan basic argument is for democracy to endure (and not simply exist for a brief time); democratic institutions and processes must be embedded in a wider set of social, economic, and cultural arrangements.

As the authors mentioned above set it, durable democracies would be those where the five conditions stated are more fully developed, which usually coincides with long-established democracies. Conflicts and problems in those countries are solved within democratic institutions and the abiding rules of the game. Transitional democracies have democratic institutions that are fragile and vulnerable and the conflicts and problems are not only solved within the system but also in most cases, those are also about putting into question the existence of such institutions *per se*.

Following Kesselman, Krieger and Joseph (2000: 19) durable democracies are defined as those with a record of virtually uninterrupted democratic practice for at least forty years. The assumption is that if a country remains democratic for two or more generations, the chances are good that Linz and Stepan’s five conditions will have taken root. Hence, the chances are vastly greater that the country will remain democratic in the future. In durable democracies, the rules of the democratic political game have been achieved, refined, tested, and strengthened through years of practice. Durable democracies seem to have a longer and deeper period of democratic apprenticeship and, hence, seem better equipped to face new challenges. In the case of transitional democracies, the gap between what is written in the Constitution and reality can be wide. Moreover, in durable democracies there are well-established and well-respected procedures for keeping governments accountable. However, at the end, there is also no guarantee that a durable democracy will not falter.

As presented, Peru is a country where both the four prerequisites and five conditions for democracy are still in evolution and where a durable democracy has not yet taken root. In all

⁶³ Without a capable and loyal bureaucracy, the democratic state cannot carry out the core functions needed to function: collecting taxes, enforcing the law, and developing and implementing policies that are responsive to electoral majorities (Kesselman *et al* 2000: 18.)

⁶⁴ By “economic society,” Linz and Stepan mean an economy that combines elements of market competition and political direction. If all economic life were controlled by the state, democracy would probably be impossible, since the state would be all too powerful in this decisive sphere. On the other hand, democracy would not be possible either, claim Linz and Stepan, if there was no possibility of citizens electing a government which would govern the economy in particular ways (for example, by requiring firms to pay minimum wages or observe environmental standards) (Kesselman *et al* 2000: 19.)

accounts, Peru fares uneven in the achievement of those prerequisites and conditions and the democratic idea has not still become part of the model of society the citizens want to have.⁶⁵

4.1.1. Governance and Policy-Making

Peru is a unitary republic with a central government system, formed by twenty-four departments and one constitutional province. Local governments have held a relative autonomy since 1980 when elections for mayoral offices and municipal councils were established (Constitution of 1979). Albeit, broad powers at the level of policymaking, financial transferences from the central government have been kept tight since, narrowing the space of manoeuvre for effective local governance. Officially, the Constitution and Laws declared that the Municipalities should receive a fixed percent of the total annual national budget. In practice, this never occurred.

The same fundamental law established also Regional Governments. Peru held elections for regional authorities (regional president and regional assemblies) in 1987. The devolution process was interrupted by the self-coup of April 1992, when those authorities were forcefully sacked and offices closed. Reasons adduced, among others, were the alleged corruption of the new bodies and the incompatibility of the regional organisation and structure to those of the central government. The regions' assets were put under control of "Development Corporations," directly dependant of the office of the President of the Republic. The Constitution of 1993 included the mandate to re-establish regional governments and to initiate a process of decentralisation. New elections for regional governments took place at the end of 2002. It will take some years until the structures and administration related to this new decentralised system effectively enter into function in the country.

The nation's government can be characterised as a strong presidential system since the return to democracy in 1980.⁶⁶ Nonetheless, historically, the Executive branch in Peru was weak and in the hands of the so-called oligarchy,⁶⁷ which managed to position a candidate

⁶⁵ See, the UNDP Report on Democracy in Latin America (UNDP 2005) where it came out that, in the region, people would still prefer an authoritarian government if it ensures basic needs are fulfilled. The shocking findings only confirm what Kesselman *et al* state as the difference between transitional and durable democracies.

⁶⁶ See the discussions in Chapter 1 and 4. In fact, the legislators of the Constitution of 1979 were strongly influenced by the presidential French model, whereas in the case of the Constitution of 1993, the motivation was to give the Executive Branch as much power as possible to ensure the implementation of reforms in the country.

⁶⁷ The oligarchy in Peru was composed by mainly white Peruvians of Spanish descent (descendants of the Conquistadores and of merchants who prospered during colonial times,) who, at the end of the 19th century, as its economic power faded, married into immigrant families of European descent (French, English, German, Italians) who had replaced them as the new economic motor of the country and had migrated to Peru after independence (1821.) This group was tightly knitted, practiced endogamy, and through the ownership of land, it controlled the country territorially as well. Whereas in the urban areas (less than 30 percent before the sixties), their rule was

who would represent and defend its interests. When that was not the case, they would call upon the military to depose the President in question and maintain the *status quo*. This pattern of civilian-military rule periods lasted until the sixties, when a new urban class emerged and with it new social claims. The collaboration scheme was finally broken in 1968, when a group of army generals, more worried about Peru falling in the hands of communism, took over power and through radical reform destroyed the economic bases of the oligarchy.⁶⁸

As stated, Peru has been characterised as a country where top-down styles and approaches to government abound. Authoritarian and personality-cult style politicians are another pattern. Nonetheless, democratisation efforts that emerged from the grassroots have occurred as well and with relative success,⁶⁹ leaving space for the rooting of the democratic idea in the country.

A. Organisation of the State

According to the Constitution of 1993, the supreme law of the country, from the outset, Peru's political institutions follow with some differences the presidential models around the world. There are three branches of government, the Executive, the Judiciary, and the Legislature. A system of checks-and-balances has been established in the Constitution of 1993, so that each branch controls and is, at the same time, controlled by the others. The congress (*Congreso de la Republica*) is composed of a single chamber with one-hundred and twenty representatives (*congresistas*). The electoral system is based on district scheme representation per department and per number of inhabitants. However, most congress members come from the capital city, Lima because a third of the population lives there.⁷⁰ The president and con-

exerted through control of local and national politics (Collier 1976), in the countryside (more than 70 percent before the sixties) it exerted power through patron-serf relationships similar to those of feudal Europe. The serfs, mainly indigenous peoples, worked for them paying a levy, endured physical punishment, and had no right to leave the area of influence of the patron (Cotler 1978). It was this semi-feudal arrangement that motivated the military to break the constitutional rule in 1968, as they feared an indigenous revolution was imminent. In fact, in 1966, a Cuban-inspired guerrilla movement tried to initiate a revolution, which was later crushed by the military. The origins of the Shining Path, or at least, one of the arguments used by the group to wage its terrorist war was that the land reform of 1974 did not solve the problems of the indigenous peoples in the country and was only a palliative, for which a radical armed struggle was needed, which they effectively started in 1980.

⁶⁸ The nationalisation strategy of General Velasco government was not only directed against foreign investors but also against Peruvian private owners. The radical agrarian and land reform of 1974 finished with the landed oligarchy. Before the reform, the land in Peru belonged to only 30 families (Malpica 1989). In turn, the financial oligarchy was affected when the banking system was nationalised. Still, the oligarchy managed to retain real state assets in urban areas but their political power evaporated.

⁶⁹ The most important experience at this respect is self-governance and reliance in Villa El Salvador, Lima.

⁷⁰ See the data on the congress members offered by the *Congreso de la Republica* website, www.congreso.gob.pe.

gress members are elected for five years with the possibility of re-election. Mayors and municipality councils are also elected by universal vote and can be re-elected.

In practice, the system works out very different from that of the Constitution establishes. The Executive branch exerts a much higher impact in policymaking as the Legislature. The political system is highly centralised and president-centred, as noted in Chapter 4. Democratic institutions in the country are still evolving and the democratic idea will need more time to take root.

B. The Executive

a. The President and the Cabinet

In residence at the site of the old palace of Francisco Pizarro, Conquistador of Peru and Marquis of the Conquest, the Peruvian presidency is the central institution in a centralised system of governance and policymaking. In spite of the upheavals of Peruvian politics in the last four decades, the Presidency still remains the most powerful office in the country and is therefore, much pursued after by political actors.

In the last decades, presidents in Peru have been characterised by being strong personalities who could draw a great deal of popular support through charisma and personal standing, even if they were affiliated to established political parties.⁷¹ Presidents embodied the political power in the country.⁷² While the economic and political events of the eighties and late nineties diminished the prestige of the office, the extent of presidential power remains yet notable.⁷³

⁷¹ To date, Peruvian presidents have been male and, from 1980 onwards, holding academic degrees on the most. Fernando Belaunde Terry (1980-1985) was an architect educated in Peru (UNI) and France. Alan Garcia Perez (1985-1990) does not have an academic degree; however, he studied in Peru (PUCP) and France (Paris) as well. Alberto Fujimori Fujimori (1990-2000) was an agrarian engineer, educated in Peru (UNALM) and the USA (Wisconsin). Valentin Paniagua Corazao (2000-2001) is a lawyer, educated in Peru (PUCP.) Finally, Alejandro Toledo Manrique (2001-2006) is an economist educated in the USA (University of San Francisco and Stanford University.) Mr Belaunde hailed from the white urban professional class that emerged in Peru during the sixties. Mr Garcia had a lower-middle class background, and his party supported him while studying in France. Mr Fujimori was a second-generation Japanese immigrant (Nisei), whose parents were petty traders with no formal education at all. Mr Paniagua hails from the old-family elite of Cusco. Mr Toledo comes from ethnic indigenous parents of the Northern Andes of Peru (Ancash), illiterate, who migrated to a coastal city (Chimbote) to improve their living conditions.

⁷² In fact, the Constitution of 1993 expresses this standing with more powerful words when stating, “the President of the Republic is the Head of the State and personifies the Nation” (Art. 110° *El Presidente de la Republica es el Jefe del Estado y personifica a la Nacion.*)

⁷³ The Constitution of 1993 states no less than twenty-four powers adherent to the office of President. *Constitucion Politica del Peru, Art. 118°*. These are only the formal ways of the President to assert power as, of course, the system allows an array of other informal, or non-formal means to extend those powers as well.

Peruvian presidents have a set of formal powers that allows them to initiate legislation (through the *otorgamiento de facultades legislativas*, explained in Chapter 4), lead in foreign policy, make policy by decree or through administrative regulations and procedures, and to ensure that the Electoral Board decisions are enforced, among others.⁷⁴ The possibility to extend the President's power by law only add to other means available as clientelism, nepotism, cronyism, patronage through party or movement structures, among others.

Once elected, the President names a cabinet (*Consejo de Ministros*), which is going to be led by a Prime Minister, named among its members. In the case of Presidents ascribing to a party, as Mr Belaunde and Mr Garcia, cabinet members came mainly from the ranks of the party. They were people who enjoyed the President's trust and who were representative of the cabinet post they held (an agricultural engineer if it was the Ministry of Agriculture, an economist for the Ministry of Economy and Finance, etc.) In the case of the other presidents, the situation was different. Mr Paniagua headed a Transition Government, which had as main objective to stabilise the political situation in the country after Mr Fujimori's corruption scandals. Therefore, he chose as cabinet members, people with no party or movement affiliation but with a high degree of credibility to hold the different posts. In the case of Mr Fujimori and Mr Toledo, being both supported by loose populist political movements, cabinet members were selected from all possible occupations in the country. There was no specific pattern, as, under their regimes, the minister post became a sort of fuse, exchangeable every time a crisis emerged. Change of ministers became part of the political day-to-day and later it has become a problem to find an adequate expert for a position in the cabinet. Since President Garcia, some women have been also selected for ministry posts. Under Mr Toledo, a woman became Prime Minister.

The president personally appoints numerous high-level positions, especially at the minister and vice-minister levels. This allows him to provide policy direction and monitor what is occurring throughout the government. For this purpose, the office of the President in the palace, which includes the Press Secretary and a handful of trusted advisors (political and legal), oversees the evolution of events. This office has become since Mr Fujimori's regime a very powerful, usually not visible entity, where actually the spin takes place. During Mr Toledo government, it has become a real power. This is a new development, as before, the spin would take place at the prime minister and ministers' level to avoid putting the President

⁷⁴ Art. 118° has a catch as it states in N° 24 that it corresponds to the President to "exercise all other functions of government and administration commended by the Constitution and the laws" (*ejercer las demas funciones de gobierno y administracion que la Constitucion y las leyes le encomiendan*), leaving an entrance for further powers.

in controversial situations. The reason for the change is, in our opinion, the lack of political bases provided by a party structure that characterised Mr Fujimori and Mr Toledo tenures. In some cases, they are not even in the position to trust the ministers, as they are introduced through recommendation from other members of the closest circle of power. High-level appointees would also trust their closest circle to fill the jobs in the bodies where they are to fulfil duties. Loyalty and the right recommendations and credentials play an important role in the process. This pattern goes down through the middle levels in the bureaucracy, where usually long-serving civil servants are found who would stay in their positions on the most part.

The beginning of each administration is therefore characterised by extensive turnover of positions to people close to the party or political movement. Political and economic favours have to be paid and the sharing of political posts is one of the usual ways to content all concerned. In terms of efficiency, the system would work out well depending of the people hired for key positions. During Mr Fujimori regime, there was a high level of efficiency (in terms of policy output and legislation produced) because most of the people in the advisory and consultancy posts were young ambitious professionals of the best universities in the country. These people were trying to prove their value to promote themselves further (or shift to the most lucrative private sector) after a couple of years in the government. So, the opportunity to work for the government was seen as a chance to make themselves a name and a reputation. Such viewpoint was not even influenced by the corruption events that ended Mr Fujimori government. For these young professionals to work for the government was attractive because of the challenge of dealing with important problems on a daily basis and being part of the process of finding solutions (Grindle 2000: 405.)

The post of Prime Minister is probably one of the most difficult and less cherished in the Peruvian political system. Officially, according to the Constitution of 1993, it has no more powers than a cabinet minister does. Nevertheless, the Prime Minister is the official speaker of the government,⁷⁵ and therefore, the visible face in charge of bringing the good and the bad news to the citizens. The position has become a sort of fire fighter to the president, in cases where he does not want to endanger his political standing.⁷⁶ When the issue is controversial, it

⁷⁵ *Constitucion Politica del Peru*, Art. 123°. “Al President del Consejo de Ministros, quien puede ser ministro sin cartera, le corresponde: 1. Ser, despues del Presidente de la Republica, el portavoz autorizado del gobierno. 2. Coordinar las funciones de los demas ministros. 3. Refrendar los decretos legislativos, los decretos de urgencia y los demas decretos y resoluciones que senalan la Constitucion y la ley.”

⁷⁶ One of the most remembered of these Prime Ministers is, without doubt, Mr Juan Carlos Hurtado Miller, the first Prime Minister of Mr Fujimori in 1990. He was in charge to communicate the nation the grave measures of stabilisation that would come in August 1990. His television speech was probably one of the most dramatic moments in Peruvian history as, after reading the list of radical measures (that day the Peruvian currency was devaluated in 356 percent), and having in his desk a Peruvian national flag and a huge cross, he held his hand on the latter and pled: “*Que Dios nos ayude*” (May God help us), bowing his head. Those images re-

would be the Prime Minister and not even the minister in charge, the one who would face public opinion and the media.

b. The Bureaucracy

Peru's Executive branch used to be large and powerful, having its peak in numbers of public workers during Mr Garcia's government. Mr Fujimori reduced consistently the number of civil servants under his ten-year tenure. During the period 1990-1995, non-agricultural employment in the public sector in Peru fell from 11,6 percent to 8,9 percent, making it one of the lowest overall in the Latin American region (ILO 1996: Table 1-B, Thomas 1998: 163.) However, still in the view of some of the radical neo-liberal ministers, much needed to be done.⁷⁷ As Kay (1996: 60) states, there was a much larger reduction in public sector employment as in other countries, but as a result of the increased control of the economy from the president's office, the state is now stronger than it was in the past.

Pay scales in the public sector are usually low. During Mr Fujimori's regime, all privileges related to the civil servant office were eliminated to push forward voluntary resignations. This strategy worked out during the first years of the stabilisation package. Later, it proved to be not successful anymore as people preferred to stick to low-paid jobs as a safety net for worse times.

In the case of public companies, before Mr Fujimori's reforms, employers and workers of those had the status of a civil servant, with all the privileges related to pension schemes and compensations. With the privatisation process, most of them went into retirement. The process itself involved shedding labour by the government before the event, as part of the preparation to make the public enterprise more profitable and more attractive to potential buyers (Thomas 1998: 164.) After privatisation, new owners also offered substantial compensation programmes to get rid of "old" workers and to hire new ones. This strategy was more in tune with the company's objectives of achieving higher productivity and greater profits.

The legal framework of the career in the public sector is included in the Constitution of 1993, where workers of public or mixed-capital enterprises are explicitly excluded of the

main present in many Peruvians more than a decade after, and at the same time, graphically demonstrate the role Prime Ministers have to take in the government.

⁷⁷ Mr Bolona, Minister of Economy and Finance during President Fujimori's government, observed: "Regarding personnel reduction, 70,000 employees out of a total of 645,000 active central government workers have been relocated at a cost of over US\$ 80 million. The central government should be reduced by decreasing the number of ministries from fourteen to eight" (Bolona 1996: 243-244.)

status of public servant. In addition, the obligation to publish the income received by high-level bureaucrats and other civil servants was introduced.⁷⁸

Up to Mr Fujimori's government, corruption was seen in the public opinion as a big problem in the state bureaucracy. This view had as basis the day-to-day running of business of many public offices, which short opening hours to the public, permanent delays in the processing of cases and issues, and quite often, direct and indirect requests for money or goods to speed up procedures. Most of these practices were eliminated with the abolishment of the old civil service system, and its replacement by a new one based on modern management systems. In some sectors of the bureaucracy (Tax Authority, some ministries), the change has worked very well, others, still need to work major changes to their internal policies of control and monitoring of results.

Issues of good governance have been put in the policy agenda only in recent years. With the problems of credibility and political stability in the country, these have been put hardly in practice at the level of ministries and civil service offices.

C. Other State Institutions

a. The Military⁷⁹

In Peru, the military always held a position of privilege and high standing in society until its inability to control terrorism and drug trafficking during the eighties and nineties finished undermining such status. The problem of how to bring military establishments within the control of government and societies has been discussed at large by political thinkers. A number of models have been used with that purpose.⁸⁰

⁷⁸ *Constitucion Politica del Peru*, Art. 40°. “La ley regula el ingreso a la carrera administrativa, y los derechos, deberes y responsabilidades de los servidores publicos. No estan comprendidos en dicha carrera los funcionarios que desempeñan cargos politicos o de confianza. Ningun funcionario o servidor publico puede desempeñar mas de un empleo o cargo publico remunerado, con excepcion de uno mas por funcion docente. (...) No estan comprendidos en la funcion publica los trabajadores de las empresas del Estado o de sociedades de economia mixta. (...) Es obligatoria la publicacion periodica en el diario oficial de los ingresos que, por todo concepto, perciben los altos funcionarios, y otros servidores publicos que senala la ley, en razon de sus cargos.

⁷⁹ The overview in this section is based on Enrique Obando (1998), one of the most informed experts on military affairs in Peru. His research included interviews and participant observation with former members of the army, who were part of the different arrangements described in this section. Although a civilian himself, Mr Obando studied at CAEM and worked for the National Intelligence School and as advisor of the National Secretariat of Defence during the eighties, shifting to academic research on intelligence and military during the nineties.

⁸⁰ Obando identifies five main types: the Prussian model; the “party control” model; the Anglo-Saxon model; the Swedish model, and the cooptation model. For a discussion on those, see, Obando (1998: 192-193.)

In Latin America, the preferred model has been cooptation.⁸¹ As Obando (1998: 192-208) states cooptation was nothing new in Peru. President Augusto B. Leguia attempted it in the twenties (Villanueva 1977.) It involves granting special privileges to the senior echelons of the armed forces (promotions, political appointments, and economic favours) in exchange for their support to the regime. The system encourages a degree of stability in civilian-military relations. Yet, it also generates discontent in middle and junior levels. President Garcia introduced cooptation as his model for dealing with the military. President Fujimori took it to new lengths.

Prior to 1985 and the access of Mr Garcia to power, the Peruvian military combined an open, official system of power distribution, vouchsafed by the *Ley de Situacion Militar* (Law of the Situation of the Military) with a concealed system called “rings” (*argollas*) (Obando 1998: 193.) The official system was institutionalised in the 1950s, during President Manuel Odría (a former general of the army) government. It stipulated that the commander-in-chief (*comandante general*) of each branch of the armed forces, the highest-ranking officer, should be its most senior officer, until his eventual retirement. The age of retirement in the army came after 35 years of active service or at 58 years of age. Seniority was established by the first to become a divisional general (*general de division*), before other generals of the same rank. The system proved highly predictable, making it easy to determine in advance, who would become commander-in-chief each year.

Behind the formal system, another existed based on the principle of “rings,” united in support of one particular candidate for commander-in-chief. Those who aspired to hold such highest position in a military branch started forming those rings at least ten years in advance of being in the situation of candidacy to commander-in-chief. As the system allowed the prediction of candidates, officers would join the different rings courting the ringleader. The ringleader drew power from the actual and possible offers of “goods” to the followers.⁸² The goods were promotions, appointments, grades, and profit-seeking activities (licit and illicit.) If a commander-in-chief fell in disgrace, the members of his ring would suffer a similar fate.

During Mr Belaunde government and because of his own deposal by the military, he left the rings alone to avoid alienation. His government approved all weaponry purchases dur-

⁸¹ Examples of this are Carlos Andres Perez in Venezuela and Leon Febres Cordero in Ecuador (Obando 1998: 193.)

⁸² Originally, ring formation was not related to any ideological direction but to the distribution of power within the military. In the mid-sixties ring making took a political dimension because of the excessive influence (as considered by other member of the branch) of a conservative, Masonic ring within the armed forces during the fifties and sixties. A leftward-leaning Catholic ring emerged from the so-called *cursillos de cristiandad*. This ring believed in the need of social radical change in Peruvian society and it was one of the triggers of the military coup of 1968. During the period 1965-1980, rings reflected the ideological differences within the armed forces and the struggle was not only for goods but also for the power to influence policy direction.

ing its first two years. However, the debt crisis of 1982 obliged Mr Belaunde to stop the buys, in a moment when Shining Path was also at its highest in the South Andes region of the country. Military income fell sharply, which led many members to engage in illegal activities related to drug trafficking, smuggling, etc.

As mentioned, there was a long history of antagonism between the armed forces and APRA, the party of President Garcia. For such reason, it was very important for him to control the armed forces. Cooptation took the form of cementing an alliance with the dominant ring in each of the services, providing them with appointments in government or abroad as diplomatic representatives. When the leading ring resisted the approaches, Mr Garcia co-opted its rival and helped it win the struggle for power within that branch of the services. At the same time, his government strengthened the position of the police through weaponry and resources, and created paramilitary groups (*Comando Rodrigo Franco*) within the police, as a sort of competition to the military.

These events created discontent down to the rank of major, who started organising and put together a manifesto called the “Green Book” (*El Libro Verde*.) The document is particularly important because it reflects the adaptation of the Peruvian military thinking to the liberalised market economy, in contrast to the policies they pursued in the seventies (also embodied in another document called “Plan Inca.”) The most controversial point of the plan was the establishment of an uninterrupted government of 20 years, timeframe considered necessary for the reforms to take root in the Peruvian political system. At the same time, it stated a radical counter-subversion policy. It was, then, liberal in the economic area, while authoritarian in the political. The underlying pillar was a civil-military alliance, working in favour of business class interests and, at the same time, seeking support in civil society. The military wanted to play a major role in the attempt to restructure society on more stable foundations, and by avoiding the periodic crises plaguing Peru in the last decades, they wanted the country to play a more hegemonic role in the South America region.

President Fujimori, in collaboration with his close advisor Vladimiro Montesinos, chose a different cooptation strategy. Mr Fujimori was concerned that, without a political party or other stable back up in civil society, he might be a victim of a coup. On Mr Montesinos advice, Mr Fujimori eliminated the previous ring system on deciding himself whom to promote to the high command. A new military law was issued in November 1991 (through the special delegation of faculties from Congress to the Executive). It was specified that the president would personally nominate the commanders-in-chief of the armed forces and that they did not have to retire after 35 years of active service. In practice, that meant it was not necessary anymore to co-opt one ring every year. He could nominate a person of trust and

hold him in power as long as necessary. The only ring in existence would be that of the commander-in-chief.

The new cooptation strategy again enraged members of the military because it was not based in professional merit anymore and the goods to distribute became scarcer. A group of *institucionalista* generals formed by those who had been slighted in the position of commander-in-chief organised a coup in November 1992. A second reason for the coup attempt was the closure of Congress in April 1992. The plot was discovered and crushed. Fifty officers were involved, going down to the rank of captain. The alleged defence of the constitutional order by the *golpistas* can be certainly doubted as most of the Army, whether *institucionalista* or not, were against the laws the 1990-elected Congress approved to deal with subversion, whose contents were the contrary of what the army envisioned.

Human rights violations committed by the military in the early nineties led to increase criticism of the commander-in-chief chosen by President Fujimori, General Nicolas Hermoza di Bari. This man would prove to be resilient and most importantly, capable to develop his own network of power, which ultimately led him to resist the President and his advisor, Montesinos, in their attempts to remove him from power. He did not have political ambitions and his main concern was to protect himself and his ring from accusations of human rights violations or drug-related corruption. In the wake of denunciations for grave crimes committed by the Army,⁸³ general Hermoza felt powerful enough to take the tanks to the street to prevent an investigation by the Congress. Mr Fujimori used the intelligence service (SIN) under Mr Montesinos' control as a counterweight to general Hermoza's power.

The trio formed by President Fujimori, his advisor Montesinos, and the commander-in-chief Hermoza was held together through common enemies, rather than mutual trust. Those enemies were the opposition, the independent press, and the terrorist groups, among others. The hostage crisis in the Japanese embassy in December 1996 played in favour of the three as its handling provided them with a boost in popularity and political revenues.

Finally, at the end of his government, Mr Fujimori managed to remove general Hermoza. With the end of President Fujimori's government, and the fall in disgrace of his advisor Montesinos, general Hermoza saw himself with less trouble than them and, apart of the charges on human right violations (dragging in the Judiciary,) he has not been involved in corruption accusations as Mr Montesinos, and had not have to flee the country as Mr Fujimori.

⁸³ Those were the Barrios Altos assassinations (army squads attacked a party murdering several people, including children) and the kidnapping and disappearance of a professor and nine students of the National University La Cantuta.

Mr Toledo government has attempted to normalise the relations with the military and assert the civil sector through the nomination, for the first time in the history of the country, of ministers of Defence coming from civilian sectors of society. The same policy was applied in relation to the police forces. Up to the present, there is no public sign of great discontent among the military ranks, although Mr Toledo carried out a *razzia* at the beginning of his government, removing all officers of general Hermoza's ring. Apparently, the military has contented itself, for the moment, and has retired to its garrisons, busy with the task of re-organising its internal structures of power, seriously affected since 1985.

b. The Judiciary⁸⁴

Peru's law system derives from the Roman-German juridical tradition (civil law) and is formal and explicit. The Constitution of 1993 has two-hundred and six articles plus final and transitional dispositions. It contains a catalogue of human rights of first, second, and third generation. Regulatory agencies can also create rules and regulations regarding material under their jurisdiction, which form the corpus of administrative law. Peruvian law tends to be explicit and definable. Lawsuits are therefore for the assertion of rights clearly stated in the laws. The Peruvian system does not include punitive damages. Lawsuits in defence of constitutional rights are handled through specific mechanisms called "constitutional guarantees" (*garantias constitucionales*). The one most used is the *Accion de Amparo*. Through this writ, citizens may ask for a writ of protection claiming that specific government actions, laws, or omissions have violated their constitutional rights. The decision by the courts has juridical effects only among the parties in the lawsuit (*inter partes*) and not general effects, mandatory to everyone (*erga omnes*.)

The system of courts has at its top the Constitutional Tribunal (*Tribunal Constitucional*), which has seven members elected by the Congress of the Republic with the favourable vote of two thirds of the legal number of members.⁸⁵ The requisites for becoming a member are the same established for becoming Justice (*Vocal Supremo*) of the Supreme Court of Justice. The Constitutional Tribunal decides on cases where the decision of the Supreme Court fell against the accusatory part, but only in cases of *habeas corpus*, *amparo*, *habeas data*, and *cumplimiento*. It also decides as sole instance on constitutionality writs (*accion de*

⁸⁴ The information included in this section has as source, apart of the literature, the experiences of the author of the dissertation as a lawyer in the Peruvian juridical system.

⁸⁵ *Constitucion Politica del Peru*, Art. 201°.

inconstitucionalidad). Finally, it decides on conflicts of competences according to law.⁸⁶ In all other cases, the Supreme Court is the highest level of decision in the country.

The Supreme Court (*Corte Suprema de Justicia*) is internally organised in specialised chambers that decide on the cases accordingly, e.g. constitutional, criminal, administrative, and civil. The members of the Court are called *Vocales Supremos*. When the members of the Court convene together, it is called *Sala Plena* (plenary). The National Counsel of the Magistrate (*Consejo Nacional de la Magistratura*) appoints the Justices.⁸⁷

The next level down in the Judiciary is the Higher Courts (*Cortes Superiores*), which are located in each department of the Republic. These courts are usually the second level of decision in a lawsuit. The members of the courts are called *Vocales Superiores*. Under the Higher Courts, the circuit courts are found; each led by a judge (*juez de primera instancia*). Circuit courts are organised by shifts and specialisations, e.g. criminal, family, children, civil, administrative, and constitutional. Labour and agrarian affairs have a separate jurisdiction that comes together again at the level of Supreme Court.

Electoral issues are handled by the *Jurado Nacional de Elecciones* (National Electoral Board), whose decisions are not subject to appeal before the Judiciary. Military issues are handled by military courts, which are not a part of the Judiciary but of the armed forces system (*tribunales castrenses*).

As mentioned at the beginning of this section, the Executive Branch can exert influence and pressure on the decisions of the Peruvian courts through mainly informal means. Albeit, during President Fujimori's second government, those were near to extortion and physical threats through the use of the national intelligence service by his close advisor, Mr Montesinos.

The main reason for which the Judiciary has never enjoyed the political autonomy required to protect individuals' rights against abuse by the state or from the excesses of the country's rulers has been the interference of the Executive branch in the appointment of judges. Prior to the reforms of the nineties, the Constitution of 1979 gave the president the right to nominate judges, members of the higher courts and the Supreme Court from a list of names suggested by the *Consejo Nacional de la Magistratura*. In the case of the Supreme Court, presidential nominees needed to be ratified by the Senate (de Belaunde 1998: 173.) Before 1979, during civilian rule periods, the system was the same. The use of such powers by the Executive reinforced the political dependence of the Judiciary.

⁸⁶ *Constitucion Politica del Peru*, Art. 202°.

⁸⁷ *Constitucion Politica del Peru*, Art. 150° to 157°. This is an important change in relation to past systems.

In addition, lack of adequate funding and poor working conditions made of the Judiciary an unattractive career and not an alternative for lawyers of the best universities. This neglect under successive governments only seems to confirm the politician's distaste for a strong and assertive Judiciary. The main consequence of this has been widespread corruption, exacerbated since the eighties by drug-related crime. Moreover, legal procedures are obsolete and archaic in terms of organisation. Proceedings can extend for long periods, even years, normally in detriment of those demanding justice and benefiting those who violated the law. This situation does not motivate the citizens to recur to the Judiciary in search of justice and rather push them to look for solutions outside the formal legal system, which only undermines it, further.

In the wake of the process of reforms of the nineties, the Judiciary was also included. Consensus grew in society that without an independent and efficient justice system, there could be no democracy. During President Fujimori government, this call for reform was mainly understood as a need to modernise with technological means the procedures of the Judiciary. The structural problems of the Judiciary, e.g. the attacks of outside forces to its autonomy, were not addressed. First, between 1990 and 1992, Mr Fujimori's government issued a series of laws affecting the Judiciary. Among them were a new General Law of the Judiciary (*Ley Organica del Poder Judicial*), a new criminal code, a new civil procedural code (*Codigo Procesal Civil*) and a new criminal procedural code (*Codigo de Procedimientos Penales*) (Rivera Paz 1997: 21.)

However, the self-coup of April 1992 changed the direction of the reform. Mr Fujimori, in the speech justifying the coup, emphasised the role of the Judiciary as corrupt, arguing that judges were incompetent, partisan, and even supportive of terrorism. One of the first measures of the new government of national reconstruction was to dismiss most of the judges of the Supreme Court, along with the attorney-general (*Fiscal de la Nacion*), the Justices of the Tribunal of Constitutional Guarantees, the members of the *Consejo Nacional de la Magistratura*, and a large number of judges at lower levels of the hierarchy. In the following, the Executive appointed new provisional members of the Supreme Court, who held the authority to dismiss judges of lesser ranks without right to appeal.

The strategy used by Mr Fujimori government to hold a fist against the Judiciary was the appointment of provisional judges. Judges in a position of uncertainty, as of whether or not they would remain in the position, would usually decide in favour of the regime or its associates in lawsuits that fell under their jurisdiction. Another strategy was the system of rotation. Judges were obliged to change circuit courts every certain time. The fear of confronting

cases that would be controversial led them to decide tamely on issues involving the state as a party in a lawsuit.

The Constitution of 1993 that included the decision of surrender judges' appointment to the *Consejo Nacional de la Magistratura* gave some hope to those expecting more judicial autonomy. The text also included the creation of the *Academia Nacional de la Magistratura* (National Academy of the Magistrate) to provide training to those entering and in the Judiciary. Likewise, the establishment of the Peruvian Ombudsman was seen as another positive step. Finally, the re-creation of a Constitutional Tribunal with more powers than the previous Constitutional Guarantees tribunal was also welcomed. In addition, the legal recognition of the ancestral authority systems of indigenous and Amazonian communities, along with their customary law was seen as a long due step towards their full integration in Peruvian society (de Belaunde 1998.) However, the official discourse was contradicted by what would happen in the next years.

Mr Fujimori's clearest strategy to control the Judiciary started in November 1995 with the creation of the *Comision Ejecutiva del Poder Judicial* (Executive Commission of the Judiciary), which had as objective to concentrate all administrative issues related to the management of the Judiciary that had been traditionally in the hands of the President of the Supreme Court. Mr Jose Dellepiane, a retired admiral associated with Mr Montesinos, was named executive secretary of the Commission. He, in fact, became the most powerful person in the Judiciary. In June 1996, the Congress approved a law that established the Counsel of Judicial Coordination (*Consejo de Coordinacion Judicial*), which was given the responsibility of reorganising the administration of justice in the country. At the same time, the powers of the CCJ reinforced the importance of the Executive Commission of the Judiciary.

As it can be observed, the main problem with the creation of all these bodies was that, although in theory the aim of reorganising the Judiciary was important, such commissions only took out power from those who were the ones called to initiate and implement the reform, the judges and justices.

A similar strategy with copycat commissions and bodies was applied to the reform of the state prosecution service (*Ministerio Publico*). Ms Nelida Colan Maguino, a person trusted by Mr Fujimori, was named both Attorney-General of Peru and president of the Executive Commission of the State Prosecution Service (*Comision Ejecutiva del Ministerio Publico*).

Overall, the process of reform of the judiciary showed positive developments and pitfalls. Among the first, it can be counted the improvement in administrative methods through the adoption of more business-like attitudes towards management and the implementation of greater administrative control. The physical infrastructure was upgraded (although much still

needs to be done). New technology systems were introduced, like computers (before judicial files used to be sewn by hand as in the 18th century,) and new courts were created to deal with the problem of imprisoned without trial.

The pitfalls however were also important. Decision-making in the Judiciary was centralised and not transparent. Members of the Judiciary could not express their critique to the reforms. As it was mentioned before, the instability in the position of judge and the introduction of a system of bonus, paved the way to unfair influence and political manipulation.

Four cases illustrate how the Executive branch, with the help of the Congress, and the Military, violated the autonomy of the Judiciary.⁸⁸

i. In July 1992, a professor and nine students of the National University of Education (called “La Cantuta” for its location) were kidnapped, tortured, and forcibly disappeared by members of the Military. Investigations by independent journalists and human rights organisations revealed compelling evidence of the involvement of members of the armed forces. Subsequently, judicial proceedings opened in both civilian and military courts, where the main accused were military officers in active duty. Rival claims were presented as to which court had jurisdiction to hear the case. The Supreme Court should have settled the dispute around February 1994, according to the code of criminal proceedings and the code of military justice.

However, when it came to vote, and without doubt with pressure from the Executive branch, three members of the Court voted for the case to be adjudicated to the military courts and two for it to go to the civil courts. This provoked a stale because the law required a majority of at least four-to-one. In the case of a stale, the General Law of the Judiciary established that more members of the Court should be summoned until the required majority was achieved. However, immediately after, the Congress approved Law 26291, which stated that in circumstances as those involving military courts a simple majority was sufficient and the new law was directly applicable to the case in hand without the need for more votes on the matter.

This meant that the Congress was solving a dispute over legal jurisdiction, overriding established procedures. This was a breach of judicial autonomy, involving lawmaking retroactive in its effects. It is also an example of *ad hoc* legislation, a law made applicable to a single case and one that, on top, violated constitutional norms.

ii. In June 1995, Law 26479 was promulgated. Art. 1° of this law extended an amnesty to all members of the armed forces, the police and members of the public, who had been de-

⁸⁸ Even if these cases refer to the issue of human rights, those demonstrate the pattern of behaviour of the Executive branch that repeats at other levels of the administration and bodies, including environmental ones.

nounced, were under investigation, tried or imprisoned for military or civilian crimes arising out of the fight against terrorism, whether acting alone or in a group, between May 1980 and the date of promulgation/issuing. At the same time, a trial was running for those responsible for the killing of 16 persons in the Barrios Altos district of Lima. The accused were members of the national intelligence service (SIN) also involved in the killings of La Cantuta.

The judge running the case, Ms Antonia Saquicuray, considered that the amnesty law was inapplicable to the case of Barrios Altos. She argued it represented a violation of international treaties signed by Peru in defence of the rights and life of individuals. A second argument was the superiority of the constitution over individual laws in cases in which these clash.

The government reacted and Congress promulgated Law 26492 a few days after the judge's decision. The new Law interpreted the amnesty law in such ways as to state that it did not violate judicial norms or international commitments on human rights and that, since it was related to a pardon, it was not subject to any revision by the judicial authorities. Further, it broadened the scope of the amnesty, including in it those who had not been denounced by the cut-off point. This was a gross violation of the Judiciary autonomy. The higher court in charge of revision of the judge's decision acquiesced and those held on custody were freed.

It was therefore a case where the government enacted a law to correct a judicial decision, imposing a new preferred content. Going to the specifics of amnesty, this institution is supposed to be justified with regard to crimes against the state, not to those committed for those working as agents of the state, as it was the case of the military officers involved in alleged human rights violations. Secondly, the amnesty overrode the duties of the state to protect human life and end the use of torture, duties derived from international treaties in which the Peruvian state was a signatory.

iii. The third case demonstrates the way in which military jurisdiction had assumed extraordinary and disproportionate powers. In 1996, General Rodolfo Robles, a retired general and *institucionalista*, was detained without a judicial warrant accused of military misdemeanours (*delitos de funcion*). This general did not belong to the ring of commander-in-chief, general Hermoza, and in an attempt to weaken him; he denounced to the press the participation of members of the military in both the Barrios Altos killings and La Cantuta kidnappings and disappearances. After making public those crimes he retired of active service. The basis for his arrest was the interviews he gave to the press. General Robles' family petitioned a writ of *habeas corpus* before a constitutional circuit court. The judge upheld the petition and ordered

general Robles' immediate release.⁸⁹ However, the military judge refused to accept the jurisdiction of the civilian judge. The trial to general Robles continued its course, in spite of President Fujimori publicly recognising his detention (ordered by General Hermoza) as an abuse.⁹⁰

A few days later, the Congress of the Republic approved Law 26699, which amnestied general Robles, followed by Law 26700, which amnestied the military judges who had been denounced for contempt (*desacato*) of a judicial order (of the civilian courts). In other words, the Congress pursued to roll back events as if nothing had happened.

The weakness of the Judiciary derived from the fact that it was necessary that the Congress granted an amnesty to a single person to restore his rights. On the other hand, the refusal, not only from the Military but also from the Congress, to recognise that civilian courts had the upper hand over the military ones speaks volumes on the stand of the Judiciary at that particular time.

iv. In January 1997, the Constitutional Tribunal was called upon to resolve on a claim of unconstitutionality against a law of interpretation, which would enable Mr Fujimori to stand for re-election in year 2000. According to the legislation governing the workings of the Tribunal, a majority of six-to-one was necessary to declare a law unconstitutional. The Tribunal declared the law inapplicable in Mr Fujimori's case, with three of its members voting for that argument and the rest of the members abstaining. This meant Mr Fujimori was not able to stand for election in 2000. The law was not deemed unconstitutional, but it was not applicable

A few days later, under accusations of confidential documents going astray, the Congress started an investigation, which resulted in a constitutional accusation process against four of the Justices of the Constitutional Tribunal. This ended in the removal from the Tribunal of the three Justices who had voted against the law. On top, the Congress approved a law of "authentic interpretation" (*interpretacion autentica*) declaring that the election of 2000 was to be counted as the second for Mr Fujimori under the Constitution of 1993. The solution allowed Mr Fujimori to stand for the presidency in 2000.

Finally, in addition, in May 1998, the government decided to extend the use of military courts to judge common criminal cases in response to a wave of violent crime in the urban areas of the country.

⁸⁹ The judge, Ms Greta Minaya, was immediately removed from her post, on orders of the president of the Lima Higher Court, and demoted to sentencing judge in a criminal court. After a wave of public protest, the decision was changed and Ms Minaya returned to her previous office. Ms Minaya was a provisional judge.

⁹⁰ General Robles' detention was ordered by general Hermoza, who as it was explained before defended the members of his ring against accusations of human rights violations and drug-related corruption. This was one of the cases where the clear tension between general Hermoza and President Fujimori (and his advisor Montesinos) was visible to the public opinion and observers.

The cases mentioned above only confirm a pattern of interference in the independence and autonomy of the Judiciary by external forces headed by the Executive branch, which has repeated itself since the establishment of an organic Judiciary in the country.

c. **Regions and Municipalities**

For most of the twentieth century, the Peruvian state has shown little vocation for decentralisation. Under the Constitution of 1933, the country was divided in departments, provinces, and districts.⁹¹ That Constitution included also provisions for the creation of departmental councils, elected directly on a secret ballot. However, such bodies never came into existence. At the provincial and district levels, from 1920 onwards, and with the sole exception of the period 1963-1969, local mayors were appointed by the Executive branch (Degregori, Coronel and del Pino 1998: 243.) As explained in previous chapters, the oligarchic system of control allowed powerful landowners to control geographically the territory and held absolute power. Therefore, the person appointed by the Executive branch would usually have the acceptance of the local patron (*gamonal*) and would govern (if at all) following the lines of the landowner interests. The abovementioned system remained until 1968. The military returned to the practice of appointing directly the mayors of provinces and districts, this time without consulting any landowner, and, with the Agrarian reform of 1974, it eliminated the power of the oligarchy at the local level.

The system of regions was established for the first time in the Constitution of 1979. The first attempt to implement it was crushed by President Fujimori's coup in 1992. Regional presidents and assemblies were elected by popular vote. A second attempt under the Constitution of 1993 started in 2002. It is still on implementation. Regional presidents are elected by popular vote for a five-year term and can be re-elected.⁹² Assemblies were exchanged for Regional Coordination Councils (*Consejos de Coordinación Regional*), whose members are authorities such as provincial and district mayors, prefects, police heads, etc.

Conversely, Municipalities have had a much stable history ever since popular elections were established. Those took place, for the first time in 1963, for the period 1963-1968 and, later, were re-enacted in the 1979 constitution. Elections have been held timely since 1982. Mayors (*alcaldes*) and municipal councils (*concejos municipales*) are elected for five-year terms and can be re-elected.⁹³

⁹¹ A district is a territorial unit within a province.

⁹² *Constitucion Politica del Peru*. Art. 198°.

⁹³ *Constitucion Politica del Peru*. Art. 191°.

The main problem of the regions and, especially, of Municipalities is the lack of adequate funding to fulfil the many competences and powers given by the Constitution and the laws. Until 1994, municipalities earned the income coming from tax and services collection, plus a 2 percent of the VAT. In the case of infrastructure projects, mayors usually had to negotiate with the Executive branch the allocation of specific funds. In theory, Municipalities were supposed to solve the problems citizens face directly in their daily lives. In practice, their scope was limited because of the poor human and technical resources available. However, in some cases, Municipalities, headed by cunning and entrepreneurial mayors, have been successful in addressing the constraints and, with citizen and grassroots support, have managed to achieve improvements in their communities. In the case of the regions, it is still early to analyse the situation, although control mechanisms for transparency and accountability are being taken into account, as demonstrated by the results of the report on good governance of the Peruvian Ombudsman (Defensoria del Pueblo 2004)

Because of its population (approximately a third of the country's inhabitants, 8 millions), the capital city, Lima, is the most important mayoral post in the country. A good mayor of Lima has chances to become later a presidential candidate, if the local government has been successful in fighting the problems that such a mega-city faces. In the past, former mayors of Lima have been popular presidential candidates as Luis Bedoya Reyes (PPC,) Alfonso Barrantes Lingan (IU,) Ricardo Belmont Cassinelli (the first of these charismatic candidates without party ties who paved the way for a President Fujimori,) and Alberto Andrade Carmona (of the political movement *Vamos Vecino* renamed afterwards as *Vamos Peru* and later *Somos Peru*).

The importance of that position has led to an enormous thrive, from the part of the Executive branch, to gain the job for a member of its party or political movement. That means, in practical terms, to use the huge Executive branch resources (i.e. funding, media, organisation) to support the desired person, usually a presidential candidate "in waiting" within the party or movement. The strategy paid off handsomely in some cases. In the case of President Belaunde's party, AP, it effectively managed to gain the office for his candidate, Mr Eduardo Orrego, in 1982, who was seen as a possible *presidenciable*. In 1987, President Garcia party, APRA, gained the office for his candidate, Mr Jorge del Castillo, who belonged to the closest circle of the president. The strategy did not work out well for President Fujimori, as his candidate in the 1994 elections, Mr Jaime Yoshiyama Tanaka, lost against Mr Andrade Carmona, albeit the fact that the Executive branch apparatus (including intelligence services) was put fully to service such aim. Mr Yoshiyama was Mr Fujimori's undoubted successor at

that time and a year later, he retired completely of politics after disagreements with Mr Montesinos.

Although, President Garcia had attempted to control local government through funding control and launching programmes aimed to the poor that actually were in the scope of competences of the municipalities, President Fujimori again took this strategy to new lengths. In 1994, the Law Decree 776 established the Municipal Compensation Fund (*Fondo de Compensacion Municipal*), which allocated monies to the municipalities based on population and indicators of relative poverty (Adrianzen 1996). The Fund gave priority to rural areas, which received roughly twice as much the resources allocated to urban ones, and to district over provincial municipalities (the latter probably receiving no more than 20 percent of the total). This was in tune to the President's parallel strategy to travel intensively to the rural areas, supporting mayors who belonged to his political movement. In practice, this law provoked the atomisation of resources because the bulk to be distributed was small. The Law Decree 776 topped the intervention strategy of the Executive as in Lima, it took over responsibility for traffic management, street markets placements, and urban parks protection

A parallel tactic was the concentration of public spending in the hands of the Ministry of the Presidency, whose resources multiplied five times in three years to reach 22,6 percent of total government spending in 1996 (Degregori *et al* 1998: 245.) Many of the agencies under such ministry were involved in activities that could and had been carried out by local governments. The combined financial resources of those agencies were in excess of the monies in the Municipal Compensation Fund. The combined spending of those rose to 8 percent of total spending. In addition, the armed forces involved themselves in so-called civil programmes, re-building infrastructure damaged during the terrorist war, but again in those areas where the population was actively supporting the President.

In fact, what Mr Fujimori implemented was a decentralisation of spending, combined with a further atomisation of the local governments and a sharp increase in centralised political control (Degregori *et al* 1998: 245.) Therefore, mayors oriented themselves towards the Ministry of the Presidency and to Mr Fujimori himself, who continued travelling the country tirelessly, directly involved in the projects concerned. This phenomenon has been called "techno-populism," because the presidential handouts consisted of computers and televisions⁹⁴ rather than the more traditional fare food (Degregori *et al* 1998: 245.)

⁹⁴ These handouts were lately subject of much criticism because, at first, Mr Fujimori proclaimed he was bringing modernity to the poorest parts of the country, but, in fact, those villages were so poor that did not have energy supply to use the electrical appliances received. Then, Mr Fujimori started handing out electricity generators along to provide for the service.

D. The Policy Making Process

The Peruvian system is enormously dependent on the quality of its leadership and presidential understanding of how economic and social policies and affect the development of the country. New presidential elections are an extremely important fact of political life in Peru. New presidents introduce extensive changes in positions within the government. They are able to bring in “their” people who, in turn, build up teams of “their” people within ministries, and agencies. This provides the president with a group of high- and middle-level officials who share a general orientation towards public policy and are motivated to carry out his policy changes to reach goals. It is believed that, in doing so; they enhance their chances for upward political mobility or professional improvement. However, this five-year cut off point brings about not only innovation, but also discontinuity in public policy making.

Policy initiative is routinely taken by the office of the President in the Palace, the office of the Prime Minister (*Presidencia del Consejo de Ministros*), and the ministries, in response to the President’s policy priorities. Because of the personality cult involving the figure of the President in the last two decades, ministers have a low profile. Ministries headed by people closest to the President and staffed, in turn, by people of the most inner circles respond with zeal to the president’s lead. Ministries awarded to groups or interests important to the President political movement may be more resistant to presidential policies that may eventually affect negatively those interests.⁹⁵

Together with the bureaucracy, the president is the focal point of policy formulation and political management. Until 2000 (and with the exception of the period 1990-1992), the Legislature always had a majority belonging to the elected president and acted as a “rubber stamp” body on president sponsored legislation. Since 2000, the Congress has proven to be a more active policymaker and controller, blocking legislation, forcing its negotiation, and introducing its own bills. At the same time, the Congress is trying to repair its standing before the citizens.

How far the changes and reform will go will depend on the resources available to the government and the necessary elite support (i.e. group interests, the Military) for those changes. Presidential skills in negotiating, managing the opposition, using the media to ac-

⁹⁵ This can occur if, for instance, the Ministry of Production is given to a representative of SNI, the BUO that represents the interests of industrialists in the country, and the government opts for an export-oriented instead from an industry-growth policy. A similar case can occur if the Ministry of Energy and Mines is given to a representative of the SNMPE, or the Ministry of Fisheries is given to a representative of SNP.

quire public support, and manoeuvring within the bureaucracy can be important for ensuring full endorsement to his programme. At this respect, the office of the Presidency in the Palace has acquired unexpected importance during Mr Toledo period.

Important limits on presidential power occur when policy is being implemented. The areas where this may occur are environmental law, safety in the working place, election monitoring, health care in remote rural areas, regulation, among the most important. Those are cases where the advanced legislation issued by policy makers does not translate into practice. In some cases, policies are not implemented because public officials at the lower levels disagree with the policies or make deals with affected interests for their personal benefit. This can occur when for instance inspectors do not report environmental damage produced by mining corporations in exchange of money or goods, or the latter bribe officials to overlook them. In other cases, lower-level officials may lack the capacity or skills to implement the policies, such as those directed towards improving education or rural development services. In any case, Peruvian presidents cannot always deliver on their intentions. In spite of this, the presidential office continues being the most powerful and most sought after position in the country.

4.1.2. Representation and Participation

In Peru, the representation of citizen interests in politics is a relatively new event that goes back to sixties. In the period between 1920 and 1965, citizen interests were represented mainly by different parties (APRA and PCP, among them), and emerging trade unions. The Constitution of 1933 established that only literate men were able to vote, thus discriminating the illiterate and the women, which made the bulk of the population. However, because of the grip of the oligarchy on the country, attempts to open spaces for more participation were crushed by the military when needed. During those years, APRA and the PCP were declared illegal and their leaders forced into exile. Trade union leaders followed the same fate. The country was also very different. Only 30 percent of the population lived in urban areas and industrialisation was almost inexistent. The political system offered few chances for representation and participation. Issues of class, race, money, and gender crosscut the opportunities for the average person to express their demands to the political class. The system assumed that contending interest groups would compromise and resolve their conflicts behind the scenes. The same applied to distribution of rewards to those willing to play by the formal and informal rules of the game. The elite in power responded seldom, and if reluctantly and defensively, to the demands of the citizens.

It was in the sixties when dramatic changes in Peruvian society occurred triggered by a new phenomenon, migration from the rural areas to the cities. This new urbanites came mainly from the Andean rural areas attracted by the lure of the city as a place of opportunities and life-improvement. At first, the cities did not welcome the new neighbours. Afterwards, the newcomers would dominate and change urban life in the country. At the end of the sixties, Peru was going fast to become an urban country, process that consolidated during the seventies. To the lack of housing, they responded invading land as squatters and building with their hands houses and districts (Collier 1976). To the lack of jobs, they responded creating their own working places as street vendors, in the markets, as petty traders (Matos Mar 1984). This phenomenon was called “*el desborde popular*” (people’s overflow).

At the same time, a new urban class started to emerge led at first by a white professional group who had access to higher education (in Peru or abroad) and who did not belong or represented the interests of the oligarchy. Former President Fernando Belaunde Terry represented these sectors at best. He belonged to the white middle classes of Arequipa, the second largest city in Peru, had studied in Lima, and later in France, and had a liberal profession, architecture. The young lawyers, doctors, engineers, and architects wanted change in the country and joined Mr Belaunde’s party, AP, in hopes they could bring about that transition.

The oligarchic state had started to fall apart since the emergence of these new social actors and the *coup de grace* was provided by the landslide win of AP in the Peruvian national elections of 1965. The demands and claims of the people gradually asserting their rights in the political system overwhelmed the reaction capacity of the elite in power. This led to an unlikely alliance in Congress between APRA and UNO, the party of former military ruler, General Manuel Odria,⁹⁶ against AP attempts to bring this change through legal means. As we already have seen, the AP government was ended by the military through a coup, which had as aim to implement the reform the political elite had not managed to enshrine in constitutional ways.

The seventies brought about the consolidation of the new emergent urban classes, which were mainly of mixed or Andean ancestry, dedicated to trade, with basic education or no education at all, and a cunning entrepreneurial edge that will lead them to survive in the jungle of the cities. They worked hard to provide his children with education and opportunities they did not enjoy in the rural areas of origin. Eventually, they would form what has been called “*el nuevo Peru,*” whose ultimate example of social achievement is embodied by President Toledo.

⁹⁶ General Odria was ruthless against APRA declaring the party illegal and forcing all his leaders to leave the country for several years during the fifties.

The eighties brought the emergence of terrorist movements, which waged an internal war and pursued to bring change to the country through violent means. It is important to mention that the origin cell of SL was a group of educated people from the provinces (Central-South Andes), who did not manage to overcome the structures of domination prevalent in the rural areas and who, therefore, came to the conclusion that the only way to change the country was through armed struggle. The phenomenon of people's overflow and Peru's shift towards urbanisation was not taken into account in their analysis. That is one of the main arguments to state that the strategy of SL was doomed from the beginning because the social conditions changed so radically in the seventies that their model of Peruvian society was outdated when they started the war.⁹⁷

The nineties and Mr Fujimori brought changes on how the masses would communicate with the President, who was the ultimate decision maker in the country. As explained in the section of this Chapter dealing with the Executive branch, personality cult and control of the opposition through the intelligence service characterised the system of "delegative democracy" (as described by O'Donnell) in Peru. Peruvian researchers renamed it as "vigilated democracy" (because of the use of surveillance systems to control the population) (Balbi 1996.) Political spin reached new heights, which would end changing the ways of politics and political life in the country (Conaghan 1995).

In daily life, citizens interact with the government through a number of informal means rather than the formal processes of elections, campaigns, and interest group lobbying. Those means include clienteles, social capital, and networking, among the most important. In any case, the government continues having the upper hand, but citizens have started to assert their rights to democracy and freedom as it was demonstrated by the mass demonstrations and mobilisations that provoked the ousting of Mr Fujimori and his advisor Montesinos, after a blatantly fraudulent presidential election in 2000.

⁹⁷ SL was founded by a group of people educated in the Universidad Nacional San Cristobal de Huamanga, Ayacucho, headed by the philosophy professor Abimael Guzman Reynoso. They set the basis of their political arguments during the sixties. During the seventies, many suffered persecution and had to leave the country, going to places like China or North Korea, where they received further military training and ideological education. In 1975, Abimael Guzman and his followers declared that armed struggle was the only way to bring social, economic, and political change in the country. They went undercover until the official start of their struggle on 13 May 1980, the day of the first free and universal elections in Peru after twelve years of military rule (Gorriti 1990). See also several writings by Carlos Degregori published by IEP.

A. The Legislature

In Peru, while formal rules exist that prescribe how a bill becomes a law, analysing them would only be partially useful to understand how the Legislature has worked out during most of the history of the country. In the period from 1934 to 1968, Peru was under the Constitution of 1933, which established a bicameral system, a Chamber of Deputies (*Camara de Diputados*) and a Senate (*Senado*).

In theory, departments and provinces were represented in Congress through deputies elected for each province, and senators for each department. However, such formal system was overridden by what happened in reality. Adrianzen (1996) puts it bluntly when stating that what seemed a decentralised system of representation was, in fact, an oligarchic system with three characteristics:

- i. Congressmen were local notables.
- ii. Through the system of regional spending powers (*iniciativa del gasto*); they operated a system of patronage and clientele within their constituencies that supplanted local democracy.
- iii. Since central government controlled the purse strings, deputies were highly dependent of the Executive branch.

With the social changes in Peru during the sixties, the oligarchic system started to disintegrate as the emergence of new urban classes challenged the *status quo* with new demands and claims of citizenship. Provinces lost gradually their character of fiefdoms of a patron. This was recognised by the political class, at least when in 1962, the Law Decree 14250 established that the election of both deputies and senators was to be done on a department basis. The military regime finished the material basis of the system when the landowners lost their property through agrarian reform. Finally, the Constitution of 1979 abolished the system of *iniciativa del gasto*, ending the main instruments for propagating local clientele.

Under the Constitution of 1979, the Peruvian Congress repeated the bicameral organisation through Deputies and Senators. The latter were elected by department while deputies by single district. Each chamber had specialised committees in charge of analysing and giving opinion on draft bills, the same that, if positive, would be passed to the plenary of the chamber for approval. If the plenary approved, then the draft bill would be sent to the other chamber for approval as well. The proceedings of committee and plenary was repeated in the receiving chamber. If approved in the latter, the draft became a bill and was to be binding upon publication in the official gazette "*El Peruano*." This long-dragging system provoked ineffi-

ciency and, when in case a clear majority was not at hand, major problems for the government to achieve the approval of desired legislation.

However, in both Mr Belaunde and Mr Garcia governments, their parties achieved absolute majority for which no need existed to compromise with the opposition to carry out policy initiatives. The members of the parties in power approved automatically what has been initiated in the Executive branch. The process worked through two channels. The first one was the formal proceedings to approve legislation as established in the Constitution and the Internal Proceedings of the Congress (*Reglamento del Congreso*), the latter having the level of a law of the Republic. This consisted in the drafting of the proposal at the Executive branch; the draft then was taken by one or more members of the congress as his/their initiative and was presented to the appropriate working committee. This would roll out the process of legislation in the parliament as described above; under close follow-up of the Executive to make sure the initiative was approved.

The second channel was the mechanism known as *otorgamiento de facultades legislativas al Poder Ejecutivo* (extension of legislative powers to the Executive branch.) To obtain those powers, an absolute majority of the Congress had to vote accordingly. This alternative was used when the Executive thrived for a swift approval of a law, overriding the long procedures of the Congress. The extension was given for a specific period and for legislating on specific issues. Although Mr Belaunde and Mr Garcia counted with absolute majorities in both chambers, as said before, and they would not have had major problems to achieve the approval of a law if needed, they made use of the mechanism in several occasions, especially when controversial topics related to the economy were at stake. This was also a way to assert publicly which branch had the upper hand in policy making on a specific issue and, as time passed, finished undermining the Congress, as more often the Executive would use the special faculties to approve the most important legislation, leaving aside the Legislature.

The system worked smoothly for the Executive branch until 1990, when the political movement of Mr Fujimori did not reach the absolute majority necessary to approve legislation. Its majority was relative, and that meant it needed to compromise and form alliances within the chambers to achieve the desired results. As it was explained before, many congressional representatives new to politics and policymaking formed Mr Fujimori's movement, people who had worked as an average professional or in business. On the other side, the representatives in congress of APRA, AP, PPC, and IU were seasoned professional politicians and it was clear from the beginning that the latter would try to dominate the proceedings taking advantage of the inexperience of Mr Fujimori's movement representatives.

This situation occurred effectively when Mr Fujimori pursued approval of legislation leading to economic reform and the fight against subversion. With the support of the military, intelligence services, like-minded technocrats, and part of the business community, Mr Fujimori closed the democratically elected congress on 5 April 1992 and ordered the presidents of both chambers and other influential members to be put under house arrest. The military also tried to arrest former President Garcia, who after ending office was a senator for life, according to the 1979 constitution.

Because of how the system worked in reality, interest and lobby groups never developed a real interest to work with the congress or its representatives, as it was more effective to negotiate directly with the Executive branch. Upon Mr Fujimori election in 1990, an attempt was made by CONFIEP. They founded the *Instituto de Asesoría Normativa* INAN (Institute of Normative Advisory)⁹⁸ to work towards sound legislation to be presented to like-minded Congress members and committees. Again, this effort ended when Parliament was closed in 1992.

The Constitution of 1993 changed the parliamentary system and procedures. The Parliament (*Congreso de la Republica*) is organised as a one-chamber system. Its members are elected for a five-year term and can be re-elected. Parliamentary elections are held jointly with the presidential ones. The Legislative Period (*periodo de legislatura*) starts 28 July each year with the annual speech to the nation of the President. The Congress meets from August to December, recess from January to March, and re-starts workings on April until mid July. During the recess period, a permanent committee (*comision permanente*) is in charge of affairs. Again, the Legislature is organised in specialised working groups called “Committees” (*Comisiones*), each one in charge of specific theme areas.⁹⁹ Each committee then oversees a sector or activity carried on by the Executive branch. The membership of the committees is renewed every legislative period. Committees can be created or closed down every year. In 1996, a Committee on Environment, Ecology, and Amazonia, in charge of dealing with environmental matters in the parliamentary work, was created.

In practice, congressional representatives pursue membership in the most prestigious committees, as the permanent committee, economic affairs, international affairs, justice, among the most important.¹⁰⁰ This leads to heavy struggle inside the different parties and political movements on who would be assigned where. Usually when a specific wing in the

⁹⁸ The author of this dissertation was a legal assistant at this Institute up to the Congress closure.

⁹⁹ See General Regulations of the Parliament of Peru (*Reglamento General del Congreso de la Republica del Peru.*)

¹⁰⁰ Interview with Mr Alberto, former advisor at the Peruvian Parliament (1993-2000), Lima, November 2001.

party or movement wants to damage the other, it is pursued that the members of the rival wing are appointed to the less prestigious committees.

In the case of Mr Fujimori's movement, although it closed ranks fully with the objectives of the president, it was not exempt of internal politicking. The movement was composed by two sub-movements, *Nueva Mayoria* and *Cambio 90*. *Nueva Mayoria* emerged before the campaign for approval of the Constitution of 1993 through referendum. Businesspersons and liberal professionals, with certain prestige in the country, mainly owners of middle size companies or offices, composed it. It was organised and pulled together by Mr Jaime Yoshiyama, apparent successor of Mr Fujimori. It was a mainly urbanite people group, with a majority of members coming from the coastal cities or the Amazonian region. *Cambio 90* was the original movement of Mr Fujimori, which helped him to gain office in the 1990 elections. Its members were many of the original supporters of the president, mixing small and middle size landowners, businesspersons, and liberal professionals. Many members came from Andean departments of the country.

There was tension between the two groups as for which was the most influential and the closest to the Executive branch. A great deal of ringing took place every year between July and August when the members of the committees for the corresponding legislative period had to be nominated, including nasty coups among each other and the use of information of the intelligence services (provided by Mr Montesinos) to disgrace rival members. This means that, from the lists of members of the committees of the congress every year, it was possible to determine which group or leaders have had the upper hand and, therefore, have gained momentum with Mr Fujimori and his associates at that particular time.

Following Holtz's (Holtz 2005) model for parliamentary governance, "the parliamentary hexagon," the Peruvian Congress, according to the 1993 Constitution, has the legislative power,¹⁰¹ the power of the purse,¹⁰² the power of parliamentary oversight,¹⁰³ the power of representation and discourse,¹⁰⁴ the elective power,¹⁰⁵ and the treaty and war power, including the power of mediation between the public and international organisations and institutions.¹⁰⁶

The legislative power as included in the Constitution is general and unlimited as corresponding to the Parliament in a presidential system. This however can be surrendered to the

¹⁰¹ Making laws. See *Constitucion Political del Peru*, Art. 90° 102°, num 1, and 104°.

¹⁰² Deciding on the budget. See *Constitucion Political del Peru*, Art. 102°, num 4 and 5.

¹⁰³ Holding the government accountable and exercising control of executive action. See *Constitucion Political del Peru*, Chapter VI, Arts. 130° to 136°.

¹⁰⁴ Representing democratic publics. See *Constitucion Political del Peru*, Art. 93°.

¹⁰⁵ Electing the Executive. See *Constitucion Political del Peru*, Arts. 136°.

¹⁰⁶ Influencing foreign policy and international relations. See *Constitucion Political del Peru*, Art. 102°, num. 3, 7, 8, and 9.

Executive through the figure of “delegation of legislative powers” (*delegacion de facultades legislativas*). In that case, the figure of “legislative decrees” is used to differentiate those laws from the ones of the Parliament. It can only be legislated on a specific matter authorised by the Congress, and exclusively during the period determined in the law of authorisation. The power of the purse, in the Peruvian case, is a general one that only foresees to approve the Budget and the General Accounts, and to authorise loans as well, once per year. This means budgets, accounts and loans are discussed only at the final state of their preparation by the Executive branch, with limited time to propose and obtain substantial changes. The power of parliamentary oversight is mainly exercised through the specialised committees and the so-called “investigation commissions” (*comisiones investigadoras*), established ad-hoc to research on specific issues where the Parliament deems incorrect practices from the Executive.

The power of representation and discourse is exerted through the normal functioning of the Congress (plenary sessions, committee meetings, etc.), where a role of echo box of the problems of the Nation is asserted and exercised. However, the power of the media has affected this power, in the sense that when important issues for the country are at stake, parliamentarians may prefer to air these and initiate public debate through the press instead of using the Congress channels. This may weaken further the role of the Parliament as representative of the Nation. The elective power in the Peruvian system is limited and only considers this possibility in case the Executive does not fulfil its obligation of implement general elections in the periods determined by law, in which case the Parliament takes over power and dismisses the Executive. Finally, the treaty and war power included in the Peruvian Constitution establishes that the Parliament must always approve a treaty, declares war, and authorise the President of the Republic to leave the country (including private travelling).

The system works in practice as it did during the Congress of the 1979 Constitution. That means, the Executive branch exerting power through initiatives that were taken up by like-minded parliamentarians and went the formal proceedings. Because there is only one chamber, the time for approval can be shortened dramatically in comparison with the old bicameral congress. During Mr Fujimori government, the grip on the congress through the majority of its party was such that the congress acted really like a mere “rubber stamp” phase before the publication of the law in the official gazette.¹⁰⁷

¹⁰⁷ In fact, it was well known that in the meeting of the parliamentary group of Mr Fujimori before each plenary session, clear instructions on how to vote and manage the session were given to the members. On top, each congressperson had a beeper through which they would receive instructions on to vote yes or no during the session. The sessions of the congress are transmitted live in cable television, so it is possible to follow-up the development of the discussions. The author witnessed several plenary sessions during the Legislative Period 1996-1997 and could observe those arrangements. According to Johnson and Nakamura (1999), rubber-stamp

In spite of the lack of regional and province representation, diversification has widened concerning the members of Congress. In the 2001 elections, representation in the Congress is per department and number of inhabitants. They are not anymore the members of the oligarchy but a mixed group of persons coming from all occupations. In 2001, indigenous representatives took seat for the first time as such (in the past they would not have had an ethnic political agenda). Women are also represented and a system of quotas was established in 2001. Several women have held already the position of Speaker (Chairman) of the parliament or Vice-Chairmanships.

B. Political Parties and Movements and the Party System

As it was explained in other sections of this chapter and in Chapter 4, the system of parties in Peru, which re-established itself quite successfully after military rule, broke down under the weight of hyperinflation and internal war at the end of the eighties. It received the *coup de grace* in the 2000 elections with the victory of Mr Fujimori and his political movement. The so-called “traditional parties,” APRA, AP, PPC, and IU, managed to survive the decade of the nineties either because of its stronghold (as in the case of APRA) or because of timely arranged alliances with up and coming political movements before each election process (as in the case of AP and PPC). At the same time, a number of successful political movements emerged, led by charismatic figures at the end of the eighties and nineties. It is important here to mention that these movements avoided calling themselves parties to avoid being identified with the “traditional parties.”

As it was mentioned before, APRA stands for a social-democratic populist agenda and it is the historical party of Peruvian politics, in existence since the twenties. Since the return of Mr Garcia to the country, it has recovered its popular appeal. AP is the party founded by the emerging urban classes during the sixties. It stands for a centre-right populist approach. Most recently, it returned to the forefront when Mr Valentin Paniagua Corazao, the chief of the party and, in 2000, elected Speaker of the Congress, assumed the presidency of the Transition Government after Mr Fujimori left the country under accusations of corruption. PPC has had a steady leadership under Ms Lourdes Flores Nano (now part of *Unidad Nacional*.) IU was affected by subversion in the eighties, as many of his members were accused to sympathise with those movements. In spite of that, the party survived and maintained representatives in

legislatures are bodies that simply endorse choices made elsewhere in the society, i.e. authoritarian and totalitarian regimes where legislatures are largely symbolic bodies endorsing the decision of leaders.

Congress, even at the peak of Mr Fujimori' wave. One reason might have been that its members have hardly been involved in corruption cases.

The first of these loose political movements out of the party system emerged at the end of the eighties when Mr Ricardo Belmont Cassinelli, a successful businessperson, and television owner and presenter, formed a movement to stand for mayor. Mr Belmont and his supporters came from the upper and upper-middle classes of Lima, and were mainly white.¹⁰⁸ His appeal came from the television programmes he presented in his private channel, Canal 11, where he attacked the corruption and inefficacy of Mr Garcia's government. Without any political agenda and manifesto, and based on charisma and "clear words" he captured the imagination of the public of Lima who elected him to the office of mayor with a landslide victory. Of course, he did not expect to win and this made most of the problems of his municipal government, rigged by disorder, nepotism, and cronyism. The administration of the city of Lima fell into chaos during his period. He stood for re-election and lost clearly against Mr Andrade Carmona. His movement still exists and Mr Belmont stood for the presidency in the 1995 elections without chances.

The second of these political movements was the *Frente Democrático* (FREDEMO Democratic Front), which was led by famous Peruvian writer, Mr Mario Vargas Llosa. It was formed when the government of Mr Garcia attempted to nationalise the private banking system in 1988. Their members came from the intellectual and technocratic circles of Lima, many having academic degrees from prestigious universities in the USA and Europe. Their ideological direction was clearly to the right and neo-liberal (with some radicals led by Mr Vargas Llosa son, Alvaro, group called by the press the "Young Turks"). Mr Vargas Llosa made the mistake to establish an alliance with PPC and AP for the 1990 elections, which instead of boosting his candidacy only damaged it. PPC and AP wanted to survive and stuck to the alliance when other members of FREDEMO suggested breaking it. It is still not clear if naiveté or good faith led Mr Vargas Llosa to keep it. On his side, it has to be said that he always spoke the truth about his political agenda and intentions, while other candidates only made vague propositions about what solutions would be appropriate to solve the crisis of the country. He lost against Mr Fujimori in the 1990 elections. Mr Vargas Llosa retired from politics after that. FREDEMO disappeared after some years.

¹⁰⁸ Mr Belmont and his associates had the nickname "Waikiki Boys," the reason being their membership in the very exclusive "Waikiki Beach Club" where surfing is the main activity. They were all expert surfers and had travelled all around the world just to pursue their hobby. Surfers in Peru, as in other countries of the world, have a special slang and tone to speak and dress accordingly as well. All of that was to be found in the members of this group.

The third movement emerged as a local government movement at the beginning of the nineties, *Vamos Vecino* (Let us go Neighbours), led by Mr Alberto Andrade Carmona, a successful businessperson. He is the owner of a leather luxury goods chain. Mr Andrade came into politics in the eighties as a member of PPC. He was the mayor of the district of Miraflores, middle, and upper-middle class district of Lima, and stronghold of the commercial and banking activities of the city. He did very well in his period as mayor, converting the district in one of the cleanest and nicest. His administration was ordered and efficient. Mr Andrade wanted to stand as candidate for mayor of Lima but it was no clear if his party would elect him. On the other hand, PPC's image was tarnished from the events of the eighties. In an attempt to improve his chances, he and like-minded associates in the country organised the movement. It managed to present candidates in almost all districts, using the political bases of the PPC. In a way, this movement was a sort of break of PPC, although there was never a public break. Mr Andrade was elected and he carried out a successful municipal government during his period. He was re-elected and, during his second period, he became very popular and a real threat to Mr Fujimori, who stroke back with a law that did not allow mayors in government to stand for the presidency unless they resigned or had finished their period. This affected Mr Andrade directly because his re-election was in 1998 and it overlapped with the presidential general elections in 2000. He did not stand for presidency then.

The fourth of these movements was *Union por el Peru* (UP Union for Peru), led by former UN Secretary-General, Ambassador Javier Perez de Cuellar. He was living in France after retiring from the UN office. He returned to the country, where he kept a house, with the purpose of challenging Mr Fujimori, in 1993. Mr Perez de Cuellar relied on his untarnished reputation and diplomat forms and fell among the population as a unifying and non-polarising figure who could effectively run the country. However, Mr Fujimori was at its peak after the population felt the first fruits of his economic programme. The successful privatisation of the telecommunications sector to Telefonica of Spain only added to this picture. Mr Perez de Cuellar movement had the support of intellectuals with different ideological positions. There was no clear ideological cut as in FREDEMO case, but its members were reputed and recognised figures in the different fields of professional development in Peru, as human rights, economics, and law, among others. In fact, many of those supporters would play years later an important role for the country during the Transition Government of 2000-2001 when they took over ministries and high-level positions. Although, UP campaigned well, it did not manage to overcome President Fujimori machine, which included the use of intelligence services. It was clear that albeit popular, Mr Perez de Cuellar could not compete with the massive media exposure Mr Fujimori enjoyed being President (Crabtree 1995a.) He lost the election and

returned to live to France. However, he did not relinquish his position in the movement and continued supporting the work of the members elected to congress. He travels frequently to the country and continues being a respected figure among Peruvians. In the 2000 elections, the movement stood for congress seats winning respectable numbers. The UP congressional representatives played an important role during the Transition government as well.

Finally yet importantly, we mention President Toledo's political movement, *Peru Possible*. It emerged at the same time than UP. Mr Toledo had returned to the country some years before after spending most of his adult life in the USA, studying for his academic degrees and working for international organisations. He took a position as professor of economics at ESAN, one of the most prestigious business administration schools in Peru. For the 1995 elections, Mr Toledo formed an alliance with another small movement. They managed to obtain some seats at the congress and their leader there was Mr Jose Barba Caballero, a former APRA member, who resigned of the party disillusioned by its inability to manage Mr Garcia's influence, which he considered negative. By 1998, the country was again ready for a change and a new president. However, it did not count with Mr Montesinos fraud machine. Mr Toledo stood for the presidency in 2000 and lost against Mr Fujimori in elections that were accused to be fraudulent, as it was demonstrated later. He then was considered the natural leader to overthrow Mr Fujimori, and he delivered starting mass demonstrations and staying at the front with risk of his own life. The population did not forget and in 2001, when new elections took place, it elected him against the still very popular former president Garcia. After a period of daily denunciations (involving accusations on Mr Toledo's private life) with the purpose of provoking anticipated elections or the president's resignation, Mr Toledo has managed to reach the fourth year of his presidency.

Mr Toledo's movement has proved to be highly volatile, as it has endured a high turnover of members during its four years of government. The situation was serious enough to put in risk his relative majority in the congress. However, because of the fact that, on the most part, his economic policies have followed the neo-liberal pattern set by Mr Fujimori and assumed as consensus by the other groups (with the exception of APRA and the Left), those have not faced much resistance and were supported by other movements in the Congress.

D. Political Culture, Citizenship, and Identity

Citizens in Peru demonstrate commitment to the democratic system while criticising (with black humour and cynicism) how it works and how equitable it is. There is widespread incredulity over the capacity of political leaders to deliver, and the motto guiding citizens'

political behaviour is pragmatism. People in Peru are proud of the history of the country, its heroes, its natural beauties, and richness. At the same time, there is open disdain and contempt against the powerful.

Most Peruvians, especially in the urban areas, are familiar with how the political system works and the ways in which they might be able to extract benefits from it. They understand the informal rules of Peruvian politics. The extensive inequalities in economic and political powers, based on the deep income inequality in the country, provoke creative responses to overcome the difficulties the system may show, and in most cases, just skip it for good. This has led to informal systems that have developed parallel and, can deliver to the citizens the goods and means they pursue. In part, is what De Soto (1986) called “the other path,” and which replicates at the political level.

Clienteles, or the exchange of favours among people of different status or degrees of power (Grindle 2000: 414), extends from the very top of the political system to the most remote and poverty-stricken villages. It is a form of participation (albeit not politically correct and desired) because many people, even the poorest, are able to interact with public officials and get something out of the political system.

Nevertheless, new ways of interacting with the government are emerging, and they coexist along with the clienteles styles of the past. An increasing number of citizens are seeking to negotiate with the government on the basis on citizenship rights,¹⁰⁹ not relationships. As it was seen before, citizenship itself is no older than forty years in Peruvian society, because of the patron-serf schemes reigning in the country before 1974. The immigration phenomena along with the emergence of a new urban group of non-white, province-origin, cunning citizens’ middle class (the so-called “*nuevo Peru*” or “*Peru emergente*”) have led to new channels where old ways mix with new ones. The most noticeable is the use of social capital and networks.

The latter phenomena manifests in provincial and, even, district associations that have spread in the cities, with the purpose of bringing together immigrants from a specific area for cultural and religious festivities.¹¹⁰ Afterwards, those associations became the ground for eco-

¹⁰⁹ Sulmont (1997) defines citizenship as a form of social integration that operates within the political system and which permits the existence of rules by which an individual belongs to a society. These define their rights and obligations. Historically, in a modern society, these rules have been institutionalised as citizens’ duties and rights that are universal and equal.

¹¹⁰ Those cultural associations were created to celebrate cultural and religious festivities as the district or provincial holidays and, most importantly, the days of the patron saints of the places of origin of the immigrants. Brotherhoods and fraternities within the association would organise the events for which donations are asked. Networks associated with those organisations work as well. The association is a sort of exchange bourse where information on jobs, business opportunities and the like is shared and spread to the members. To become a

conomic and now even political exchange and activity,¹¹¹ reinforcing the power of the new urbanites.

A new phenomena that was observed since President Garcia's electoral campaign has been the use of Andean or native symbols to attract the electorate. Before the 1985 presidential campaign because most of the voters were from the cities, campaign ways had a much-westernised tone, where candidates would never dare to show up in public without proper business attire and shoes. Mr Garcia relaxed his presentation methods to the masses, showing up in shirts and sport clothing. Mr Fujimori led this self-presentation ways further, using the Andean *poncho* and *chullo* (a cap that also cover the ears) when campaigning. He was careful enough to use garments that corresponded to the region he was visiting, acknowledging the cultural diversity of the country, reason for which he gained huge support in the provinces. Mr Toledo combined Mr Garcia and Mr Fujimori's presentation styles with explicit Andean symbols like the *chakana*.¹¹²

To negotiate with the government based on citizenship, different kinds of movements have emerged. Among the most important it should be mentioned regional-interests movements (*frentes de defensa regional*), and ethnic-representation movements (as those of the *ashaninka* or other Amazonian nationalities, and the *aymaras*). These kinds of movements have an element of response to the centralism in the country, combined with social claims. The regional-interests movements have been successful in mobilisation of the citizens when conflicts emerged. This has been the case in Cajamarca, or Loreto.¹¹³ Similar *frentes* have also showed strength in other regions of the country.

Ethnic-representation movements are a new phenomenon in Peru, which is observed wearily by most politicians. This has to do with the racism existing in the country, where people of Andean or indigenous descent would have less opportunities to achieve success in society. A second element is the fear in the political classes of an "indigenous revolution," which

member of the association, one has to share the same origin, as coming from the same town and village, or be blood-related, and be recommended by other members.

¹¹¹ This role became evident in the building-up of Mr Toledo's campaign for the presidency, when the associations who represented immigrants from Ancash, the department of origin of Mr Toledo, and Cabana, his birth town, played host to parties and gatherings to fundraise for his campaign. Again, to attend those events, one had to be invited by a member of the association.

¹¹² The *chakana* is a symbol for attraction of power and charisma in the Andean world. It is a piece of metal that combines a half-moon with a stick. It should be worn visibly and supposedly, it attracts positive energy that leads to success. Mr Toledo and his wife wore *chakanas* in every public political event they participated during the 2001 presidential campaign. The nearer the event to the date of election, the bigger the pieces they wore. It was a weird sight but actually a very specific and aimed one, full of symbolism.

¹¹³ Loreto is the biggest department of Peru in territorial terms. It is located in the Northern Amazonian region. The Frente de Defensa de Loreto has a special history linked to the strong federalist tradition of the region. At the beginning of the century, resistance emerged against the centralism of the Lima government. The oligarchic governments at the time crushed the federal movement. However, it is still a very strong component of regional identity in Loreto.

has historical roots.¹¹⁴ The assertion of indigenous identity in Peru has been closely linked with the history of oligarchic rule in the country. As it was previously explained, the territorial and physical control of big landowners over indigenous villages meant that everything Andean would be deemed lower or less valuable in comparison to their western equivalents. This had an influence in the self-esteem and confidence of people of the rural areas in comparison to those of the urban. That situation broke with migration to the cities and the end of the oligarchic rule. Nevertheless, the emergence of an ethnic identity still did not manifest explicitly. The new urban dwellers would adapt to urban lifestyles, which followed those of western society. The assertion of indigenous lifestyles as standing in an equal foot was not occurring. Immigrants would forbid their children to speak *Quechua* (or their respective indigenous mother tongue), and would try to imitate the accents and pronunciation of the Coast when speaking Spanish.

The new ethnic movements assert and rely on ethnic symbols with success. The first ones to emerge were the *ashaninkas*; an Amazonian indigenous group that suffered under SL.¹¹⁵ The *ashaninkas* have their ancestral territory in the Central High Amazonian region of Peru and are warriors and gatherers living in small villages. The subversion war led their leaders to organise themselves, first, to resist SL, and second, to claim from the Peruvian state not only protection, but also economic and development answers to their grievances. This followed the emergence of interest-associations, NGOs, lobby groups, etc. Globalisation brought about also new means, which they have used wisely, creating networks with other similar groups abroad to state their petitions.¹¹⁶ Albeit they continue belonging to the poorest segments of society in Peru, their representation has gained standing, to the point that the media and the politicians pay attention when the leader of the *ashaninkas* addresses them. Another element is that they recognise fully their belonging to the Peruvian state and do not pursue a secessionist agenda. An *ashaninka* was elected for Parliament in past elections.

A new ethnic movement emerging in the last years is the *aymara* nationality movement. The *aymaras* have their ancestral territory in the Southern Andes of Peru, bordering with Bolivia. In fact, the territory of the *aymaras* crosses the border of the two countries in a

¹¹⁴ During the 19th century, the most feared event by the oligarchy was the emergence of an indigenous leader who would lead the masses to a revolution. Dissent and resistance in their lands was crushed bloodily. Revolutions (Juan Atahualpa and Inkarrí) and revolts emerged which mobilised thousands of Indians who were slaughtered by the landowners' private armies with the help of the Peruvian state.

¹¹⁵ SL used the territory of this nation to retreat when the military launched campaigns against them. It is a very difficult jungle environment similar to those of South-East Asia, which acted as a natural barrier against military offensive. SL obliged the *ashaninkas* to give them food, work forcedly for them, and had entire villages practically kidnapped. Journalists and NGOs, who denounced the human rights violations and abuses committed by SL, documented the plea of the *ashaninkas*.

¹¹⁶ See, AIDSESEP Home Page: www.aidesep.org.pe.

similar way of that the Basque country in Spain and France. A third of the total population lives in Peru. The emergence of ethnic claim movements in Bolivia influenced similar developments in the country. The *aymaras* of Peru have close contacts with the ones in Bolivia, although it is not clear if they share their secessionist agenda and claim for an *aymara* state, the *Contisuyo*. Until now, they have not stated so, although in their actions they support the politics of their brothers in the neighbouring country. An *aymara*, a woman, was elected for Parliament in the 2001 elections.

The role of the public opinion and the mass in Peruvian politics is extremely important. Since Mr Fujimori's government, spin and use of media to achieve political aims achieved unexpected heights. Before 1990, each political party had like-minded supporters in the media, which was on the most part independent. The supporters would write opinion columns favouring the policies of the parties. Newspapers had a more or less clear political direction, to the right, to the left, or centre. Television and radio also followed a similar pattern. Mr Fujimori, based on a strategy designed by his intelligence advisor, Mr Montesinos, relied more on television than any other president before. Newspapers were also aggressively courted. If resistance emerged, the owners of the media outlet would suffer the consequences through investigations for tax evasions, withdrawal of state-sponsored publicity, or a defamation campaign through the media supporting the president. Mr Montesinos also gave major importance to the use of tabloids (*prensa amarilla*) to propagate rumours, eulogise the policies of the government, and attack the opposition.

An additional element has been the use of surveys and polls to plan political strategy. Mr Fujimori and his supporters not only read and analysed carefully what was produced by independent pollsters, but also created their own agencies and paid polls to survey the citizens on topics they considered important. Later, those results were published in the friendly media outlets. Popularity polls were the most important tool to continue feeding the positive image of the president, especially if they showed approval numbers over the sixties (Conaghan 1995). Mr Fujimori, then, arranged carefully the timing and content of his speeches to touch directly the problems and concerns of Peruvians according to polls findings.

At the same time, the media played an important role in Mr Fujimori's demise. Radio and cable TV channels transmitted live the rallies of the opposition led by Mr Toledo. They showed the other side of the events reported by the pro-Fujimori press. Radios banned from the air managed to transmit illegally, finding huge audiences among the population. At present, the media in Peru has recovered independency after the years of surveillance under Mr Montesinos and his intelligence service. There is still pro- and anti-President media but freedom of the press has been recovered on the most.

4.2. Reform of the State Process in Peru before 1992

The application and implementation of political and economic reforms was not new to Peru, as it has been one of the characteristics of the country, in a continuous state of instability concerning its political, social, and economic situation.¹¹⁷

Following Grindle and Thomas (1991: 4), reform is defined as deliberate efforts on the part of government to redress perceived errors in prior and existing policy and institutional arrangements. Additionally, (1991: 195) a reform initiative is ‘any instance in which such a change is advocated.’ No judgement is attached on the goodness or badness of a particular change being advocated.

4.2.1. Economic Reforms

In the modern economic history of Peru, there are two important facts that have influenced the development of the country in the last four decades. The first one was the application of import-substitution policies (promoted by the UN-ECLAC since the 1950s) that took place, in the case of Peru, during the seventies and the beginning of the eighties.¹¹⁸ The second one was the application of neo-classical economic policies, especially in its monetarist variant, during the nineties. The two are essential to understand the present economic and political situation of Peru, because they have shaped the characteristics of the economy and its perspectives, in the long-term (Hunt and Thorp in Gonzales de Olarte 1996.)

Both reforms corresponded also to a shift in the traditional role of the State in a historical perspective. That is from a social state with a prominent role in the economy, in the first case, to a small state with almost no role in the economy, in the second. Both, in their different historical moments, implied deep changes in the Peruvian society for achieving economic growth. Thus, the economic reforms were instrumental to a political and social reform (McClintock and Lowenthal 1983.)

¹¹⁷ For an account of the economic history of Peru, from the perspective of structural reforms, see Beaumont 1997.

¹¹⁸ In the 40 years between 1930 and 1970, Peru stands out in contrast to the larger countries of Latin America, where populist-type governments helped prompt a new model of national state-led development. Overall, this period in Peru was characterised by the continuance of a non-interventionist state, reliance on a liberal export-oriented model of growth and a relatively weak pattern of industrial development. The new social forces, which in other parts of the region provided both the driving force of and the constituency for ISI were weaker, and the political parties with which they were associated failed to build up sufficient strength to overturn the status quo (Thorp and Bertram 1978, Crabtree 1998: 9.)

During the seventies and the eighties, the strategy of import-substitution policies, implemented by both the military and President Belaunde (1980-1985) and President Garcia (1985-1990) governments, showed their limits as growth led to an increasing inequality in income distribution (Parodi 2001: 96-97.) Mining activities were strongly affected by those policies as well, as most of the largest mining companies were nationalised at the beginning of the seventies. Both the exchange rate and tax policies inhibited private investment in the sector (Pasco-Font 2000: 5-6.)

General Juan Velasco Alvarado, who took power in 1968, led a left-wing nationalistic regime that increased state control of natural resources and industries (the so-called “strategic sectors”) and implemented radical land reform.¹¹⁹ The state played an increasingly important role in determining the pattern of growth, with the bulk of investment coming from the public sector (Kisic 1998: 43). Because government spending and foreign borrowing spiralled out of control, General Velasco was deposed in a bloodless military coup in 1974. Between 1975 and 1980, General Francisco Morales-Bermudez Cerruti pursued a more liberal but hesitant agenda (World Bank 2003), the country entered in a period of adjustment and public investment fell.

State interventionism was at its height during military rule. The existence of state monopolies encouraged the use of price controls and led to persistent fiscal deficits (Kisic 1998: 45). Among the most important monopolies were, in the area of marketing, food imports (ENCI,) rice imports (ECASA,) and the sale of minerals and metals (MINPECO). In the production sector, the largest monopolies were PETROPERU (refining and sale of petroleum products) and PESCAPERU (fishing and fishmeal industries). In the services sector, the main monopolies were electricity generation and distribution, water supply and sewerage, telecommunications, ports, and social security. Around 60 percent of the assets of the public sector (without counting the financial sector) were accounted by only three firms: ELECTROPERU, PETROPERU, and ENTEUPERU (telecommunications).

The return of democracy took place in 1980 with the election of Mr Fernando Belaunde Terry, who continued the timid reform and liberalisation process, but lost popularity due to the 1982 debt crisis and the increasing internal violence (Crabtree 1998: 11, World Bank 2003.) During the eighties, President Belaunde government implemented a set of policies that had as general objective to stabilise the economy in the context of market-oriented policies, without renouncing to protect the national industry. In fact, this hybrid approach to

¹¹⁹ In fact, the driving force behind the military dissatisfaction with the status quo, which ended the old oligarchy system, was the concern that the lack of reform would otherwise spark a Cuban-style revolutionary upsurge (Crabtree 1998: 10.)

economic policies would prove to be ineffective, as growth did not occur as expected. On the other hand, Mr Belaunde was thoughtful about any step that could provoke a reaction of the military, because of his unceremonious removal from the Presidency in 1968. Its approach though was still monetarist, at least in what refers to fiscal policy. Because of those policies, overall investment levels increased up until 1982, reaching a peak of 33,5 percent of the GDP. However, they fell again because of the onset of the debt crisis, “El Nino” phenomenon and the lack of consistent reform (Kisic 1998: 43). Nevertheless, in the case of the mining sector, copper production grew from 335 thousand tones in 1980 to 389 thousand tones in 1985 (Pasco-Font 2000: 7.)

In the 1985 presidential elections, the agenda shifted to state intervention, protectionism, and unorthodox economic policies (World Bank 2003.) In fact, Mr Garcia’s government has been seen as the ‘last gasp’ of traditional Latin American populism (Crabtree 1998: 13.) First, it raised the banner of economic nationalism and reaffirmed the virtues of state interventionism over free market economics, arguing that the market exacerbates rather than reduces the country’s inequalities and social divides.

In practice, President Garcia’s government (1985-1990) had a heterodox approach to economic policies (a return to import-substitution,) which were clearly anti traditional-exports oriented in its attempt to develop a national industry. The public sector once again was privileged in terms of policymaking (Kisic 1998: 43). The exchange rate policy during the regime discriminated the traditional export sectors of the economy (mining and fisheries) in favour of the industrial sector (mostly for internal consumption.) In the case of the mining sector, the real exchange rate deteriorated and the exchange rate system had a negative effect in the revenues of the sector. The reason of this backlash was that the sector received the income from exports at a “mining exchange rate,” but it paid its imports at a free exchange rate, which was much higher. This had the effect of being an implicit tax that grew gradually and, in July 1990, the “mining exchange rate” was equivalent to only 62 percent of the free exchange rate. In the first trimester of 1990, the mining sector paid only in such exchange rate difference an implicit tax on its revenues of around 30 percent. The trade policy implemented by President Garcia’s government responded also to the logic of import-substitution policies. Tariff barriers dispersion and nominal protection rates were high. Both the tariff barriers structure and the multiple exchange rate system generated a negative effective protection of the mining sector, which attained that, in average, it was 40 percent cheaper to extract minerals abroad than to produce them in the country. The practical consequences of all those policies were that, for instance, in the case of copper, production fell from 389 thousand tones in 1985 to the minimum of 298 thousand tones in 1988 (Pasco-Font 2000: 7-9.)

President Garcia's policies led the country to hyperinflation, increased poverty, and violence, and put the country on the verge of economic and social collapse (World Bank 2003.) Mr Garcia's government ended up creating worse problems than those it sought to remedy. By the end of the 1980s, the country found itself facing its most profound crisis since the late 1920s, one which (in the minds of some researchers at least) threatened to destroy the very existence of the Peruvian state (Rospigliosi 1988, Crabtree 1998: 13, Kusic 1998: 59.) Rudiger Dornbusch critique of what he calls the "macroeconomics of populism" can be interpreted as a powerful warning to those who were tempted to follow Mr Garcia's example and buck the global trend towards economic liberalisation (Dornbusch and Edwards, 1991.) In fact, "old style" ISI type economic policies went directly against the trend of all other South American countries, going in the direction of neo-liberalism during the eighties.

In addition, a characteristic of both the Belaunde and Garcia governments was the implementation of economic policies from a top-down approach, negotiating directly with the economic elite, interest groups, and trade unions.¹²⁰ Moreover, an unfavourable international economic environment further contributed to the weakening of the economy, due to the fall of the prices of metallic minerals, which constituted the bulk of the country's exports.

The pitfalls of these different approaches to economic reform led finally to re-take market economy mechanisms during the nineties at a very high political and social cost (Parodi 2001: 132-135 and 149-150.) Since August 1990, Peru started the implementation of a reform programme to insert its economy into the world market and strive for economic growth. The programme aimed at re-organising the Peruvian economy from its foundations.¹²¹ The initial outcomes were economic recession and an increasing disparity in income distribution. The program has continued up to the present, reflecting a straight political will of the different governments to fulfil its financial obligations at the international level. In 2004, from the outset, economic growth is stable and macroeconomic numbers are good.

¹²⁰ Crabtree (1998: 11) points out that the political parties in Peru retained many of the authoritarian, top-down, clientele, personality-cult characteristics of their forebears. Mr Belaunde attempted a corporatist approach through a tripartite negotiation of economic and labour policies: state, business, and trade unions. Mr Garcia pursued to negotiate directly with the 12 most important economic groups of the country (so-called 12 apostles) to reach approval for its ISI pursuits.

¹²¹ For a detailed account of the programme, see The World Bank Home Page, Peru Country Profile, and the International Monetary Fund Home Page, successive Letters of Intent of the Government of Peru, 1997-2002.

4.2.2. The Peruvian Political System

To understand the extent of the reforms that took place in the nineties, it is necessary to present and analyse the political system before the implementation of structural adjustment and reform of the state process based on neo-liberal policies.

The political system, in Peru, was based on the Constitution of 1979, which entered into force in 1980. This Constitution was the product of a National Constitutional Assembly convoked by the military government of President Morales-Bermudez Cerruti in 1978. APRA (centre-left) obtained the majority, followed by PPC (centre-right,) and by different parties of the left. AP, the party of ousted President Belaunde, did not participate in the election.

The Constitution of 1979 created a new institutional framework with rules of the game that commanded wide acceptance. Among other things, it established universal franchise for the first time. In the period after 1980, elections took place regularly, on time, reasonably fairly and with high degrees of public participation (Tuesta 1994, Crabtree 1998.)

In the light of a ten-year military rule and the radical changes occurred in the Peruvian society in those years, the elected representatives pursued to enshrine in the Constitution principles and guidelines that would prevent the repetition of the political party stale that led to the military coup of 1968. Specifically, it is referred to the continuous blockades of the Parliament (controlled by APRA) to the initiatives of the Executive (in the hands of AP), which led to a stalemate in the political system ended by the military when taking over power to implement radical reforms of the state.

In addition, the experiences and consequences of the military rule were in the background of the principles included in the 1979 Constitution. The most important issues in this respect were, on the one hand, human rights and, on the other, economic reforms. In the case of human rights, a generous new catalogue, or set of rights of first, second, and third generation was included. Some topics were present to the legislators, having suffered exile and persecution in the hands of the “*golpistas*.” Among these were the right to hold the Peruvian nationality, and the impossibility to be deprived of the Peruvian citizenship by administrative decision. In the case of the economic reforms implemented by the military, the legislators decided not to roll back those when returning to democracy. The nationalisation of companies in all sectors of the economy and the agrarian and land reform stood unmovable.

Being APRA the most influential political party in the Assembly, a series of issues that were in their political manifesto for decades were also included. APRA was most influenced by the international socialist movement and it saw the policies of those parties in Europe as examples of the economic policies to be followed in the country. Specially, the idea

of the implementation of a welfare state was very important for the party and following those ideological lines, several articles of the Constitution of 1979 included provisions related to the social system, pensions, health system, retirement schemes, rights of the workers and trade unions, the organisation of the state, etc. The Constitution of 1979 was an attempt to rebuild the structures of Peruvian society on the lines of the welfare states so successful in Northern Europe. The most explicit proof of this attempt was the inclusion of the concept of “*economía social de mercado*” (social market economy) in the economic structure section of the document.

In the political realm, the Peruvian state was organised on the lines of Executive, Parliament, and Judiciary, clearly differentiated and, in theory, independent of each other. The reality was that a strong Executive branch was a feature of the Constitution of 1979. The Parliament consisted of a bicameral structure with a Chamber of Representatives (*Camara de Diputados*) and a Senate (*Senado*).¹²² It was necessary the approval of both Chambers to issue a Law of the Republic. The procedure of approval consisted in a series of steps that included an approval report (*Dictamen*) from the specialised Committee in charge to draft and propose the law, discussion and approval in the Plenary of the Chamber of Representatives, and then, after that, a renewed approval report in the Senate, with another discussion in its Plenary. If the law was rejected in the Senate, the procedure had to start all over again.¹²³

Another important feature, which reaffirms the view of a strong Executive in the 1979 Constitution, was the so-called “*otorgamiento de facultades legislativas*” (to confer legislative faculties) by the Parliament to the Executive, to issue legislation even in a faster fashion. For the approval of this procedure, the absolute majority of the Parliament had to vote in favour. The conferring of those faculties was only temporal (usually three months). During that period, the Executive branch was allowed to issue legislation that had the level of a law of the Parliament.

In the 1980 election, which elevated Mr Belaunde Terry as President of the Republic, the possible blockades between the Executive branch and the Parliament were avoided because AP, the President’s party, reached the absolute majority of seats. This situation allowed the Executive branch to approve laws in a swiftly manner with no major opposition from the Legislature, using the usual Parliament channels for approval. The conferring of legislative faculties was used only exceptionally. The same situation occurred in 1985, when Mr Garcia

¹²² Members of both Chambers were elected directly by the citizens through universal suffrage.

¹²³ The long path for approval of a Law was used later by President Fujimori regime as justification to close the Parliament and seize power. The official version was that the Legislative hampered and impeded the swift reform necessary to take the country out of the economic and political crisis where it had fallen.

Perez won the elections. Again, APRA obtained the absolute majority, which allowed the Executive to govern with no major opposition. In fact, Mr Garcia inaugurated a period where state corporatism was the strategic method used by APRA to exert power from government spheres, trying to adapt the old party to the new circumstances.¹²⁴

The political (internal war) and economic crises (hyperinflation) of the end of the eighties led to the loss of credibility of the parties that participated in the political arena and paved the way to the emergence of “charismatic” political movements, which would end replacing the political establishment (or “traditional parties.”) The main characteristic of these movements is that they were formed with mere election purposes, with no clear political manifesto. A charismatic and popular leader usually leads them.¹²⁵ When in power, the movements engage in loose alliances to achieve their political objectives, changing sides constantly. Individual members of the movements also shift loyalties often. Most members of the movements come from non-politician backgrounds, which made difficult for them to manage the logic of the parliamentary work as envisioned by the legislators of 1979. Furthermore, the movement does not provide the leader with a stable organised backing in society as a whole as a political party would do.

The political movement of Mr Fujimori¹²⁶ shared all characteristics above. It was formed by an alliance of Mr Fujimori acquaintances coming from his times as Rector of

¹²⁴ State corporatism refers to a method of organising societal actors in state-sponsored associations. It rejects the idea of competition among social groups by having the state arbitrate all conflicts (Montero 2000: 329.) On the other hand, Mr Garcia was strongly influenced by the experiences of the Velasco regime and by the legacy of the historic leader of the party Mr Haya de la Torre. APRA was always a party for which the past loomed large over the present (Crabtree 1998: 12.)

¹²⁵ This phenomenon has been called populism. Populist and populism refer to politicians, programmes, or movements that seek to expand citizenship to previously disenfranchised sectors of society in return for political support. Populist government tend to grant benefits to guarantee support, but they discourage lower-class groups from creating autonomous organisations. Populist leaders, around whom personality cults often form, were successful in Latin American countries in generating mass support among urban working and middle classes (and rural groups) through the provision of social insurance, health care, and wage hikes. Yet in no way are these leaders directly representative or accountable to their constituencies (Montero 2000: 330.) Mr Fujimori is a clear example of this trend. Another definition of populism (Crabtree 1998: 7) signals that is a style of government characterised by an appeal by strong, sometimes charismatic, leaders to the people, over the heads of existing parties and politicians and therefore ‘unmediated by institutions.’ We see a return to the notion of an identity between a leader of a political movement with the ‘populus’, even though the popularity of some so-called populists may prove fleeting and unsustainable. We see the emergence of politicians who seek to override existing institutions in their desire to challenge the status quo and who seek to legitimate themselves through a direct appeal to ‘the people’ through what O’Donnell has termed ‘delegative democracies’ (O’Donnell 1994.) The norms of liberal democracy are eschewed, representative institutions sidelined and political mediation becomes a question of ‘top-down’ mobilisation rather than any articulation upwards of grassroots demands. Such forms tend to prosper in countries where representative institutions, which ‘bridge’ the gap between state and civil society, are weak or ineffectual. Crabtree called the leaders emerged in the nineties, neo-populists and the phenomenon neo-populism.

¹²⁶ Paradoxically, Mr Fujimori himself was accused before the 1990 elections of being close to APRA, which helped him to become elected as Rector of that National University. In the 1990 elections, Mr Fujimori ran against Mr Vargas Llosa, a famous Peruvian writer. To avoid Mr Vargas Llosa election, supported by an

UNALM, members of the Evangelical church, members of the Peruvian community of Japanese ancestry, and professionals coming from liberal professions (doctors, engineers, lawyers) with no previous political experience whatsoever. Later, politicians from parties of the right political spectrum also joined Mr Fujimori's movement on a personal and loose basis.

In 1990, when Mr Fujimori won the elections, his political movement *Cambio 90* only obtained a relative majority, which did not allow the Executive branch to obtain swift approval for its reform proposals. This also meant that it was not possible for the Executive branch to obtain the conferring of legislative faculties, which would have allowed the government a faster pace for the issuing of the necessary regulatory framework for reform. This led to a constant blockade of the laws proposed by the Executive branch in the Parliament that was ultimately solved through the break of the constitutional order and the installation of a “*gobierno de reconstrucción nacional*” (National Reconstruction Government) on April 1992 with the support of the Armed Forces and the economic and technocratic elites. The coup was carried on through the closing of the democratically elected Parliament.

The issue that triggered the political crisis was specifically the attempt by President Fujimori's government from August 1990 onwards to implement the structural reform package as agreed with the World Bank and the IMF, for which a series of laws were necessary to liberalise the markets, privatise the national companies, loose labour legislation, and so on. Mr Fujimori immediately after its taking over of power, in August 1990, introduced a radical orthodox stabilisation programme that removed price controls and state subsidies, froze public sector wages, and cut public sector spending. He then continued with trade, capital market, exchange rate liberalisation and a profound privatisation programme (World Bank 2003.) Those measures went against the political manifesto of APRA (which through alliances with the parties of the left managed to reach majority of the Parliament,) and even against articles of the Constitution of 1979 that followed the logic of the welfare state. It was clear that APRA and its allies would reject and oppose any attempt to change the institutional and regulatory framework enshrined in that Constitution. The Judiciary (also under APRA control through the nomination of judges that took place before they left power in July 1990) also issued a series of decisions against the laws and regulations of the Executive. The most often used instrument was the “*Acción de Inconstitucionalidad*” (writ of unconstitutionality). A renowned lawyer, close to APRA, would present writs against the government for a specific law, and the judicial machine would roll over the issue.

alliance of right and centre-right parties, APRA gave its followers the recommendation of voting for Mr Fujimori movement.

The tension in the political elite could not be solved through transaction or negotiation, because the “old traditional parties”¹²⁷ were not willing to bargain with Mr Fujimori (regarded mainly as a newcomer who would eventually adapt to the traditional system.) In fact, due to the diminished standing of the main parties, Mr Fujimori was not obliged to enter into alliances with them to garner support. Therefore, President Fujimori simply exacerbated the political arena, attacking the political established parties as a *partidocracia*. He tried to build consensus towards his economic policies through vilification of the political parties, at whose feet Peru’s problems were repeatedly laid.¹²⁸ Mr Fujimori took another way out of the situation, organising a *coup* with the support of the military, heavily demoralised and in crisis itself, which needed to assert its identity as one of the powers in the country.¹²⁹ This meant the replacement of the ‘old-traditional parties’ political elite through a new one based in personal leaderships and volatile political movements.

The National Reconstruction Government led by President Fujimori, with the support of the military forces, closed the Parliament, and arrogated itself the right to issue legislation through “*Decretos Leyes*” (Law Decrees), which is the term in Peru used to refer to legislation issued by non-constitutional governments. Because of the political blockades created by the opposition parties to the Executive and the discredit of them, the coup of Mr Fujimori counted with huge popular support, as the population was tired of the rampant economic (hyperinflation) and political (internal war with guerrilla movements, SL and MRTA) crises. It was considered that a “strong hand” was necessary to establish the institutional and regulatory framework to fight and overcome those crises.

In addition, as part of the process of reform of the state, President Fujimori government deemed appropriate to establish new goals in policymaking, according to the international treaties and obligations adopted by the Peruvian governments during the eighties. This included the environment. During the seventies and eighties, policymaking issues related to the environment were expressed in terms of natural resources management and extraction, and in exceptional cases, preservation. Concepts of conservation, holistic approach to nature and the links between environment and development were not yet part of day-to-day decision-making processes. This situation would change with the reform of the state process started in 1992.

¹²⁷ Those were APRA (centre left) AP (centre right), PPC (right), and IU (left).

¹²⁸ Mr Fujimori was well aware of the impact of this strategy and very successful, as it is demonstrated by the popularity measure polls before and after the April 1992 coup (Conaghan 1995, Crabtree 1998: 17.)

¹²⁹ This demoralisation came from the long combat (1980-1992) with terrorism, and the increasing influence of drug trafficking interests among officials and soldiers.

4.3. Reform of the State Process in Peru during the Nineties

The objectives of the reforms of President Fujimori government were both to rebuild the Peruvian economy from its basis, changing significantly the role of the State, and to re-shape the institutional conditions inherent to the political system, fitting them into market-oriented policies. Therefore, it can be asserted that the political elite considered the economic reform a necessary condition to rebuild the role of the State, towards a free-market oriented system. The programme was implemented through a bureaucratic state from a top-down approach.

The process started immediately after taking over power (28 July 1990). In August 1990, the first stabilisation package was issued. From April 1992 to mid 1993, a “National Reconstruction Government” seized power with the support of the military and the economic and technocratic elites. From 1993 until 1995, a new democratically elected government led by President Fujimori was in power with absolute majority. From 1995 to 2000, the Peruvian electors gave another period of government to the President, again with absolute majority. In July 2000, President Fujimori gained power through allegedly rigged elections. After mass protests and demonstrations, a Transitional Government (“*gobierno de transición*”) led by Mr Valentin Paniagua Corazao, the Speaker of the Parliament elected in 2000 took power, following the procedure established in the Constitution of 1993, ousting the absent President. Mr Fujimori had fled the country over accusations of corruption, human rights violations, and authoritarian practices and sent his resignation via fax. He left significant improvements in the economic policy environment but weakened institutions and political turmoil.

4.3.1. Stabilisation and Structural Adjustment

The situation in Peru, before the implementation of the neo-liberal reforms (starting from August 1990), was described by some as the worst economic and socio-political crisis since the Pacific War (1879-1881.) The economic results were worsened by rampant political violence. Some facts, which give us a broader idea of this situation, are (World Bank 2001, Paredes and Sachs 1991:15-16):

- i. In 1989, the *per capita* income was below of that of 1966.
- ii. The political violence claimed in 1989 3,000 lives (with a total approximate 60,000, according to the official report of the Peruvian Commission for Truth and Reconciliation, for the period 1980-1996.)
- iii. The prices had increased by a factor of 27 million over 3 decades.

- iv. The reduction of the workers real income reached 75 percent of the labour force.
- v. There was persistent fiscal imbalance, increasing financial dis-intermediation and weakness of the institutional state apparatus.

The Peruvian economic situation, before the application of the reform programme, was of collapse and bankruptcy (Gonzales de Olarte 1996: 4-5.)

In 1990, with a new government in power, reform was imminent, taking the form of a neo-classical economics reform (in its monetarist variant), as promoted by the international financial institutions, in others words structural adjustment.¹³⁰ In fact, the government of President Fujimori (1990-2000) did not have broad space of manoeuvre (being probably a case of TINA There Is No Alternative,) given the deteriorated conditions in which it received the country. The implementation of economic measures did not provoke social unrest in the country. The surrounding conditions of political violence (i.e. counter-subversive war against SL and MRTA) contributed to such paralysis, creating space for a radical implementation of the structural adjustment programme by the new “technocratic” elite in power.¹³¹ The application of the reform programme had as focus to tackle the crisis by inserting the Peruvian economy into the world market.

The economic strategy of the government was based in certain assumptions that concentrated in short-term development planning (Iguiniz 1998: 26-27):

- i. The growth potential of the Peruvian economy in the medium and longer term was going to be sustained by two mutually supporting processes: capital inflows and an increase in primary exports (especially mining, but also agro-industry and fishing) coupled with the substitution of some imports (mainly fuel) (PROMPERU 1996.)
- ii. The increase in exports would reduce country-risk and sustain a lengthy period of current account deficits and heavy debt repayment. Regular debt payment would help generate financial confidence in Peru’s credit worthiness which, alongside the maintenance of high domestic interest rates and non-interference in profit remission (which includes an important element of differential rents), would stimulate steady and growing direct investment in export-oriented enterprises.

¹³⁰ The term ‘structural adjustment’ refers to the market-oriented policies promoted by the international financial institutions. According to Opschoor and Jongma (1996), those policies have had three stages. In the first one, in the early eighties, the aim was to enhance the relation among capital, GDP, and income. In a second stage, the international financial institutions recognised the importance of human capital in the economy, so the approach included other elements, as the institutional aspects of economic processes. Finally, in the third stage of the adjustment policies, they paid attention to environmental issues, supporting environmental projects and recognising environmental assets.

¹³¹ As Crabtree (1998: 16) rightly points out, Mr Garcia’s regime experience removed the main political obstacles to the implementation of the neo-liberal agenda. Mr Fujimori inherited a situation, which made structural adjustment politically possible, since the obstacles towards implementation had been largely removed.

iii. Domestic capital was neither sufficiently plentiful nor prepared to finance projects of such calibre. The external deficits made it easier for Mr Fujimori government to maintain the internal political autonomy it has sought to establish since 1990 and to insulate the policies of international financial reinsertion from domestic political pressures.

In turn, as Iguiniz clearly states, the stability of the process depended on four variables: the first was the ability to achieve sufficient levels of domestic savings to provide protection from volatility in international financial markets. The method for achieving this objective was the establishment of a privatised system of pensions. By 1996, financial savings in private pension plans (AFPs) were equivalent to 1,5 percent of the GDP. It was expected they would account for 8 percent of the GDP by 2000 (Seminario 1997.)

The second objective was a macroeconomic policy based on a fiscal surplus and which provided incentives for the entry of foreign capital. To achieve the objective the Letters of Intent signed with the IMF indicated the government's intention to maintain a tight control over the rhythm of economic activity and to avoid the introduction of controls over the inflow of short-term capital (Rojas 1994: 153.)

The third variable was sufficient flexibility to respond to external volatility and to problems arising from the way in which macro policy affected economic agents and the public sector. Labour market liberalisation (Garavito 1996) and the ending of protection for manufacturing industry and agriculture were conducive to the third objective.

Finally, the fourth objective was a concentration of decision-making power and resource allocation in the office of the president with a view to ensuring his continuance in office. The self-coup of April 1992, the system for controlling public sector spending, the size of the budget afforded to the Ministry of the Presidency (depending directly from the President of the Republic), and Mr Fujimori's use of housing funds (FONAVI) were important in contributing to the objective.

In August 1990, President Fujimori's government started the application of the structural adjustment programme with the implementation of the so-called "stabilisation measures." The major task was the reintegration of the Peruvian economy into the international economic system to overcome the financial isolation provoked by the cut-off of the debt service in 1984. The option taken by the government was "a form of orthodoxy that was based on a radical return to the market and a severe recession that was far more extreme than any Peru had ever previously experienced" (Thorp 1996: 71 in Gonzales de Olarte 1996.)¹³² The

¹³² The radical character of the adjustment in Peru has been stressed by several authors, as presented in this section. However, it is important to underline the firm decision of the technocratic and business elites at that particular time to bury finally the economic model introduced during General Velasco regime. The view was that

stabilisation phase took place in the period of 1990-1993 and preceded the reform of the political system. The economic reform was functional to the political reform that took place immediately after.

Through new legislation, issued in the period 1991-1993, free initiative and private investment was guaranteed. Prices were left to the laws of supply-and-demand. All administration prices were eliminated, except public services tariffs. All extraction reserves of the State were annulled, with the exception of natural reserves. Any discriminatory treatment on exchange rate, prices, tariffs,¹³³ or taxes,¹³⁴ or among economic activities, or geographical location of enterprises, or national and foreign investors was eliminated. (Pasco-Font 2000: 10.)

Additionally, an ambitious privatisation programme was put into place. President Fujimori government's strategy in privatising formed part of an overall market-oriented strategy to achieve greater economic efficiency and competitiveness based on the promotion of private investment and a reduction in state participation (Kisic 1998: 48). This included the privatisation of state mining companies nationalised during the seventies. In 1990, the Peruvian state controlled 50 percent of total mining production. At the end of 1997, such participation was in the order of 15 percent and, in July 1998, only 1,5 percent. It was established that the State participation in mining activities should not be higher than 2 percent.

The first privatisations in the mining sector took place in 1991 and 1992 through the selling of stakes at the Lima Stock Exchange. Shares belonging to the Peruvian state in mid-scale mining companies were sold, including those held in Minas Buenaventura (June and July 1991) and Mina Condestable (May 1992.) In September 1992, again through the stock exchange, the State sold its shares in MINPECO, a mining trade company created in the seventies. The process of selling the large-scale mining companies of the State started in November 1992. Before privatisation, the Peruvian state assumed all the long-term debts of the public mining companies, so to make them more attractive. All companies were sold under the

the pendulum had to swing as far as possible in the opposite direction (Iguiniz 1998: 27). In addition, the personal influence of the then Minister of Economy, Mr Carlos Bolona, should not be underestimated. He and his team were possessed with an almost fundamentalist liberalising zeal, and the speed and radical nature of the institutional changes introduced took even the multilateral institutions by surprise. In opposition to SL motto ("outside of power, everything is illusion"), Mr Bolona was given the contrasting motto by Peruvian political journalists, "out of the market, everything is illusion."

¹³³ All exonerations were eliminated and tariff protection was reduced to three tiers: 15 percent, 25 percent, and 50 percent. In early 1992, the tariff regime was simplified further: two tiers at 15 percent and 25 percent. Finally, in early 1997 the tariff structure was reduced to 12 percent and 20 percent (Kisic 1998: 46.)

¹³⁴ In November 1990, eleven decrees were issued to achieve tax simplification (Gomez, Urrunaga, and Bel 1997: 61-67). In addition, the reforms in the financial system helped Peru and its government to weather successfully two potential exogenous upsets to stability: the 1992 self-coup and both the "tequila effect" that followed the Mexican peso crisis and the brief border conflict with Ecuador in January 1995.

modality of public auction. In the conditions of the auction, the minimum investment commitments and guarantees for the Peruvian state in case those would not take place were set. In 1993 and 1994, the State sold the most important public companies: Cerro Verde and Tintaya. The zinc refinery of Cajamarquilla and the copper refinery of Ilo were sold as well. The process of privatisation was characterised by the fact that the total of public companies were sold to foreign companies, without participation of national capital. The new proprietors are Shougang (Hierro Peru,) Broken Hill Proprietary (Tintaya,) Cyprus Amax (Cerro Verde,) COMINCO/Marubeni (Refinery of Cajamarquilla,) The Doe Run (La Oroya-CENTROMIN,) and Southern Peru Copper Corporation (Refinery of Ilo) (Campodonico Sanchez 1999: 25-28.)

Privatisation was accompanied by the creation of a new regulatory system to promote competitive markets and improve the quality of goods and services to consumers (Kisic 1998: 49). Regulatory agencies were established, especially to deal with the problem of natural monopolies in sectors like energy and telecommunications.¹³⁵

In addition, in the case of the mining sector, the exchange rate system was unified, eliminating the discrimination against it, thus improving its revenues. However, the effect was not permanent as the stabilisation programme caused a strong appreciation of the real exchange rate, back lashing again negatively the sector. On the other hand, the need to stabilise the economy obliged to take measures not concordant with “getting the prices right.” Although those measures were considered “anti-technical,” public tariffs were drastically elevated and taxes on exports (including mining) were established. The elevated public tariffs, especially on oil and electricity, also affected negatively the international competitiveness of the mining sector. In 1993, with the improvement of the fiscal and budgetary situation, the taxes on exports, including mining, were abolished (Pasco-Font 2000: 8.)

For the mining sector, the economic stabilisation and reforms implemented from August 1990 generated a boom in mining exploration in the country, which concretised in important production projects. The accumulated growth of the sector, during the 1993-1997 period, was of 48,6 percent, higher than the average 41,8 percent of the whole economy. In the case of copper, production grew 63,4 percent since 1990, with 494 thousand tones in 1997. (Pasco-Font 2000: 6.) It has to be underlined that the first private mining investment that did not have as origin privatisation was the Yanacocha operation in 1992, which also meant the emergence of large-scale gold mining in the country (Campodonico Sanchez 1999: 33.)

¹³⁵ Among them, it should be mentioned OSIPTEL for the telecommunications sector, OSINERG for the energy sector, PERUPETRO for the oil sector, and the Commission on Electric Tariffs for the electricity sector.

Peru finalised the stabilisation phase as planned (1993), with good macroeconomic results, but severe recession and increasing disparities in income distribution.¹³⁶ In spite of these, it can be said that the model was only partially successful, as it did not bring results at the social level: in 1994, unemployment was massive, 49 percent of the population was living in poverty, and extreme poverty was at 20 percent (Parodi 2001: 299.)

Overall, between 1991 and 1995, a substantial part of the public sector was privatised, prices in the economy were left to market forces, most forms of tariff protection were abandoned, an accommodation was sought with foreign creditors, and priority was given to attracting foreign investors (Crabtree 1998: 16.)

Between 1993 and 1997 Peru was one of the leading economic performers of Latin America, with an average annual GDP growth rate of about 7 percent. The economy stagnated after 1997,¹³⁷ with the exception of 2000. Growth was only 0,2 percent in 2001 and averaged only 6,1 percent in the last three years. A slow recovery went underway in 2002, at about 3 percent, driven by production from the country's largest foreign investment project to date (the Antamina copper and zinc mine) and by increased public investment, particularly in the construction sector (World Bank 2003.)

4.3.2. Political Reforms

In April 1992, in the middle of the political struggles between the Executive branch and the Parliament, President Fujimori, with the support of the Peruvian armed forces and economic and technocratic elites, closed the Parliament and declared the "*Gobierno de Reconstrucción Nacional*" (National Reconstruction Government.)¹³⁸ The Speakers of both the Chamber of Representatives and the Senate, and several important elected Parliament members of other parties, were put under house arrest, across the political spectrum. The intelli-

¹³⁶ According to the INEI, National Institute of Statistics, the Peruvian GDP in 1990 went -5,4; in 1991, 2,8; in 1992, -2,5; in 1993, 6,5; in 1994, 12,9; in 1995, 6,9; and, in 1996, 1,9. Gonzales de Olarte provides the following numbers for poverty, which are important for contrasting: in 1986, poverty at the national level was 37,9; in 1991, 55,3; in 1994, 46,5; and in 1996, 49,0.

¹³⁷ The return of El Niño phenomenon in 1998 also has to be taken into account for the economic slow down in year 1998.

¹³⁸ This phenomenon has been termed by O'Donnell "bureaucratic authoritarianism" or BA. BA regimes are authoritarian regimes that emerge in response to severe economic crises and that are led by the armed forces and key civilian allies, most notably professional economists, engineers, and administrators (O'Donnell 1973.) In fact, one of the controversial issues that triggered the struggles was the budding relationship between Mr Fujimori's regime and the military, which was seen suspiciously by the Parliament (especially APRA and AP, parties that had suffered political repression by military governments.) The Parliament had intended to reject granting far-reaching powers to the military to fight the war against the guerrilla subversion. The aforementioned parties may have feared that would strengthen the position of the military in Peruvian society and pave the way for a new coup, which in fact occurred weeks later. See also, Crabtree (1998: 18.)

gence services, jointly with the army, attempted to arrest former President Garcia Perez, who managed to flee and seek refuge in the Embassy of Colombia in Lima.¹³⁹ Members of left wing political parties were accused to support terrorist groups and an attempt to arrest them took place. Some managed to get political asylum in Mexico. At the same time, the Tribunal of Constitutional Guarantees (the highest in the country) was closed and its members sacked. Judges at other levels (Supreme Court, High Courts) were sacked as well. The Ministry of Foreign Affairs was also subject to a *razzia*, including the sacking of ambassadors and diplomats prominent or deemed close to APRA.¹⁴⁰ Other public institutions underwent similar measures as well. The regional governments elected during Mr Garcia government were closed down and its functions suspended indefinitely.

In spite of President Fujimori's "modernising intentions," the international community did not react favourably to the break of the constitutional order. OAS and the government of the US pressured Mr Fujimori for a return to the constitutional order. The European Union and other international bodies also condemned the *coup-de-etat*. The danger of isolation and possible embargo measures that would have made impossible to implement the economic and political reforms pursued by President Fujimori and his supporters led to the negotiation of a gradual comeback to constitutional rule. The international community forced Mr Fujimori to return to a representative-democracy system, using as guarantee the support to the economic programme. The solution was to convoke a Constitutional Assembly with powers to enact a new constitution. The assembly would act as the national parliament after the issue of the new legislation until new general elections took place in 1995. For the international financial institutions and private lenders, these guarantees were enough to continue their support to the structural adjustment programme on implementation.

As a result, in 1993, President Fujimori convoked a Constitutional Assembly to elaborate a new Constitution, which would contain principles more suitable to the economic policies already on implementation by his government and to the political and military measures necessary to defeat the guerrilla movements in the country. The general elections that took place meant a huge boost to Mr Fujimori's intentions as he and his political movement obtained the absolute majority of the votes. The traditional parties ousted through the coup were

¹³⁹ Some weeks later, Mr Garcia and his family were given the status of political refugees and asylum in Colombia. After some years of residence, he moved to France, commuting between the two countries until 2001, when he was able to return to Peru to lead APRA again. According to Crabtree (1998: 16), the coup may have also been motivated to prevent the possibility of Mr Garcia political resurgence, which may explain why he was a target of arrest by the military. The *autogolpe* may have been partly an attempt to prevent such outcome.

¹⁴⁰ Reasons expressed to the sacking among others were corruption, "deviant sexual inclinations," "inappropriate" private or family arrangements (unmarried diplomats living together with partners without being married,) etc.

almost atomised, almost missing the 5 percent vote-cut necessary to remain as registered political parties before the National Electoral Board (JNE). The results meant that the Executive would have free hands to implement all the reforms in waiting. Mr Fujimori hurried also to appoint new Judges at all levels, but the highest Tribunal remained closed until 1995.

In the Peruvian case, the reform of the State was interpreted, in this second phase, mainly as the reform of the Executive branch (Boloña 1996: 204-205.) The policies were directed at adjusting the institutions of the Executive to the economic reforms taking place since August 1990. This direction coincides with the reaffirmation of the Executive power over other functions of the state.

At first, the reform of the State was implemented from the second semester of 1991 through *Decretos Legislativos* (Legislative Decrees.) Initially, during the 1991-1993 phase, several decrees were issued to deregulate the economy, liberalise the markets, and reform of property rights and public institutions. In November 1991, 117 decrees were issued on restoration of order, promotion of investment, and employment. In April 1992, immediately after the coup, 61 Law Decrees (*Decretos Leyes*) were issued on foreign trade, exchange market, financial market, fiscal sector, public enterprises, and labour market. In addition, by December 1992, several more were passed on commercial, public, productive, and social sectors (Beaumont 1997: 41.) An important characteristic of these Law Decrees is that many of them (especially those referring to production and extraction sectors or activities) included, for the first time, environmental clauses.

The reform was supported institutionally, *ex post*, by the articles contained in the Constitution of 1993 (approved by referendum in the same year)¹⁴¹ that ascribes to neo-classical economics theory principles. The reforms established in the Constitution of 1993 were envisioned as the general framework for the reforms already designed and that took place during the period 1992-1993 (National Reconstruction Government.)

In 1993, after the conclusion of the stabilisation phase, important reforms were carried out, modifying the state towards an export-oriented and free market model. The Executive branch, through its influence in the other functions of the State, promoted Parliament and Judiciary reforms as the most important in the context of the institutional reforms.¹⁴² Those in-

¹⁴¹ The deterioration of the living conditions caused by the stabilisation package led to a contestation of Fujimori's policies, after the initial "honeymoon" with the electorate, which reflected in the results of the referendum for the Constitution of 1993. 49 percent voted NO and 51 percent YES. Consequently, the reform-of-the-state proposed in the Constitution neither had a consensus, nor a wide majority of approval at that particular time. Additionally, it has been known, after the corruption scandals that obliged Mr Fujimori to leave the country in 2000, that it is probable that the results of the referendum were manipulated in favour of the approval.

¹⁴² The new single-chamber Congress showed little disposition to question the legislation set before it by the government, and on several occasions voted to obstruct moves which were considered problematic or embar-

stitutional reforms comprised the reform of the Constitutional framework, and the reform of the institutional framework, i.e. the Parliament, the Judiciary, Local and Regional Governments, Electoral College, Political Parties, Property Rights, and Peacekeeping Forces (*sic*) (Boloña 1996: 207-209.)

The Constitution of 1993 approved by the new Congress with a pro-Mr Fujimori majority, reinforced executive powers *vis-à-vis* both the Legislature and the Judiciary. The new Charta allowed for immediate presidential re-election, it also reduced the powers of Congress to hold the government or senior military officers to account and increased those of the police and the military in the judicial process¹⁴³ (Garcia Belaunde and Planas 1993, Crabtree 1998: 18.)

In the case of the Parliament, the two-chamber system was abolished and a single chamber of one-hundred and twenty (120) representatives was established (Art. 90°.) A new Constitutional Tribunal was established instead of the old Tribunal of Constitutional Guarantees (Art. 201°.) A new process of decentralisation and regionalisation was devised and the elected regional governments disbanded (Chapter XIV, Arts. 188° to 199°.) The regime also changed the rules of the Electoral College to allow not only political parties but also explicitly movements and alliances to take part in elections (Art. 35°.) Property rights restrictions were eased, especially those related to the participation of foreign investors in the different sectors of the economy in Peru. Finally, the armed forces were given legal jurisdiction over terrorism cases through military courts.

The Constitution of 1993 includes principles that delineate a new economic framework.¹⁴⁴ It facilitates and promotes free competition (Art. 61°.) It establishes the same rights and duties for national and foreign investors (Art. 63°.) It forbids the monopoly of the State in the field of mass media and communications (Art. 61°.) It guarantees the free access and use of foreign currencies by all citizens (Art. 64°.)¹⁴⁵ It protects the right to property, and gives equal rights to national and foreign persons (Art. 70°.) It prohibits the Central Reserve Bank to open credit lines to the public sector (Art. 84°.)¹⁴⁶ and it establishes property rights for and

passing for the government (Crabtree 1995b.) The dominance of the Executive over the Supreme Court was also made clear in several occasions (de Belaunde 1998.)

¹⁴³ In fact, the military became a crucial element in the coalition of interests that helped sustain the government (Crabtree 1998: 19.)

¹⁴⁴ See, *Constitucion Politica del Peru*, 1993.

¹⁴⁵ This meant the abolishment of and the impossibility to re-establish the differentiated exchange rate that was the basis of President Garcia government economic policies.

¹⁴⁶ This measure, again, was a reaction to the economic policies of President Garcia government that made use of open credit lines by the Central Reserve Banks to cover public deficits.

the right of the indigenous communities to sell their communal land (Art. 88°.)¹⁴⁷ In addition, the funds and reserves of the social security were declared intangible (Art. 12°.)¹⁴⁸

In relation to environment and natural resources, the right to “enjoy a balanced and adequate environment for the development of life” was recognised in the section of basic rights of the person (Art. 2°, num. 22°.) This article was to be the legal basis of all environment and natural resources legislation and practice in the country during the next years. At the same time, a special section dedicated to environment and natural resources was included within the “Economic Regime” section of the Constitution (Title III, Chapter II, Arts. 66° to 69°), which demonstrated the new importance and links between economy and environment given by the legislators of 1993.

The reforms of President Fujimori government came to a stalemate in 1997, when authoritarian practices incremented. In fact, the regime developed towards personality cult, clien-tele, nepotism, cronyism, anti-institutionalism, and less than a sympathetic attitude towards the development of the institutions of representative democracy and civil society (Crabtree 1998: 20, Kistic 1998: 58-59.) It brought about a concentration of power, a process facilitated by the lack of an effective opposition force. Those characteristics clearly contradicted many of the objectives of the programmes and projects agreed with the international community. In some cases, as in the reform of the Judiciary to be financed by the World Bank, the funding was suspended until the political conditions for implementation changed. The Bank finally re-channelled funding for the project at the end of 2004, more than seven years after its approval.¹⁴⁹

In the conditions that Mr Fujimori received the country, reform was a question of national survival. The country changed in fundamental ways and the consequences are yet to be seen, almost five years after Mr Fujimori left power. The immediate changes, however, were the recovery of economic stability and the regain by the government of its international stand as interlocutor with outside actors. More importantly, the Peruvian people regained part of their lost optimism and the belief that, effectively, a future in the country was possible.¹⁵⁰

¹⁴⁷ Through the Agrarian Reform implemented by the military government, it was forbidden in the Political Constitution of 1979 to sell any land belonging to an indigenous community, the reason being to defend its ancestral rights and avoid dispossession. The change of policy in the Constitution of 1973 had as objective to put the lands, property of the communities, in the market.

¹⁴⁸ This measure was set to avoid their use by the Central Government to cover deficits in other organisms of the public sector, as practised by the APRA government.

¹⁴⁹ The amount approved in 1997 was of US\$ 500 millions.

¹⁵⁰ During the period 1987-1992, more than one million Peruvians left the country, mainly to the USA, Spain, Italy, and England. In many cases, people of the middle classes sold out everything they had in the country to migrate and complete families turned their back to the country. For an account of this process, see Altamirano (1992).

4.4. The Post-Fujimori Era

In July 2001, Mr Alejandro Toledo Manrique, leader of the political movement *Peru Posible*, who had lost against Mr Fujimori in the 2000 elections, was elected president with only 45 of the 120 seats in Congress. His party is a loosely formed political movement with no clear political ideology. The government has the support of some four smaller parties and is able to master a majority of 64 seats when important topics are at stake. The second largest party is APRA, led by former President Garcia Perez (World Bank 2003.)

After his inauguration, President Toledo initiated a process of dialogue with representatives of all political parties, mayors, business organisations, professional institutions, churches, and other civil society organisations. The process culminated in March 2002 with the signing of a document called Commitment to Dialogue for a National Agreement. The signatories of the document expressed their intention to reach a National Agreement that would serve to consolidate democracy, reaffirm national identity, and establish a shared long-term vision and development strategy for Peru. Mr Roberto Danino Zapata, then president of the Council of Ministers, defined the National Agreement as an attempt to “stop the swinging of the pendulum between uncontrolled populism and inconclusive liberalism,” that characterises the recent history of the country and has not produced real improvements in living conditions for the vast majority of the population (World Bank 2003.)

The aim of the National Agreement (signed in Lima, 22 July 2002) was to define long-term policies that would be used in the fight against poverty and for social justice, and in the consolidation of democracy. The Agreement included 29 policy areas in the clusters of governance,¹⁵¹ social equity and social justice,¹⁵² competitiveness,¹⁵³ and institutionality and public ethics.¹⁵⁴

¹⁵¹ In the cluster of governance the objectives state were: the strengthening of democracy and of the rule of law; the democratisation of politics and the strengthening of the system of political parties; the affirmation of a National identity, the institutionalisation of dialogue and the search for agreements; the government use of strategic planning, a national perspective and transparent procedures; a foreign policy for supporting peace, democracy, development, and integration; the eradication of all forms of violence and the strengthening of the citizens' security; the decentralisation of the economy and of power, and of public administration; and the boosting of national security.

¹⁵² In the cluster of social equity and social justice the following objectives were stated: the elimination of poverty and the promotion of equality of opportunities; the fostering equality of opportunities without discrimination; universal access to quality education and promotion of free public education and of sports; universal access to health services and social security; access to dignified and productive employment for all Peruvians; the promotion of food security and nutrition; and the strengthening of the family, child protection, and promotion of youth.

¹⁵³ In the cluster of competitiveness, objectives were stated as: reaffirmation of the social market economy; search for competitiveness, productivity, and increase formalisation of economic activity; sustainable development and protection of the environment; development of science and technology; establishment of a national

Mr Toledo attempt to reach a National Agreement for Governance only worked out in theory. After the signing of the document in 2002, the different political actors re-started their campaigns to assert their political influence in the country. Thus, the agreement never entered into practice. Yet again, it constitutes the first attempt of the political elite of the country to reach consensus towards a stable national political agenda.

At the same time, the Ministry of Economy and Finance published a document called “Basic Outline of a Strategic National Plan 2002-2006.” This document identifies as government priorities:

- i. Employment generation.
- ii. Reduction of poverty.
- iii. Decentralisation.
- iv. Modernisation of the State.

The document itself is a projection of revenues and expenditures of the central government. It forecasts public resources for the period 2002-2006 under two scenarios: a conservative scenario with low growth of the economy and a progressive reduction of the consolidated public sector deficit to 1,0 percent of the GDP; and a more optimistic scenario with higher growth and an increase of public sector resources to 15,5 percent of GDP.

In February 2002, the Government of Mr Toledo signed a new two-year stand-by agreement with the IMF, which targeted narrowing the fiscal deficit from an estimated 2,4 percent of GDP in 2001 to 1,9 percent of GDP in 2002, and included tax reforms, the acceleration of the privatisation and concession programmes, and continued reduction of import tariffs. A sign of the strong international investors confidence in the government was the placement of US\$500 million in new ten-year bonds at very favourable rates in 2002 (World Bank 2003.)

Finally, the decentralisation and regionalisation process of the country was re-launched and elections for regional government took place in November 2002. In July 2004, the Peruvian Ombudsman published a “Good Governance Index” for regional governments, as an attempt to introduce transparency and accountability criteria for policymaking. The

infrastructure plan and promotion of housing; promotion of trade policies to further open markets based on reciprocity; and the advancement of rural and agricultural development.

¹⁵⁴ In this cluster, the following were state as objectives: reaffirmation of the efficiency and transparency of the State; protection of the institutional role of the Armed Forces and of their services to democracy; boosting of ethics and transparency, and eradication of corruption, drug traffic, money laundering, fiscal evasion, and smuggling; eradication of the production, traffic, and consumption of illegal drugs; full access to justice, independence of the judicial system and full applicability of the Constitution and human rights; and guarantee of full access to information and of freedom of the press.

same initiative included the award of a prize to the regional government that ranked the best in the Index (Defensoria del Pueblo 2004.)

4.5. The Results of the Process of Reform

To evaluate the results of the process of reform in Peru, the indicators of the World Bank, the UNDP Human Development Report, official national statistics (INEI), the Transparency International Corruption Index, and the Bertelsmann Transformation Index BTI (2004,) will be presented.

First, we will revise the general indicators of the country based on UNDP Human Development Report¹⁵⁵ and World Bank Development Data Base. Peru is ranked 85 among 177 in the Human Development Index (HDI) 2004 with an HDI value of 0,752. In the Latin America and Caribbean region, Barbados ranks first with a value of 0,888.

TABLE 1: PERU HUMAN DEVELOPMENT INDEX 2004

LIFE EXPECTANCY AT BIRTH (YEARS) (HDI), 2002	69,7
Adult literacy rate (percent ages 15 and above) (HDI), 2002	85,0
Combined gross enrolment ratio for primary, secondary, and tertiary schools (percent), 2001/02	88
GDP per capita (PPP US\$) (HDI), 2002	5,010
Life expectancy index	0,74
Education index	0,86
GDP index	0,65
Human development index (HDI) value, 2002	0,752
GDP per capita (PPP US\$) rank minus HDI rank	7

Source: UNDP Human Development Report 2004

According to the Human Development Index 2004, Peru has consistently improved its value indicators, as it can be observed in the following comparative table of trends since 1975.

TABLE 2: PERU HUMAN DEVELOPMENT INDEX TRENDS 1975-2000

HDI 1975	0,642
HDI 1980	0,672
HDI 1985	0,696
HDI 1990	0,706
HDI 1995	0,733
HDI 2000	..
HDI 2002	0,752

Source: UNDP Human Development Report 2004

The World Bank general indicators information for Peru, which encompasses the period 1990-2002, also show an improvement of social indicators, albeit not as strong as at the economic level.

TABLE 3: PERU GENERAL INDICATORS 1990-2002

	1990	1995	2001	2002
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¹⁵⁵

Peru is mentioned in the report on pages 11, 53, 61, 66, 67, 69, 86, 92, 93, and 94.

Population (in millions)	21,6 m	23,8 m	26,3 m	26,7 m
Gross national income (\$) (in billions)	16,8 b	48,5 b	51,9 b	54,0 b
GNI per capita (\$)	780,0	2,030,0	1,970,0	2,020,0
Adult literacy rate (percent of people ages 15 and over)	85,5	87,8	90,2	85,0
Total fertility rates (births per woman)	3,7	3,4	2,8	2,6
Life expectancy at birth (years)	65,8	67,8	69,3	69,8
Aid (percent of GNI)	1,6	0,7	0,9	0,9
External debt (percent of GNI)	78,7	59,5	52,6	51,2
Investment (percent of GDP)	16,5	24,8	18,6	18,4
Trade (percent of GDP)	29,6	30,7	33,6	33,8

Source: World Development Indicators Database 2004, World Bank

For the World Bank¹⁵⁶, the economic numbers and indicators of the country have showed improvement in terms of poverty and social issues. For comparisons, the Bank locates Peru among the lower-middle income countries and the Latin America and Caribbean region.

TABLE 4: PERU POVERTY AND SOCIAL 2002

	peru	latin america & caribbean	lower-middle-income
Population, mid-year (millions)	26,7	527	2,411
GNI per capita (Atlas method, US\$)	2,060	3,280	1,390
GNI (Atlas method, US\$)	55,1	1,727	3,352
Average Annual Growth, 1996-2002			
Population (percent)	1,6	1,5	1,0
Labour force (percent)	2,8	2,2	1,2
Most recent estimate (latest year available, 1996-2002)			
Poverty (percent of population below national poverty line)	49	..	..
Urban population (percent of total population)	73	76	49
Life expectancy at birth (years)	70	71	69
Infant mortality (per 1,000 live births)	30	27	30
Child malnutrition (percent of children under 5)	7	9	11
Access to an improve water source (percent of the population)	80	86	81
Illiteracy (percent of population age 15+)	9	11	13
Gross primary enrolment (percent of school-age population)	128	130	111
Male	128	131	111
Female	127	128	110

Source: World Bank Development Economics Database 2004

In the fifth table, we can observe the key economic ratios and long-term trends of the Peruvian economy.

TABLE 5: PERU KEY ECONOMIC RATIOS AND LONG-TERM EFFECTS

	1982	1992	2001	2002
GDP (US\$ billions)	24,8	36,1	54,2	56,9
Gross domestic investment/GDP	33,6	17,3	18,3	..
Exports of goods and services/GDP	16,5	12,5	15,8	..
Gross domestic savings/GDP	30,5	14,4	16,9	..
Gross national savings/GDP	26,4	12,4	16,5	..
Current account balance/GDP	-6,5	-5,2	-2,0	..
Interest payments/GDP	2,4	0,9	2,1	2,2
Total debt/GDP	43,2	56,4	51,0	49,0
Total debt service/exports	48,6	20,3	22,0	28,7
Present value of debt/GDP	..	..	51,9	..

¹⁵⁶ This information is based on the data produced for 2004 by the Development Economics central database, and the World Development Indicators Database of the World Bank.

	1982-92	1992-02	2001	2002	2002-06
Present value of debt/exports		..	..	282,7	..
(average annual growth)					
GDP	-0,8	4,0	0,6	5,2	4,0
GDP per capita	-2,9	2,2	-1,0	3,7	2.4
Exports for goods and services	-0,1	8,9	6,9	..	..

Source: World Bank Development Economics Database 2004

Table N° 5 shows the improvement in the Peruvian economy since the implementation of the structural adjustment programme, based in the macroeconomic numbers. However, to add another edge to the analysis, those can be crossed with the social indicators of the country, especially those related to the advances of Peru concerning the achievement of the Millennium Development Goals, as showed in Table N° 6. As with the case of the HDI, the achievements of the country through these compared indicators showed significant improvement in some areas, while others still have to be tackled with more efficiency.

TABLE 6: PERU MILLENIUM DEVELOPMENT GOALS

	1990	1995	2001	2002
1. Eradicate extreme poverty and hunger				
Population below 1\$ a day (percent)	..	..	18,1	..
Poverty gap at \$1 a day (percent)	..	..	9,1	..
Percentage share of income or consumption held by poorest 20 percent	..	..	2,9	..
Prevalence of child malnutrition (percent of children under 5)	10,7	7,8	7,1	..
Population below minimum level of dietary energy consumption (percent)	40,0	18,0	11,0	..
2. Achieve universal primary education				
Net primary enrolment ratio (percent of relevant age group)	..	90,8	99,9	..
Percentage of cohort reaching grade 5 (percent)	..	..	87,4	..
Youth literacy rate (percent ages 15-24)	94,5	95,7	96,9	96,6
3. Promote gender equality				
Ratio of girls to boys in primary and secondary education (percent)	96,1	96,0	..	..
Ratio of young literate females to males (percent ages 15-24)	95,1	96,0	97,1	97,3
Share of women employed in the non-agricultural sector (percent)	28,9	30,5	34,6	..
Proportion of seats held by women in national parliament (percent)	..	10,0	..	..
4. Reduce child mortality				
Under 5 mortality rate (per 1,000)	80,0	60,0	42,0	39,0
Infant mortality rate (per 1,000 live births)	58,0	46,0	40,0	30,0
Immunisation, measles (percent of children under 12 months)	64,0	98,0	97,0	95,0
5. Improve maternal health				
Maternal mortality ratio (modelled estimate, per 100,000 live births)	..	..	410,0	..
Births attended by skilled health staff (percent of total)	..	56,4	59,3	..
6. Combat HIV/AIDS, malaria and other diseases				
Prevalence of HIV, female (percent ages 15-24)	..	..	0,2	..
Contraceptive prevalence rate (percent of women ages 15-49)	54,7	64,0	68,9	..
Number of children orphaned by HIV/AIDS	..	..	17,00	..
Incidence of tuberculosis (per 100,000 people)	..	..	196,0	202,4
Tuberculosis cases detected under DOTS (percent)	..	99,0	94,0	84,5
7. Ensure environmental sustainability				
Forest area (percent of total land area)	53,0	..	50,9	..
Nationally protected areas (percent of total land area)	..	2,7	2,7	6,1
GDP per unit of energy use (PPP \$ per kg oil equivalent)	6,8	8,9	10,4	..
CO2 emissions (metric tons per capita)	1,0	1,0	1,1	..
Access to an improved water source (percent of population)	74,0	..	80,0	..
Access to improved sanitation (percent of population)	60,0	..	71,0	..
8. Develop a Global Partnership for Development				
Youth unemployment rate (percent of total labour force ages 15-24)	15,8	11,4	13,2	15,2

Fixed line and mobile telephones (per 1,000 people)	26,2	50,3	136,7	152,3
Personal computers (per 1,000 people)	..	14,9	47,9	43,0

Source: World Development Indicators Database 2004, World Bank

In relation to MDG Goal 1, Table N° 6 shows high levels of poverty and poverty gap. Notwithstanding, indicators of malnutrition and dietary energy consumption have improved consistently during the period 1990-2002. MDG Goal 2 can be misleading in the case of Peru because education rates have been high since the eighties, albeit the poverty situation of the country. Education in Peru is regarded as a means to level up in the social ladder; therefore, families in the country will pull out resources together to send children to school at any cost, in spite of their financial situation. So, thriving for education is based on the private efforts of the citizens rather than in public policies coming from the state. MDG Goal 3 is again a consequence of the private efforts mentioned for MDG Goal 2. MDG Goal 4 is however very much a result of basic health policies supported by the central government with the support of WHO and PAHO. Such rates are proof of consequent state and government policies undertaken regardless political colour or tendency for the well-being of the Peruvian citizens. MDG Goal 5 still needs much effort for improvement. This Goal is closely linked with the lack of investment in infrastructure in the Health sector in the last decade, as a product of the cut of social expenses during the implementation of structural adjustment and reform of the state programme. MDG Goal 6 shows rates that need to be improved and worked upon in the shortest term possible. MDG Goal 7 shows a mixed picture of environmental conditions in the country. While in issues as natural protected areas and improved water source access the numbers show improvement, forest area has been lost probably irreversibly, and energy consumption and CO₂ emissions have augmented. Finally yet importantly, for MDG Goal 8, while rates are positive concerning access to technology means, unemployment among the youth has augmented.

A third aspect, subject to analysis in the last years, is the indicators of governance and transparency developed by different independent institutions and think-tank bodies.

At the Bertelsmann Transformation Index BTI 2003, Peru is classified in both the Status and the Management indexes. Within a group of 116 countries surveyed around the world, Peru ranks 38 (6,1) at the Status Index (in the group of countries with deficits in relation to market-economy based democracy) and 39 (5,1) at the Management Index (in the group of countries with regular success in political management.) In the Latin America and Caribbean region, Chile has the best values with 9,2 in the Status-Index and 7,6 in the Management-Index, ranking 8 in both among the 116 countries considered. The following table resumes the values obtained by the country, with the indicators taken into account for each index.

TABLE 7: PERU STATUS INDEX TRANSFORMATION TO MARKET-ECONOMY BASED DEMOCRACY

CRITERIA OF POLITICAL TRANSFORMATION	
Governance	4
Political Participation	5
Rule of Law	3
Institutional Stability	3
Political and Societal Integration	2
Results of Political Transformation	3,4
Criteria of Transformation to Market Economy	
Socio-economic level of development	3
Regulatory framework for market and competition	3
Stability of currency and prices	4
Private ownership	3
Welfare regime	2
Strength of the economy	2
Sustainability	2
Results of Transformation to market economy	2,7
Trend 1998-2003	No significant*
Status-Index	6,1

Source: Bertelsmann Transformation Index 2003

* No significant change towards market-economy based democracy

In a second table, the indicators for successful political management are presented with the values given by the criteria taken into account by the BTI 2003.

TABLE 8: PERU MANAGEMENT INDEX POLITICAL ACHIEVEMENTS FOR MARKET-ECONOMY BASED DEMOCRACY

CRITERIA FOR MANAGEMENT PERFORMANCE	
Targeting	6
Effective resources use	4
Design capacity	4
Consensus seeking	6
International collaboration	8
Results Management Performance	5,6
Level of Difficulty	6
Management-Index	5,1

Source: Bertelsmann Transformation Index 2003

The Transparency International Corruption Perceptions Index (2004) ranks Peru 67 among 146 countries surveyed. The score in the CPI 2004 is 3,5, which indicates a high level of corruption perception (10 is the cleanest score.) In addition, the Second National Survey on Corruption (*Segunda Encuesta Nacional sobre Corrupcion*), ordered by the Peruvian National Chapter of TI, Proetica, offered significant finds, among them (Proetica 2004):

- i. Two of three Peruvians considered corruption a very serious problem. The perception grows according to the educational level of the surveyed.
- ii. The most questioned institution is the Judiciary. Most of the population considered it the most inefficient and corrupt.
- iii. Regional governments have a different rapport with the population. The perception of corruption is linked with the approval ratings of the presidents of the region.

iv. Tolerance towards corruption (acceptance or only partial rejection of corruption) has incremented from 66 percent to 75 percent. The Peruvian word for “bribe” (*coima*) has a less negatively connotation, from 50 percent to 45 percent.

v. Confidence in the denouncing of corruption acts as an effective means has diminished from 23 percent to 13 percent. On the contrary, the perception that those who denounce would suffer the worst part has grown.

vi. One of the very few positive results is that the Daily Corruption Index (*Indice de Corrupcion Cotidiana*) has diminished from 6,4 to 5,3. Corruption has diminished in procedures related to traffic and export and import.

In July 2004, the Peruvian Ombudsman published its Good Governance Index (*Indice de Buen Gobierno*) based upon four components: transparency, access to information, budget tracking, consensus seeking. This Index refers only to the first 18 months in power of the regional governments elected at the end of 2002. The best performer was the Region Lambayeque in the Northern Coast of Peru with a value of 0,76. Region Cajamarca placed rank 6 among 25 with a value of 0,69. Region Lima (which includes the capital city and surrounding areas and is home to 8 million Peruvians) only placed rank 12 with a value of 0,59.

The latest survey on good governance issues is the World Bank Governance Indicators 1996-2004 (Kaufmann, Kraay, and Mastruzzi 2005), which reflect the statistical compilation of responses on the quality of governance based on a large number of citizen and expert survey respondents. In the case of Peru, the indicators are as follows:

TABLE 9: PERU GOVERNANCE INDICATORS

	Percentile rank (0-100)
Voice and Accountability	
2004	44,7
2002	52,5
2000	51,8
1998	25,7
1996	27,2
Political Stability	
2004	27,2
2002	23,8
2000	32,1
1998	26,1
1996	17,7
Government Effectiveness	
2004	32,2
2002	37,3
2000	45,7
1998	69,9
1996	53,1
Regulatory Quality	
2004	57,1
2002	62,2
2000	73,3

1998	81,5
1996	76,2
Rule of Law	
2004	31,9
2002	36,7
2000	38,5
1998	37,3
1996	40,4
Control of Corruption	
2004	44,8
2002	50,5
2000	57,5
1998	59,6
1996	56,0

Source: Kaufmann, Kraay, and Mastruzzi, 2005, World Bank Governance Indicators

These indicators are most interesting because they allow us to observe the trends during the second President Fujimori government, the Transition Government, and President Toledo government. Government Effectiveness and Regulatory Quality seemed to have been on a high during President Fujimori 1995-2000 period, while Voice and Accountability, and Political Stability were low in the agenda. Rule of Law, and Control of Corruption fare high, but not as the first two mentioned indicators. This coincides with the emphasis given during those years to government action and issuing of regulatory frameworks for reform. Participation and the strengthening of the political system towards more democracy were not high in Mr Fujimori's political agenda. On the contrary, authoritarian tendencies tended to increase time after time. Those were the best years of Mr Fujimori government, with a high level of support to his policies from both the elites and the population. The contrast with the regime of Mr Toledo cannot be bigger. Albeit the fact that Mr Toledo helped to topple an authoritarian regime, his rule itself fares lower in all indicators, going steadily down since he took over power.

The most important element of the different set of indicators is that they consistently confirm the positive tendencies at the level of macroeconomic numbers and selected social indicators (as education or immunisations campaigns) but also negative trends at the levels of poverty, gender, and health issues. The gap between those fields is the one to be addressed by any government that will take power in Peru in the next years, regardless of their ideological position. If the political elites are not capable to deliver, governance indicators will continue to deteriorate paving the way for possible authoritarian or populist rule.

Paraphrasing Hunt (1995), the strengthening of institutional arrangements is the most important issue to ensure the continuity of the process of reform under democratic conditions in the next years. Hunt argues, "For there to be a consistent long-term model, a strong state is needed. However, it is important to stress that a strong state does not mean an interventionist state. A state must be strong in the sense that it has the capacity to defend itself against pres-

sures from society, so that it can pursue a consistent line of behaviour. A small, non-interventionist state should have the strength to maintain that line.”¹⁵⁷ For the case of Peru, Hunt goes further maintaining that there are three alternatives: an autonomous state, which he sees as authoritarian and inconsistent with liberal norms; a state supported by the ruling class, an alternative he rejects for the lack of such a class in contemporary Peru; and a state supported by a coalition of dominant interests. He considers the last as the only viable alternative for Peru. Hunt argues that to create such alternative it is necessary the establishment of a broad coalition of otherwise antagonistic interests behind a project to pursue economic progress in a context of democracy and respect for the rule of law.

4.6. Preliminary Conclusions

In this chapter, it has been established the character of Peru as a democracy in transition, in the light of the conditions of democracy set by Linz and Stepan, and the elements considered by *Kesselman et al.* As the analysis of the political system in the country demonstrates, the elements of democracy have not taken deep root in the Peruvian system, and the implementation of a neo-liberal economic model with authoritarian political tendencies shows that economic reform does not offer *per se* the solution to structural problems dragged by historical and political circumstances. The challenge for the Peruvian society is to find a balance among the demands and thrive for a democratic and inclusive system with the benefits of free-market and liberalism. The danger exists that if the political class does not deliver through economic reform, democracy would be sacrificed to populist and authoritarian trends that offer to do so.

The political system as it evolved under President Fujimori was personality-cult oriented, with political power concentrated in the office of the president. Top-down and vertical forms of government were not new, but Mr Fujimori took them to new lengths intentionally weakening representative institutions, which sought a balancing role. The power of the Executive branch over other branches was enhanced. The new Constitution of 1993 with a unicameral structure only provided more support to his government, as the majority acted as a mere procedure level in approving legislation mostly proposed by the Executive branch itself. When necessary the Congress was ready to override the political system in defence of Mr Fujimori’s government, even if it meant to violate the international obligations of Peru on

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The call for a strong state is also in the line of the arguments of Friedmann, as mentioned in Chapter 2.

human rights issues and the Constitution itself. The Judiciary was weakened and it did not recover still from the unprecedented levels of intervention of the Executive branch.

The role of the military in the political system became more apparent in pursuing to have an active role in the reform of Peruvian society towards a liberal direction. In turn, President Fujimori tactics to control the military only ended debilitating its internal structures as corruption and other practices were not addressed. The military played the role of guarantor of the stability of the regime, which was not seen since the oligarchic era.

In spite of the different economic policy orientations of successive governments in Peru (either liberalism or interventionism), the country's political development for much of the last century was characterised by the persistence of an authoritarian tradition and top-down styles of governance. The country did not develop strong democratic traditions, institutions, or culture, and the weakness of representative institutions provided ground for the emergence of populist styles of government that heightened political instability and hampered economic growth.

In the case of the economic reforms undertaken in Peru before the implementation of the structural adjustment and reform of the state programme in 1991, it can be said that import-substitution policies to achieve growth and heterodox models to tackle the economic crisis did not offer tangible results that could be translated in better livelihood conditions for the masses. Increasing disparity in income distribution and growing poverty paved the way to the questioning of the political system in the country, and the atomisation and eventual disappearance of the political parties system, as envisioned by the legislators of the Constitution of 1978. This, in turn, led to the emergence of populist loose political movements that had taken centre stage in the political arena and the making of politics in the country, and continue doing so up to the present.

The neo-liberal reforms that took place during the nineties paved the way for an almost total re-shape of the state structure, which has had a tremendous impact in the present political and economic situation of the country, as that path of reforms became consensus among the political and economic elites of the country. It is not possible to foresee at the present state of affairs that a new government in 2006 would roll back the policies implemented during the nineties.

The first (stabilisation and structural adjustment) and second (reform of the state) stages of the reform programme were implemented smoothly, with no political opposition, although at a very high social and political cost. At that time (1990-1997,) President Fujimori enjoyed great popularity arising from his government success in fighting political violence and successfully re-ordering the country's finances. The third stage of the programme (institu-

tional reforms) posed problems to Mr Fujimori government from the beginning because for such third stage, good governance and transparency were needed on how and when the reforms would take place and this fact contradicted the increasing authoritarian practices of the President's regime.

Attempts made during Mr Toledo government to reach a consensus for the public policies to be implemented in the country have had mixed results as, on paper, an agreement was reached among most of the political forces. However, the decline of good governance rates contradicts the positive values at the macroeconomic level. A gap between these two levels of policy may hinder the relative development of the country in the last years and can propel a return to populist practices.

Moreover, the indicators and hard data of Peru for the last five years show that a trend has developed in the handling of state affairs. On the one hand, the administration seems to deliver in numbers and relatively positive rates and values related to economic and social issues. The running of the day-to-day state apparatus seems to have reached a status of "business as usual" logic, not present at the level of day-to-day politics. Concurrently, at the level of politics and government management, frequent upheavals and instability seem to have taken on a negative toll, as it is showed by the levels and values related to good governance, corruption, and transparency issues.

The process of reform, although positive at the macroeconomic level and for some specific social indicators, has failed to deliver to the poorest sector of the Peruvian society. Extreme poverty and relative poverty increased during the last decade. Issues of good governance and transparency are still at its beginning in the country. Important attempts are being made by different institutions to evaluate and make government institutions and politicians accountable for their acts.

After a period of political turmoil (which included mass demonstrations and the resignation of President Fujimori) provoked by corruption scandals, authoritarian practices, and human rights violations, the Peruvian state attempts to regain political stability. Success in this matter has been tame at most. After a Transition Government headed by Mr Paniagua (2000-2001,) new elections took place in April 2001 and the economic programmes agreed with the international financial institutions were re-negotiated by the democratically elected government of President Alejandro Toledo, which took power in July 2001 and will govern until July 2006.

V. ENVIRONMENTAL FRAMEWORK AND POLICY IN PERU

In the following chapter, the institutional and regulatory framework for the environment of the country is analysed. In doing so, special attention is paid to institutions and sectors directly related to the research questions of this dissertation.¹⁵⁸ The bodies and organisations of the state that have a mandate to act upon environmental issues constitute the environmental institutional framework of the country. In turn, those institutions are related closely to the regulations that fill the mandates with contents. The environmental regulatory framework is understood as the collection of norms and regulations that incorporate the guidelines of environmental policy and has the level of an official regulation of the country. Policy documents are in the background and are part of the contents of environmental regulations. In addition, the environmental policies introduced in the country as part of the process of reform of the state that took place during the nineties are analysed. In doing so, theoretical tools related to policymaking are introduced to facilitate the analysis to be undertaken and that will be further used along in this dissertation.

5.1. Environmental Institutional Framework

In Peru, the institutional framework for the environment is embedded in the political system described in the previous section of this Chapter. The same formal and informal arrangements take place with the difference that there is a change of scenario and political objectives. Overall, it can be said that the process of reform in the country brought about new themes to public policy in the country. One of those was undoubtedly the environment. This meant changes at the level of institutions to cope with it. It is important to establish that those changes had as limits the political and economic directions of public policies in Peru of the nineties. The changes responded to a vision of a state with a liberal economy, based on private initiative and self-regulation. However, the pitfalls inherent to the system described above remain and repeat itself at the level of environmental policies.

5.1.1. The Legislative Branch and the Environment

The Parliamentary "Committee of Environment, Ecology, and Amazonia" (*Comision de Ambiente, Ecologia y Amazonia*) is in charge of dealing with environment and natural re-

¹⁵⁸ In addition, see the following studies on the topic: Charpentier *et al.* (1996: 8-16,) Foy Valencia (2000: 31-82,) Valdez Muñoz (2000: 117-139,) and Vela Vargas (1998: 28-43.)

sources themes.¹⁵⁹ It was created at the beginning of the Legislative Period 1996-1997. The committee has as functions to study bill drafts, and elaborate and discuss law proposals, in collaborative work with the members of the different political groups represented in it. It brings the discussed drafts to the plenary of the Parliament, steering the debate and contributing with inputs and awareness on the environmental field. The work of the Parliament is to enact the proposed legislation, leaving to the bodies of the Executive the competence of regulating, implementing, and enforcing it through regulations and sector laws. Each Parliament group appoints members to the committee. The number of members is variable, according to the percentage representation of the parties and movements. It does not have more than twelve representatives. Meetings and agenda are accorded at the beginning of the Legislative Period (around August). Members can propose the topics to be included.

In practice, the internal workings of the Committee are influenced by the personal political agendas of its members. The chairperson can play a major role in designing the work and line of the group. There is place for creativity and initiative that unfortunately is not always used in defence of environmental interests, especially if there is a conflict where government interests are at stake. In the past, environmental matters were not considered important enough, for which there was not a high level of interest to belong to the Committee at first.¹⁶⁰ Later, due to the increasing presence of the issue in the media and the environmental conflicts that have emerged; the Committee has become an interesting place for parliamentary work.

As stated above, the Congress is highly influenced by the Executive branch. In the case of the Committee of Environment, this leads to permanent coordination and collaboration with both the Prime Minister's office and CONAM, the main policy actors in the field at the Executive. The purpose of this permanent exchange is to issue legislation that accords the general lines of the policies and programs of the Executive, especially those in the economic field. If the chairperson is a dynamic leader, his team prepare draft bills and pursue their approval in the committee to show a degree of legislative production under his lead. The chairperson or other members may also receive draft proposals from the Executive that are taken as theirs and are presented to the committee obtaining the same result, their approval to be taken

¹⁵⁹ The author was a member of the advisory team of the Chairperson of the Committee in the Legislative Period 1996-1997.

¹⁶⁰ In fact, when Mr Sandoval was appointed to the chair of this committee in August 1996, his foes of *Cambio 90* (Mr Sandoval belonged to *Nueva Mayoría* and was a close friend of Mr Yoshiyama, the President's apparent successor) expected to bury his political career and standing with President Fujimori. Mr Sandoval himself was not very enthusiastic until his political advisors showed him the opportunities brought by an issue (the environment) which was not controversial and could bring him huge political gains if managed professionally. The strategy was to avoid the "coloured" side of environmental protest and concentrate in the "technocratic" aspects of the topic.

to the congress plenary continuing proceedings to become a law. This repeats the pattern of influence of the Executive in the congress described in other sections.

The work of the Committee can be complicated when other Committees also have interest in the issue. This occurs in the case of an environmental bill that falls in the scope of work of other committees. Those committees (e.g. of Mining, of Economy, of Indigenous Affairs, of Agrarian Affairs, of Health, of Justice, among the most important) may pursue to give opinion on the same draft bill as well, slowing the pace of results for the Environmental one. Moreover, the former can ask the matter to be discussed exclusively by them. These conflicts of competences have to be decided upon by the Plenary of the Congress, with the risk of undermining the authority and scope of the Committee of Environment and its Chair. In all these cases, the negotiation and diplomatic skills of the chairperson and other members of the Committee can bring successful results that can be showed later in the work balance at the end of the Legislative Period, and to their constituents as well.¹⁶¹

The experience of the Legislative Period 1996-1997 can be mentioned as an example of these arrangements working in practice. Mr Sandoval, the chairperson, was only interested in obtaining the chair of a committee for the significance of the position within his political group and the opportunities derived to enhance his own standing. The title also carries representative and protocol duties that are cherished by many, as travels and invitations.

Mr Sandoval organised his work around an experienced political advisor, who had worked for President Fujimori himself during the 1991-1993 period. Mr Sandoval had entered politics in 1993 in the elections for the Democratic Constitutional Congress (CCD). His responsibilities during the years 1993-1995 were to manage the program of modernisation of the congress, funded by the UNDP. The Speaker of the Congress during that period was Mr Jaime Yoshiyama, a friend of his. Mr Sandoval was re-elected in 1995, having supported the president's campaign through financial and logistic means. For the Legislative Period 1995-1996, he did not obtain the chair of a committee, which was a huge disappointment. In August 1996, he obtained one, albeit not a one he necessarily cherished at first.

Mr Sandoval's political advisor recruited a team of lawyers with experience in constitutional and environmental issues, who were contacted through university colleagues. All members of the team graduated from the same law school, PUCP, and had met before on those circumstances. The political advisor himself was a professor at that university. That

¹⁶¹ In the case of Mr Sandoval, as his standing grew and his negotiation skills were good, he could avoid those conflicts of competences solving issues with the rival committee under "gentlemen agreements." The favours exchanged were usually promises of support for specific legislative initiatives and exchange of information.

made of the team a homogeneous group from the standpoint of social extraction, education, and law training. They also shared language and social codes, all of which reflected in the ways legal problems were addressed. This played only for the benefit of the work of the committee and his chair. Draft bills had a high quality, and were professionally presented and argued.

Mr Sandoval devised a strategy that would allow presenting himself as an efficient and professional parliamentarian through the management and legislative production of “his” committee. The strategy consisted in identifying gaps existing in the environmental legislation of the country at the time. The Constitution of 1993 in fact contained mandates that have not been fulfilled by the Congress, as a law for natural resources. The strategy included to incorporate some innovative elements in the workings of the committee to make it stand out in comparison to the others. The elements were public audiences, conferences, and expert workshops as places of exchange for political opinions. In the past, committees of the congress did not have that kind of exchange with their constituencies. The relationship was dual, the constituency to the representative and vice versa. Committees were only a place to complain and express grievances when the singular representative had not addressed the issue.

With the exception of two members, the membership of the committee consisted of representatives who did not have any experience and deep knowledge on environmental issues from a political point of view. Most of them had postgraduate degrees from foreign universities, which made the group a potential interesting troupe if it not were for their different political standings. Therefore, the second strategy was to achieve a collegiality among the group, which would allow the chairperson to obtain the approval of draft bills without much resistance or animosity and without recurring to authoritarian means. This would help also the chairperson in his handlings with members of the opposition in a sort of *inter pares* standing. In turn, that would again provide him with gains in terms of influence within his own movement.

The most important output of the committee was to be its draft bills. From those, the most important was the Law for Natural Resources. One of the representatives with previous environmental experience, Ms Beatriz Merino Lucero,¹⁶² presented a draft bill, with the support of members of the opposition. It has to be taken into account that parliamentarians took very seriously the issue of who was the first to present a draft and the authorship of it. Mr

¹⁶² Ms Merino was the first Peruvian woman graduated from Harvard and was years later appointed Prime Minister by Mr Toledo, again the first woman to hold such position in the history of the country. She had been active in environmental affairs since Mr Garcia’s government. She was a member of FIM, a movement with a centre-right direction and an anti-corruption agenda.

Sandoval, with the support of the members of his group, presented a rival proposal prepared by his advisory team.¹⁶³ Instead of taking the affair into an issue of prevalence of one proposal, the chairperson and his team chose to make it an issue of consensus seeking to obtain a single draft bill that would be supported by all members of the committee. This would enhance its chances for approval in the plenary of the congress without much opposition and would show the capacities of Mr Sandoval in managing and handling within his committee. Some of the opposition members of the committee were very respected and serious professionals, and to obtain their approval was important in terms of prestige.¹⁶⁴

As it was explained before, the Legislative Period runs from August to December, with a recess in January-February, and another working season from March to July. In the case of the commission, it was devised that the first part of the legislative was to be used for preparing the field for the consensus-seeking process. The recess would serve to assess the scenario and re-design the strategy according to the developments, and the second working season to push the draft bill on its way to the plenary up to publication in the official gazette. At the beginning of September 1996, the chairperson presented a working plan with objectives, aims, and analysis. The document looked very much as a managerial working scheme, not in use in congressional circles at the time, more accustomed to legalistic styles. This again brought another element of innovation and professionalism. In October 1996, the work itself started. The rival proposals were going to be discussed but not in a confrontational manner but through third parties. The advisory team arranged the appearance of environmental experts at every meeting of the committee.

The content of the presentations was not comments on the existing proposals but rather the opinion of the expert on what those contents should be. These experts presented their viewpoints that, sometimes, included issues taken in the proposals, sometimes not. Therefore, they did not compromise their independence and integrity and, at the same time, the chairperson gained points with the knowledge he personally was getting and the improvement of the level of the discussion within the committee. Before the process, the two congress representatives who had environmental experience had asserted a sort of monopoly of knowledge and used the situation to dominate the discussions. With every session and every expert invited that situation changed. The experts invited were in fact the most recog-

¹⁶³ It has to be said that, at first, the members of the opposition in the committee did not take Mr Sandoval seriously because of his previous lack of experience on environmental affairs. At the end of the Legislative Period, that situation changed drastically.

¹⁶⁴ Another important member of the committee was Dr. Graciela Fernandez-Baca, who is director of the most prestigious private statistics and economics organisation in the country, Cuanto S.A. She was a member of UP.

nised in Peru on the issue and their opinions in some cases were almost the authoritative opinion of the environmental sector of the country. Therefore, the element of internal competition among members was eliminated gradually.¹⁶⁵

In December 1996, things have developed to the point that it was possible to work in a single proposal during the recess that could be presented in March 1997 as the proposal of the Committee with the endorsement of all of its members. The second part of the strategy came into place. It was devised to organise public audiences to discuss the joint proposal among a group of interested people, NGOs, CBOs, academics, experts, students, etc. The audiences would be held in the provinces with the objective of bringing the Congress to the people in the periphery, the “forgotten citizens,” far away from the centre of power in Lima. Three audiences were held in Madre de Dios (South Amazonian region), Piura (Northern Coast), and Iquitos (Northern Amazonian region). An audience in Cusco (South Andes) had to be cancelled. Each of the audiences was co-organised with a local university to give the event a more academic and a less partisan side. The content and proceedings however were the same of a meeting of the committee in the congress. Members of the committee would travel to the places and hear the opinions of those interested experts and academics. Questions asked by those attending were grouped in themes and were presented as general topics to avoid controversy. Therefore, people could present their concerns in a controlled set up. The opinions collected were processed, analysed and re-worked in the draft if they were considered helpful insights. To close up the process a workshop with international experts was also organised, which impressed the opposition members very much for the standing of the invited. This helped to finish and wrap up the contents of the draft bill and made it ready for plenary discussion.

In June 1997, a single proposal was ready to be presented to the plenary of the Congress. Mr Sandoval had managed to arrange carefully the endorsement of almost all members of the committee with the exception of Ms Merino. On the eve of its presentation to the plenary, Ms Merino relented and backed the proposal, making of it one of the very few draft bills with support of all political parties and movements represented in Congress. In fact, only the draft bills of the Committee of Environment had that characteristic, thanks to Mr Sandoval’s strategy. In addition, other proposals regarding important environmental topics had been presented and followed suit. If there was agreement on the most difficult law, it was clear that agreement on the others would not be hampered.

¹⁶⁵ For all complete presentations and experts invited, see Sandoval 1997.

Nevertheless, there was room for politicking and hurdles from the part of the opposition to the chairperson during the process. The advantage of Mr Sandoval was that the opposition did not expect him to carry on seriously with his consensus-seeking strategy. They thought that eventually, Mr Sandoval would recur to authoritarian means to obtain the approval of his proposals as his movement and other chairperson colleagues practiced it.¹⁶⁶

The second part of the Legislative period also meant hard ringing with the different bodies of the Executive branch, in particular, the Prime Minister's office and the Ministries of Economy and of Energy and Mines. They wanted to make sure that the draft bill did not contradict the overall economic policies of the country and the strategies to attract private investment in natural resources extraction. This hurdle also was overcome after closed meetings and discussions among the advisory teams of each office and private encounters of the chairperson with the ministers when necessary.

At the same time, the committee, using its control powers on the Executive branch activities, invited every minister with environmental competences to present their plans and strategies. These sessions were very much liked by opposition members because they could criticise openly government policies and ask for results. For the chairperson and the members of his movement in the committee, it meant that they could meet the ministers of each sector and expand their networking within the Executive branch. Therefore, the meetings were beneficial for the political purposes of both sets of representatives.

At the beginning of July 1997, the draft bill of the Law for Sustainable Use of Natural Resources was approved in the plenary of the congress. Other drafts of the committee followed suit, making the committee one of the most productive and efficient in terms of legislation and consensus seeking. The chairperson managed to arrange the publication of volumes containing all discussions and proceedings towards approval of the law just before the end of the Legislative Period.¹⁶⁷

Mr Sandoval's successors in the position followed his strategy and managed to achieve the approval of other important environmental laws for the country. However, in 1998 with the preparations for the electoral campaign of 2000, legislative production stalled as all

¹⁶⁶ The strategy of positioning of the opposition was based on the assumption that the government will use authoritarian means to obtain their political objectives, and that there was no difference in the daily politics of the movement in comparison to the "old traditional parties."

¹⁶⁷ At the end of July 1997, Mr Sandoval was appointed Vice-Speaker of the Parliament with enhanced powers and influence within his political movement. As such, he arranged for the inclusion of part of his working strategy in the environmental committee as part of the internal regulations of the Congress, making public audiences a part of general proceedings in the work of the committees. To date, committees have used such instrument often. In July 1998, he became chairperson of the Committee of Foreign Affairs, and in such capacity was in charge of approving the peace treaty with Ecuador (a war had broken in January 1995,) furthering his influence.

politicians concentrated efforts on preparations for re-election. Overall, the parliament work as a whole slowed down and concentrated only in the topics that were most urgent for the Executive branch. Again, environmental affairs were not deemed so high in the political agenda and the draft Law of Water Resources was the first victim of that.

During the 2001-2002 term, the committee of environment was stripped of its competences on Amazonian and indigenous affairs, as a specific committee for that purpose was created. The work of the committee has concentrated more on control and investigations than legislation, and the long-awaited new law for water resources is still on the agenda.

5.1.2. The Judiciary and the Environment

In the Judiciary, there is no specialised court in charge of environmental issues. Environmental cases are usually channelled through common proceedings (e.g., constitutional, civil or criminal). A gradual growth in the number of cases dealing with environmental conflicts has occurred.¹⁶⁸ In the last years, the role of the Judiciary in shaping environmental policies in Peru has become important because of the explicit recognition of rights contained in its decisions. The Judiciary offers new insights in interpreting legislation, influencing the legislation, or in shifting the Executive branch practices. The Judiciary has issued a range of decisions that have helped to change the perception of the citizenship on the environmental question. Gradually, from 1989 onwards,¹⁶⁹ environmental defence of public interest has lost the label of an “exotic” product imported from developed countries inapplicable to the Peruvian context.

Standing to sue for environmental causes originated properly with the CMARN (1991), which included a specific clause allowing NPOs to sue in defence of environmental interests, as diffuse interests,¹⁷⁰ before tribunals. Afterwards, a more specific clause (mentioning NGOs as such) was included in the Civil Proceedings Code, issued in year 1992. With that, the allowance to environmental defence of public interest was official at the Judiciary level. Before the existence of that clause, Courts usually dismissed environmental demands alleging that, either the legislation did not allow NGOs to defend before the Courts, or that

¹⁶⁸ See the section on environmental jurisprudence, later in this chapter.

¹⁶⁹ Year in which one of the first important cases on environmental defence of public interest was presented before tribunals: *Protterra vs. Ferroaleaciones San Ramon S.A.*

¹⁷⁰ The reference to *intereses difusos* is important because it means that environmental rights are recognised, as those that affect the interests of the society as a whole and not of a particular private person, facilitating third interest parties the possibility of standing to sue before tribunals in the cases where the directly affected are not able to defend themselves.

environmental causes were not included in the general procedural legislation and, therefore, no possibility to sue before Tribunals existed.¹⁷¹

At present, standing to sue for environmental interests has become a normal subject of litigation like others before Peruvian Courts. A number of decisions that make up a Peruvian jurisprudence on the topic exist and those guide a gradual recognition of rights, especially for people in disadvantage as indigenous and Amazonian communities.

The difficulties to obtain a fair trial before a Peruvian tribunal arise from the elements of pressure and the interference of the Executive branch in the Judiciary, in general, as described in other sections of this chapter. This means, change of judges can affect the length and duration of the proceedings. Judges are not motivated to engage in cases where big companies are involved on fears of being put under pressure by the authorities (the Executive branch would in most cases support the private investors) or the companies. As many of the environmental cases are taken up by NGOs, corruption comes up less often because of the fear by judges and judicial employees of being exposed in the press, a tool usually NGOs would recur.

Another difficulty in the first years of experience with environmental defence of public interest was that knowledge on environmental law (i.e. doctrine, comparative law, information) was not widely available in the country or if available was in a foreign language.¹⁷² Therefore, the material to back up the decisions was in the hands of very few researchers, practitioners, and academics and was obtained from abroad. Judges did not want to give a legal opinion on a matter in which they could be labelled as not knowledgeable or incompetent. This situation changed with the gradual inclusion of courses on environmental law at universities and the diffusion and sharing of material. A slow process led to the forming of a group of interested judges on the matter. This, of course, was only positive for the environmental cause and developed in an internal network of environmental knowledge within the Judiciary. In addition, an environmental NGO, SPDA, has engaged on training of judges in collaboration with the *Academia Nacional de la Magistratura*, the training body of the judiciary. They have organised specialised seminars to help deepen the knowledge and importance of the issue among its members.¹⁷³

¹⁷¹ Actually, no legislation forbade the possibility of suing for environmental interests before 1989, but the 'interpretation' of the Courts was for not allowing it, until an explicit recognition in the standing legislation existed. It was a very formal and narrow interpretation of the law and the proceedings.

¹⁷² This observation comes from the experiences of the author in a pilot project to introduce environmental defence of public interest in Peru implemented by Proterra. The first phase of the project took place during the period 1993-1996.

¹⁷³ See, SPDA Home Page, www.spda.org.pe.

Other difficulties may arise from the crossing of trials. This occurs when, for instance, a community demands a company before tribunals for environmental damage (a constitutional proceeding). The company may react (and this has occurred in fact) denouncing the community for slander (a criminal procedure). In turn, the community can demand the company for liability (a civil procedure), and so on. We see here three or more different trials, which have as parties the same actors and have slight differences in contents and objectives. This myriad of trials only drags proceedings even more and escalates the conflict among the parties. Judicial costs for all involved grow.

In addition, the chronic lack of resources of the Judiciary takes a toll in environmental cases when complex studies are necessary to prove the evidence presented before court. The Judiciary would usually refer to the Ministry of Health to emit opinion on damages to health and the environment. The Ministry of Health, as part of the Executive branch, can be also put under pressure to delay or present biased opinions. The Judiciary cannot overcome that difficulty with resources for hiring independent companies or consultants to carry on those technical studies. This plays against environmental causes. The issue of costs also affects the demanding party. In the case of poor communities, support through NGOs and CBOs has been important to assert their rights before courts. In turn, isolated citizens have fewer opportunities to do so, due to the high costs involving an environmental case.

The most important issue however is that the tools provided by the Constitution of 1993 to defend human rights have proved also helpful in environmental defence. The writs of *amparo* and *habeas data* are the most used. The writ of *amparo* allows to petition for an action or omission from the state to stop the violation of environmental rights. The writ of *habeas data* allows to petition for access to information important for environmental defence in a conflict, as, for instance, the contents of technical studies presented by the companies to the ministries. Prospective petitioners have developed confidence in their possibility to obtain justice through the system. Judges, on the other hand, are more confident and asserting in their arguments either in favour or against the petition, which overall levels the quality of Judiciary production, albeit the limitations.

5.1.3. The Executive Branch and the Environment

In the Executive branch, the most important environmental policymakers, in theory, are CONAM and the Ministries (known as sector authorities). In the Peruvian environmental institutional framework, the main policymaker should be CONAM, which is under the direct

authority of the Prime Minister's office, according to its Law of Creation.¹⁷⁴ On paper, it is the highest political authority for environmental policy in Peru¹⁷⁵ and its policies are supposed to be of binding compliance. At the same time, it does not have regulatory or enforcement powers, which weakens its influence overall. The Ministries have each a specialised environmental unit in charge of elaborating sector environmental policies and with enforcement competences, which make them more powerful in practice. Nevertheless, the theoretical framework can work very differently in reality. In Peru, the case is that the Prime Minister's office and the office of the President in the palace are of much more importance in terms of daily policymaking and this can influence the directions of CONAM and the ministries.

A. The National Council for the Environment

CONAM is depicted as a "purely" political advisory body, in charge of co-ordination and consensus seeking, *vis-à-vis* other stakeholders, mainly BUOs, NGOs, and CBOs. Those are also the key words used by body to describe the core of its initiatives and actions.¹⁷⁶ In reality, the separation is not as strict as drawn up in the legislation. In practice, CONAM actively participates in the process of negotiation and drafting of environmental legislation that develops at other spaces of the political system like the Committee of Environment of the Congress, the Prime Minister's office, and the Ministries. The Council also pursues that those initiatives fit into the scheme of Peruvian environmental policies, as designed by CONAM.¹⁷⁷ The latter are presented to the Prime Minister, who negotiate them before the Cabinet (e.g. the Ministries affected), which finally approves (or not) such policy plans, taking into account the cross-sector character of environmental issues. In practice, the process occurs the other way around. The ministries are more proactive in pursuing a sector environmental agenda, especially those of the Energy and Mines and Fisheries sectors. CONAM reacts to those proposals, trying to draw inter-sector commonalities to avoid law dispersion. This can only be successful if the negotiating powers of the Council are good enough to deal with the minister at each specific moment. If the minister is powerful enough, as in the case of Energy and Mines, the latter will have the upper hand in the process.

¹⁷⁴ See Constitution of the Republic of Peru 1993, Articles 121 to 123, and the Law No. 26410 Law of the National Council of the Environment. The Prime Minister chairs the Cabinet, which acts as inter sector co-ordination body. See also the Executive branch website, www.peru.gob.pe.

¹⁷⁵ According to the Law of Creation of CONAM, it plans, promotes, co-ordinates, controls and foresees for the environment and the natural heritage of the Nation (Article 2°, par. 1).

¹⁷⁶ See 'The Action of CONAM and the New Environmental Vision' (*La Accion del CONAM y la Nueva Vision Ambiental*) CONAM Internet Home Page: www.conam.gob.pe.

¹⁷⁷ See for example, National Action Plan for the Environment for 2002, www.conam.gob.pe

CONAM is organised as an executive secretariat under a directive council. The directive council (*consejo directivo*) has representative of the primary (extraction), secondary (industry), and tertiary (services) sectors, regional governments, local governments, and NGOs. The members choose a president among them. In the past, due to the influence of the Executive branch, the president has always been close to the business community of the country, with strong links to a BUO. CBOs have also questioned their lack of representation in the directive council. The president represents CONAM at the ministers' level. Under the council, an executive secretary (*secretario ejecutivo*) is appointed by the Prime Minister's office. Again, this position has fallen always to a person close to the business community, at best if combined with experience in some of the technocratic NGOs.¹⁷⁸ The executive secretary is the manager, represents CONAM at the project, and programmes level. Internally, the council has specialised directions, in charge of topics identified for CONAM as strategic. Those are climate change, biodiversity, and natural resources. Each unit carries on projects that concentrate in the areas of survey, evaluation, and information collection. CONAM has regional representation offices as well, based in different parts of the country, which work mainly on the regional environmental agendas pursued by the institution in the last years.

Since the setting-up of CONAM, the agency was busy first in implementing policy mandates and the regulatory framework related to its functions. One of the most important initiatives to that respect has been to set the National Environmental Agenda, worked on a three-year period basis. The establishment of a policy agenda helped CONAM to set priorities, forecast problems, and start a process of consultations at the national level. The main purpose was to establish a framework that would serve as basis to promote the inclusion of environmental concerns in the overall policy agenda of the government. This strategy has had only partial success, as economic policies (including private investment commitments) are the priority for governments in Peru. The political class would only pay attention to the environment in case of conflict or potential political gains.

The agenda developed by CONAM includes general and specific goals, which are divided into "fronts" referring each to specific clusters of interest. Those are the 'green' front for sustainable use of natural resources, the 'brown' front for promotion and control of environmental quality, and the 'blue' front for awareness, education, and environmental culture. Up to year 2004, the results of CONAM's work are not communicated sufficiently to the public, and its political profile is relatively low, in spite of the high hopes that surrounded its creation and put into function.

¹⁷⁸ This was the case of Mr Paul Remy, who had worked as a lawyer at FPCN and SPDA, and was close to the BUOs of the industrial and mining sectors.

CONAM has not suffered the lack of funding of other government bodies. From its creation, it received enough support, financed by international institutions interested in the development of a proper environmental framework in the country. The World Bank, USAID, and the UNDP are among them. This however has not translated in results that are comparable to those policies produced by the sectors.

Summarising, CONAM has the role of a high-level advisory body, rather than of a body in charge of implementation. Its powers include only the elaboration of policies, survey of sector environmental policies, and political co-ordinations. However, the ministries have taken over actively policy elaboration as theirs. In addition, the Law of Creation of CONAM¹⁷⁹ gives little space for enforcement powers, narrowing the space of manoeuvre of the body. The wariness of the government to give up power to other bodies plays a big role in the distortion of the system.¹⁸⁰

B. Ministerial Sector Authorities

At administrative levels, the bodies in charge of regulation, execution and enforcement of environmental policies are the sector authorities (*autoridades sectoriales*) represented by the ministries. In Peru, the environmental authority is organised by sectors. A single environmental authority does not exist.¹⁸¹ At the sector level, every ministry has an environmental unit. Usually, that unit has the highest level possible in the hierarchy (under the Minister or the Vice-Ministers), namely General Direction (*Dirección General*). Following the separation of powers at the national level, a similar situation is reproduced at the ministerial level. Often, the environmental unit has only policy elaboration powers, while the corresponding enforcement powers are under other executive unit, normally the office with coercive powers (i.e. fines or sanctions.)

At the inter-sector level, it happens that because of the segmentation of the environmental policy making process among different ministries, each one has a different and distinctive view of the topic. Therefore, it happens that in one ministry, the environmental unit has the level of a General Direction, and in another, it has a lower level in the bureaucracy (for

¹⁷⁹ See Law of Creation of CONAM (*Ley del Consejo Nacional del Ambiente, Ley 26410*), Chapter I, in Andaluz and Valdez (1995: 107-108.)

¹⁸⁰ Actually, the Legislative Decree 757, Law for Private Investment (*Decreto Legislativo 757, Ley Marco para el Crecimiento de la Inversión Privada*) contains the most important environmental regulations in the economic field in the country. This fact shows the political direction of the government in relation to the topic. Specifically, the First Final Clause of the Decree derogates clauses of CMARN, establishing that the environmental authority in Peru is organised by sectors.

¹⁸¹ The single environmental authority was included in the original text of the CMARN, however, after the coup of 1992, the Code was modified, and those articles taken out.

instance a Sub-Direction). Therefore, problems arise when inter-sector coordination is needed due to the differences in the hierarchy.

Moreover, at the inter-sector level, it may also occur that in one sector or ministry the environmental unit receives more powers than in another ministry (for instance, in one its opinion is mandatory, whereas in the other it is not). Therefore, again problems emerge when inter-sector coordination is needed due to the different powers each sector may have on a specific environmental issue.

The logic of the separation of powers on environmental affairs, at the national and sector levels has been questioned. Among the reasons explaining such dispersion were, first, the objectives of overall economic policies, where the attraction of foreign capital and private investment is a priority. Policy makers in charge of the reform programme deemed more appropriate to keep the powers in the sectors instead of giving them to another body in the bureaucracy, which could represent a hurdle. In addition, pressure emerged from a diversity of groups, specially the private sector, to keep administrative arrangements as simple as possible, avoiding the inclusion of CONAM as a decision instance, especially in the case of conflicts.¹⁸²

Risk taking in the bureaucracy was supposed to be reduced to a minimum. No surprise decisions from a body not familiar with the handlings of the sector. However, this has not solved the now more frequent conflicts, which were to be avoided with the keeping of environmental competences in each sector. How this would be solved in the future will depend on the day-to-day capacity to manage risks and new situations, added to the training of the environmental policy makers and the background of their policy shift. The Peruvian case would fit in what Dror describes as a characteristic of policymaking in developing countries.¹⁸³

a. Sector Mining

A detailed study of the Sector Energy and Mines (as officially known) follows in the next chapter.¹⁸⁴ However, in order to locate it in the context of the institutional framework, we include a brief description here. In general, the Mining sector includes the Ministry, plus a series of scientific and research bodies. In addition, structures are to be found at the regional

¹⁸² Due to the mushrooming of environmental conflicts in the last years, especially in the mining sector, this situation has changed. A tribunal in charge of overseeing environmental conflicts has been created within the structure of CONAM. At present, a temporary commission of arbiters has been appointed. See, CONAM website, www.conam.gob.pe.

¹⁸³ See Dror (1983: 108) when depicts as a characteristic of policymaking in developing countries the assumption of risk (described as an extra rational factor) for decision-making.

¹⁸⁴ See MEM website, www.minem.gob.pe.

and department levels (*direcciones regionales*). In the Ministry of Energy and Mines, the General Direction for Environmental Affairs (DGAA) is the specialised unit in charge of environmental issues related to mining in Peru. The scope of its powers is limited, as it does not possess enforcement competences, which are under the General Direction of Mining (DGM).

b. Sector Agriculture

The scope of the Sector Agriculture¹⁸⁵ includes agricultural, forestry, cattle and non-cultivated land; river basins and shores; rivers and lakes waters, and other water resources; wild flora and fauna, forestry resources and natural protected areas. This Sector includes the Ministry of Agriculture (the main body), regional ministerial offices, decentralised public bodies at the central and regional levels, and natural and juridical persons dedicated to the agricultural activity. The management of natural resources in the Sector Agriculture is under the competences of the so-called decentralised public bodies, among them: INRENA, the National Service of Agrarian Sanitation (SENASA,) and the National Institute of Agrarian Research (INIA.) We refer only to INRENA, as it is the body dedicated directly to renewable natural resources (the ones most affected by mining activities.)

In the Sector Agriculture, there is no clear difference in the administrative powers referring to environmental management on the one hand, and renewable natural resources on the other. In June 1987, the Vice-Ministry of Natural Resources and Rural Development was created. That body had in its structure, different units with administrative powers on the matter. In April 1990, when a great deal of advancement was achieved in the implementation of that structure, it was abolished. In the Sector Agriculture, the pattern of changes in the administrative structure has been a constant element. Between 1978 and 1992, the administrative structure was changed five times (Valdez 2000: 118).¹⁸⁶ Thus, it was almost impossible that administrative structures could be adapted to the new legislation every time in full, therefore, there was a chain of incomplete reforms put into place, time after time.

Nowadays, the Sector Agriculture pursues the fulfilment of their powers and competences, but the lack of financial resources and the gradual leave of qualified staff have led to a loss of its influence in hands of CONAM and the Mining sector.

¹⁸⁵ Legal basis: *Decreto Legislativo* No 25902 and *Decreto Supremo* No 053-92-AG. See also MINAG website, www.minag.gob.pe.

¹⁸⁶ In 1978: the *Decreto Ley* N° 22232, in 1981: the *Decreto Legislativo* N° 021, in 1987: the *Decreto Legislativo* N° 424, in 1990: the *Decreto Legislativo* No 565, and in 1992: the *Decreto Ley* N° 25902.

i **National Institute for Natural Resources**

INRENA has as goal the rational and integral management and use of the renewable natural resources in charge of the Sector Agriculture, e.g. waters, soils, flora, wildlife, and natural protected areas.¹⁸⁷ The Chief (*Jefe*) has the level of a Vice-Minister in the administrative hierarchy. Consequently, INRENA has a number of directions, each in charge of one of the aforementioned resources. Again, we will focus here on the ones that have administrative powers relevant to the case of mining activities.

- **General Direction for Waters and Soils**

This Direction proposes policies, plans, and regulations on sustainable use of water resources for agricultural purposes and soils. It controls and promotes their rational use, conservation, and preservation. Moreover, it supervises and evaluates the implementation of the policies, plans, and regulations. Furthermore, it proposes and sanctions the sector legislation. In reality, the Direction does not have the capacity to fulfil its responsibilities and obligations as described. The reasons are again the lack of funding and human resources. The most serious consequence of this situation is the incapacity to exert effective control powers in the field to measure the level of law enforcement and abiding by the citizens.

- **General Direction for Natural Protected Areas and Wildlife**

This Direction proposes policies, plans, and regulations on the adequate management of the units that form the National System of Natural Protected Areas (SINANPE.) Moreover, it proposes regulations on existing natural protected areas and on the establishment of new ones. Further, it proposes policies, plans, and regulations on sustainable use of wildlife and it supervises and controls the fulfilling of the regulations in its area of scope. Finally, it controls and promotes the rational use, conservation, and preservation of wildlife.

In practice, this Direction lays very much on the support of environmental organisations and foundations committed to natural protected areas and wildlife conservation. Some international NGOs, e.g. CI, TNC, IUCN and a national organisation, e.g. FPCN, have helped this Direction to accomplish their objectives through strategic partnership in projects in the field and the facilitation of financial resources. Examples of this are, for instance, the facilitation

¹⁸⁷ See INRENA home page, www.inrena.org.pe.

tion of vehicles and motorboats for park vigilance, park rangers' salary support, skill training for personnel in the field, among others. In addition, the funding ensured for the parks through an independent fund, PROFONANPE, has provided more resources, which are used for community development projects and sustainable use of park resources. This has made of this direction one of the most successful, in terms of results.

- ***General Direction for Rural Environment***

This Direction evaluates the environmental impact of programmes and projects in rural environments (land for agricultural purposes.) Further, it proposes measures for prevention and correction, and it surveys those measures. Finally, it carries on coordination activities on environmental issues with other Sectors.

The most important function assigned to this Direction is the environmental impact assessment evaluation of projects affecting the Sector Agriculture, even if those projects are carried on by other sectors. In the practice, this Direction has restricted powers as the EIA powers assigned cannot be fully exercised, as its opinion is not considered binding by the other Sectors. Moreover, the opinion faculty is further narrowed by the "administrative positive silence" decided upon for the procedure. This means that in case the Direction does not emit an opinion (in the name of the Sector Agriculture) in a certain period (considered as a deadline); it is considered automatically that the decision is in favour of the project. Due to chronic lack of personnel, it may happen that the Direction does not have enough resources to pull together for taking action on its own powers.

c. ***Sector Health***

In Peru, as in other countries in the process of including environmental policies into their Executive branch structures, the first step was the creation of a unit within the Sector Health.¹⁸⁸ This was originally the General Direction for the Environment, in charge of regulating, assessing, and controlling all aspects related to environmental protection within its administrative scope. Further, it was also in charge to promote and protect the human health at the working place (including industrial safety issues.) In 1985, with the Organic Law for the Sector Health¹⁸⁹ a Technical Direction for Environmental Health was created with a broader

¹⁸⁸ Legal basis: *Decreto Legislativo* N° 584, *Decreto Supremo* N° 002-92-SA. See website, www.minsa.gob.pe.

¹⁸⁹ *Decreto Legislativo* N° 351 of 28 October 1985.

range of responsibilities, including elements of pollution control (air, waters, soils and food), advice, co-ordination, supervision, and research. In 1990, a new law established the pillars of the administrative structure in the Sector Health elevating the former Technical Direction to the level of a General Direction and creating two Executive Directions underneath with specific environmental responsibilities. For those reasons, in general, it can be said that the Sector Health has the most complete environmental unit in comparison to the ones introduced in the other sectors.

i. General Direction for Environmental Health

DIGESA is in charge of proposing to the High Direction (*Alta Direccion*) of the Ministry the national policy on environmental protection against chemical substances, radiation and other forms of energy causing potential risk or damage to the population's health. Moreover, it designs, regulates, supervises, and diffuses regulations on environmental protection and sewerage sanitation. Finally, it participates in the design of the Sector Action Plan against disasters and emergencies on health and environmental issues (in collaboration with the Ministry of Defence, and the Ministry of Internal Affairs.)

In practice, DIGESA depends very much on the control capacity that it can exert through specialised civil servants in the field, e.g. the regional or department offices of the Direction. Likewise, the collaboration with fire fighters, military, and police authorities, in case of disaster is very important for effective action. Again, due to diminishing resources, the Direction relies on international collaboration. In this case, PAHO and WHO collaborate with facilitation of financial resources and expertise for achieving the aims. In addition, inter-sector collaboration may be called upon when researching on cross-areas issues, e.g. Municipalities, Weather Research body, among others.

- Executive Direction for Ecology and Environment

This Direction is one of the two sub-units of DIGESA. It co-ordinates plans, programmes and projects with local governments in the areas of environmental pollution control due to biological agents, chemical substances and forms of energy that could cause health damage in the population or would be a potential risk in case of operative accidents or natural disasters. Finally, it regulates, controls, and enforces the sanctions established in the health and environmental regulations on gases and noise. In practice, this Direction relies on the col-

laboration ties that may develop with Local Governments. Usually, it will be called to give opinion on a specific level of pollution.

- ***Executive Direction for Basic Sanitation***

This Direction is the second sub-unit of DIGESA. It regulates and establishes the technical criteria for physical, chemical, and biological quality of water for human consumption, and it coordinates with other organs the implementation of water and sewerage programmes, e.g. water and sewerage municipal companies. In practice, in spite of the importance of the control activities of this body, its scope of influence is diminished because it clashes with the control activities of other sectors. The Executive Direction control activities aim to identify dangers for the human health and the living quality of the citizens, while other sectors control the possible damage caused by an activity to water resources without taking into account dangers for human beings. Therefore, we have here the case of two sets of control measures that do not necessarily coincide and open a source for potential conflicts among sectors, as each considers that it not only has the power to control and to enforce, but also that its decisions cannot be revised by other sectors. It is a situation of *inter pares*, and it is usually the most often field of conflict for the Mining sector.

5.1.4. Regional Governments

This new level of government in Peru entered into functions in 2003. Previously, elections were held in 2002 to choose the regional authorities via universal vote. Legally, through the Constitution and the Law of the Regions, these governments have environmental competences and powers. However, due to their recent creation there have not been cases of use of such powers, as the regional bureaucracy is only beginning to be implemented. The same apply to the design of environmental policy. It is not clear yet which role regional governments will play in environmental issues in Peru, as like in the case of Municipalities, taking action on conflicts may occur gradually. On the other hand, the regional agenda initiatives of CONAM may be used as basis of a policy agenda. Again, this will only occur if the regional authorities agree with the content of those documents. The most important problems to be faced by the regions will be the case of shared natural resources, where inappropriate management from the part of one region can affect negatively another, with economic and social

consequences for their populations, e.g. shared river basins, shared marine ecosystems, shared natural protected areas, hydrological resources.¹⁹⁰

5.1.5. Local Governments

Municipalities have competences to elaborate and regulate on environmental issues. This level of government has demonstrated a degree of autonomy, in the context of the decentralised organisation of the country, as it has been showed by their constant intervention and participation in environmental cases before the Judiciary in Peru, where, often, Municipalities have been either the accused or a plaintiff in procedures.

It is noteworthy to give an overview of the role of Municipalities in fostering participation in environmental issues. Peru has a strong tradition of participation at the local level since the eighties. Citizens concerns have been acted upon at the municipal level and local governments have often clashed with the Executive authorities when protecting citizens' rights. That is still the case and, concerning environmental issues, local governments have helped to develop a strong sense of community awareness on the topic. When the local government has been involved and committed to the citizens' interests, it has been less likely that environmental conflicts escalate. When local governments were weak or lacked resources to take action, private interests have overcome the citizens' ones, creating space for unbalanced power or abuse and, consequently, escalation.

The legal basis for the environmental powers of the Municipalities lays on the Constitution of 1993 and the Law of Municipalities. Specifically, the Constitution of Peru (Art. 191°) establishes that Local Governments have economic and administrative autonomy in the scope of their territory. The Law N° 23853 (Law of Municipalities) establishes that Local governments plan, execute and impulse through the competent bodies actions aimed to give the citizens an adequate environment to satisfy their living needs. On environment, the aforementioned Law establishes that Municipalities shall (Valdez 2000: 137-138):

- i. Oversee the local flora and fauna conservation and promote the necessary actions for the development, rational use, and recovery of the natural resources located in their jurisdictions.
- ii. Regulate and control activities related to environmental sanitation.
- iii. Diffuse environmental education programmes.
- iv. Promote forestation and reforestation campaigns.

¹⁹⁰ See: Valdez 2000: 137.

- v. Establish measures to control transit noise and public transport units.
- vi. Establish and conserve zoological parks, botanical gardens, natural forests and recreational parks.
- vii. Promote and ensure the conservation and custody of the local cultural heritage and the defence and conservation of the archaeological, historical, or artistic monuments, in collaboration with the regional and national governments, in their restoration and conservation.
- viii. Promote tourism, restore the local historical heritage, and take care of its conservation.

As it is clear from the abovementioned competences, Local Governments can have a tremendous influence due to their scope of powers. Therefore, their role as stakeholders in environmental conflicts cannot be ignored, as it can be of the utmost importance for solutions accepted by the population, especially when local authorities are trusted and trustable.

Municipalities do not have an even administrative structure, varying from one to the other. In Peru, there are one thousand and eight-hundred provinces and districts, each having a local government. This situation poses a problem as environmental matters may be treated differently from one jurisdiction to the other, depending of available administrative, judicial and human resources. Subsequently, this can change the way a conflict is tackled and the level in which is solved.

Local governments have as higher form of regulation the *Ordenanza Municipal*, which has the level of a Law issued by the Parliament and which can only be challenged before the Constitutional Tribunal. The reason of this powerful competence is the special character of Municipalities, as governments elected by the people, through universal vote. This may lead to conflicts with the central government when a law issued by the Parliament or the Executive Branch is opposed to an *Ordenanza*, as it has been the case of the conflict of Cerro Quilish (part of the analysed case study in this dissertation). In this case, the Provincial Municipality of Cajamarca, through an *Ordenanza*, declared the area around Cerro Quilish as a “municipal ecological reserve,” based on their competences under the Law of Municipalities.¹⁹¹ This opposed central government regulations (Mining sector) giving the aforementioned area in concession for gold exploration to MYSRL. The case was solved by the Constitutional Tribunal of Peru, which decided to bring to a standstill the process of exploration, until a new EIA was presented to the competent authorities, and confirming the Municipalities competences to intervene in environmental matters in the scope of their jurisdiction.

The most common way in which citizens enter into contact with their local government because of an environmental conflict is through a complaint before the municipality. In

¹⁹¹ See Provincial Municipality of Cajamarca Home Page, www.municaj.gob.pe.

turn, the municipality has administrative procedures to deal, which may include the pay of fees and the presentation of documents demonstrating the claim. If the municipality fails to solve the problem, or decides against the complaining citizens, they can pursue their case before Courts.

5.2. Environmental Regulatory Framework

Before the nineties and the impact of the Earth Summit in 1992, the regulatory framework for the environment was a *corpus* of legislation set up for protection purposes and formed by mainly implicit environmental regulations.¹⁹² With the shift to a sustainable development approach, such old *corpus* acquired a new meaning, for it was going to be used as one of the building blocks of the environmental legislation in the country. Before the nineties, a large bulk of environmental information, data, and regulations was developed with other purposes, as health policies, safety regulations at work, and preservation of specific species or natural resources reserves for economic exploitation (Andaluz and Valdez 1987.)¹⁹³

In 1992, a process of issuing environmental legislation and reforming the outdated one was introduced at all levels in Peru. This started with the sanction of CMARN and the approval and ratification of international treaties derived from the Rio agreements. At the national level, the implementation of those provisions led to an accelerated production of legislation in close collaboration, in a first stage, with NGOs and international organisations. The latter had the information and expertise on environmental topics, combining both the technical and political sides. Later, the issuing of the Law for Private Investment (Law Decree 757, November 1991,) triggered the interest of the private sector¹⁹⁴ on the topic. For the first time, a law linked economic and environmental issues, controlling and guiding the activities of private investors.

The regulatory framework for the environment in Peru is composed of the Constitution, national general laws, sector laws, and regulations. Both, the Executive and the Legislative can sanction those regulations. Additionally, municipal level regulations have to be taken

¹⁹² This issue will be discussed at large in the next chapter.

¹⁹³ For information on environmental legislation up to 1990, see Andaluz and Valdez, *Derecho Ecologico Peruano*, (1987) (www.proterra.org.pe) and SPDA (www.spda.org.pe), Project PR5 UNEP. Both compilations account legislation related to environmental topics (implicit and explicit) in Peru from 1904 onwards. Similar data is also managed by DIGESA and by the Ministry of Justice, which have developed large environmental legislation databases.

¹⁹⁴ The interest of the business sector should be regarded in the context of the intertwining of the policy-making system with the business system (Lindblom and Woodhouse 1993: Chapter 8.) To that extent, we consider that is natural that such sector can have such a strong influence in policymaking. As those authors point down: 'the problem of how to bend business to better serve society is one of the fundamental challenges facing those who desire more intelligent and more democratic policy making' (1993: 103.)

into account, as those, in dealing with local issues; can have a strong impact on tackling environmental problems in a community. Likewise, the Judiciary, without having direct regulatory powers, can influence legislative process by deciding upon the direction of the norms, through judiciary decisions called jurisprudence.

5.2.1. Political Constitution of Peru

The present constitution was issued in year 1993, its origin being tarnished by the fact that it was a product of former President Fujimori *coup de etat* in April 1992.¹⁹⁵ During the *interim* period, 1991-1993, the “government of national reconstruction” aimed to reform the Peruvian state from its basis, through a neo-liberal economic programme, and to this effect, it passed several laws of constitutional importance with significant relevance for environmental affairs.

The Constitution of 1993 reflects the political and economic views of the political elite at that particular time, including its views on environmental issues. Following this, the environmental clauses of the Constitution reflect two viewpoints: on the one side, the neo-liberal concepts of the designers of the Charter, which would only thrive for foreign investment and free-market competition to enter the Peruvian economy. On the other, the advances of the Rio Summit in 1992 were also taken up by the legislators, including the term “sustainable development.” This meant that the Peruvian Constitution of 1993 presumed of including the latest terminology and concept on environmental policy. The contradictions emerged from those opposite positions have not been solved directly yet and the clauses have not been tested at the constitutional level either.¹⁹⁶

The right to environment, as a human right, had already been included in the previous Constitution (1979), and it was merely repeated, being situated, in 1993, into its right place, among the fundamental human rights catalogue.¹⁹⁷ The right to the environment is phrased as the right to enjoy a balanced environment, adequate to the person’s life development. This

¹⁹⁵ The full text of the Constitution of 1993 can be found at www.congreso.gob.pe.

¹⁹⁶ The nearest such a conflict has been handled is the case Yanacocha vs. Municipalidad Provincial de Cajamarca (*Accion de Amparo*) where a decision of the Municipality to create a municipal protected area in an exploration area of Yanacocha, Cerro Quilish was questioned. Yanacocha sued for violations to the right to property and the right to freedom of work. The Constitutional Tribunal however, avoided pronouncing itself on those issues, ordering instead a new EIA for the project.

¹⁹⁷ In the previous Constitution (1979), the right to a “healthy environment” had been included in the economic regime section. In the Constitution of 1993, it is situated in Title I (*De la Persona y de la Sociedad*), Chapter I (*Derechos Fundamentales de la Persona*), Art. 2°. “*Toda persona tiene derecho: (...) Num 22. A la paz, a la tranquilidad, al disfrute del tiempo libre y al descanso, así como a gozar de un ambiente equilibrado y adecuado al desarrollo de su vida.*”

right is the most important mandate on environment in Peru and the basis of the regulatory framework.

The environmental clauses included in the economic regime section of the Constitution follow in importance, especially those referring to natural resources.¹⁹⁸ The clauses concentrate in the obligations of the Peruvian state and the legal standing of natural resources in the property system, which is a crucial issue related to foreign investment in the country. Following this, natural resources are declared heritage of the Nation, being the state sovereign in its use, and opening the possibility to be given to particulars in concession under specific circumstances, stated by law. The State promotes a national policy for the environment and the sustainable use of natural resources. The State is obliged to promote biological diversity and natural protected areas conservation. Finally, the Peruvian State promotes sustainable development in the Amazonian region.

The importance of the environmental clauses of the Constitution of 1993 is that, being related to the common goods, they can be used in defence of environmental causes, even opposing the clauses of the Constitution enshrining private rights. A joint reading with the property and human right clauses is necessary to delimitate clearly the scope of protection for environmental issues in the country.

At present, the Constitution of 1993 has been subject to minor reforms by President Toledo's government, through the parliament. However, the clauses related to environment and natural resources issues were not changed.

5.2.2. National General Laws

At this level, the most important law, the CMARN (*Decreto Legislativo* 613) was sanctioned by the Parliament in year 1990. At that moment, it was considered one of the most advanced in Latin America, for it included provisions as the 'precautionary principle.' However, its entering into force was adjourned, fearing the negative effects it could cause in foreign investment commitments to the country. Because of the obligations assumed by Peru during the Rio Summit, the Code had to be put into force by the Executive branch, albeit in a

¹⁹⁸ The Constitution of 1993 dedicates a special chapter to the issue of environment and natural resources: Title III (*Del Regimen Economico*,) Chapter II (*Del Ambiente y los Recursos Naturales*,) Art. 66°. "Los recursos naturales, renovables y no renovables, son patrimonio de la Nacion. El Estado es soberano en su aprovechamiento. Por ley organica se fijan las condiciones de su utilizacion y de su otorgamiento a particulares. La concesion otorga a su titular un derecho real, sujeto a dicha norma legal." Art. 67°. "El Estado determina la politica nacional del ambiente. Promueve el uso sostenible de sus recursos naturales." Art. 68°. "El Estado esta obligado a promover la conservacion de la diversidad biologica y de las areas naturales protegidas." Art. 69°. "El Estado promueve el desarrollo sostenible de la Amazonia con una legislacion adecuada."

changed version. In fact, several chapters and clauses were modified or derogated, actually transforming the original CMARN into a brand new law, fitted to government economic policies.¹⁹⁹

The second most important regulations at this level are the environmental clauses included in the Law for Private Investment (*Ley Marco para el Crecimiento de la Inversión Privada, Decreto Legislativo 757*). This Law addressed, for the first time, environmental issues, as part of the economic activities of the country.²⁰⁰ Most notably, it included environmental requirements to carry out such activities. However, by introducing the Law, several clauses of the CMARN were modified to tailor it to the specific interests of private investors, foreign and national. This was to allow investors to undertake activities in natural protected areas, which has been forbidden in the past. In other words, the aim of the Law for Private Investment, as substantial tool of the economic programme, was to loose up environmental legislation considered too tight, to accord it to the reforms taking place.

Therefore, to understand fully the Peruvian environmental system it is necessary to make a joint reading of the CMARN and the Law for Private Investment. In its present form, the Peruvian system is per sector and not national (either centralised or decentralised.) Moreover, environmental impact assessment regulations are to be found in each of the sector laws, varying from sector to sector. Furthermore, a general law for EIA does not exist anymore.²⁰¹ Finally, crimes against the environment are to be found in the specialised Criminal Code, which dedicates a full section to the topic.

The third important regulation is the Law for the Sustainable Use for Natural Resources (*Ley Organica para el Aprovechamiento Sostenible de los Recursos Naturales, Ley 26821*)²⁰², which was sanctioned according to the mandate included in the Constitution of 1993, Article 66°. The most important characteristic of this Law is having as aim sustainable use, and only subsequently, conservation. In this regard, it includes the obligation of a retribution for those who use natural resources in a sustainable manner (Sandoval Aguirre 1997: 402-414.) Another important feature is being a general organic law that includes in its scope

¹⁹⁹ The chapters modified or derogated referred, for instance, to environmental impact assessment, dangerous wastes and substances import, natural protected areas, mining resources, energy and oil resources, environmental criminal law, and the national system of the environment (replaced by the sector system in force at present.) See: Andaluz and Valdez (1999.)

²⁰⁰ The full text of this Law can be found at www.peru.gob.pe.

²⁰¹ A remedy to this situation was established by CONAM when publishing the “Principles for Environmental Impact Assessment” and the “System for Environmental Impact Assessment.” Both documents have the stand of “soft” law or recommendations to be followed by the sectors, and are not necessarily mandatory. See: CONAM (1999a and 1999b.)

²⁰² The author of this research participated in the drafting of the Law, working as an adviser for the Committee of Environment, Amazonia, and Ecology, during the Legislative Period 1996-1997 of the Parliament of Peru. The full text of this Law can be found at www.congreso.gob.pe.

the regulation of every aspect of each of the natural resources of the country, leaving to special laws the regulation for specific resources.

Finally, the Law of the National Council for the Environment (*Ley del Consejo Nacional del Ambiente Ley 26410*) has to be mentioned.²⁰³ This law is relevant because it creates and orders the environmental administrative system to be adopted by the Peruvian state.²⁰⁴ It defines this system as a sector one, with a coordinating body at the highest level of the administration: CONAM. In theory, this body is in charge to formulate the national policy on environment, which is of obligatory compliance to all sectors (Andaluz and Valdez 1999: 147-150.)

5.2.3. Sector Laws

At this level, we find those laws, which regulate each sector of the economy of the country. The division is based in the ministerial organisation: Health, Agriculture (including natural resources,) Transport (including Communication, Housing and Construction,) Energy and Mines (including Oil,) Presidency (including infrastructure and poverty,) Production (Industry.) In general, each sector has an organic law, regulating its organisation and competences, and sector law(s) regulating the economic activities²⁰⁵ carried on by such sector. In addition, there is a series of administrative regulations complementing and defining the contents of both sets previously mentioned. The complete set of regulations is meant to be integrated and coherent. New regulations derogate old ones, and higher hierarchies have always priority.

In the case of the General Law of Mining, it includes in its Title XV regulations on environment.²⁰⁶ This is the bottom line of environmental policy in the mining sector in Peru. The most important element is the inclusion of environmental impact evaluation for mining projects and the introduction of the principle of civil society in the sector, envisioning authori-

²⁰³ This Law was further complemented in 2001, albeit with no significant changes in relation to the Law of Creation.

²⁰⁴ Art. 1° creates CONAM as a decentralised body dependant of the President of the Council of Ministers. Art. 2° declares that CONAM is the rector body on national environmental policy, which is of obligatory compliance. Art. 4° declares as a function of CONAM to coordinate the actions of the Sectors and Central Government bodies, and Regional and Local Governments as well. The full text of this Law can be found at www.conam.gob.pe.

²⁰⁵ Examples of this second sort of laws would be a: *Ley General de Pesca* (D.L. N° 25977), *Ley General de Minería* (D.S. N° 014-92-EM. T.U.O. del Dec. Leg. N° 109), *Ley General de Salud* (Ley N° 26842), among others.

²⁰⁶ *Decreto Supremo N° 014-92-EM. Texto Unico Ordenado de la Ley General de Minería. Título Decimoquinto: Del Medio Ambiente* (Arts. 14, 48 y 219-226.) The relevant articles of this Law can be found at www.minem.gob.pe.

ties as mediators between companies and the community. The consequences of these provisions still have to be analysed, but in the light of the increasing conflicts, it is a principle to be developed by policy makers in its full potential yet.

The rest of the provisions have been further developed by regulations at the administrative level, where much attention has been given to the detail in which procedures take place, even risking narrowing the scope of application of the general principles contained in the Law of Mining.

The General Law of Health²⁰⁷ provides regulations, which aim to protect health as a fundamental mean to achieve individual and collective welfare. It also regulates all matters related to sanitation and environment protection for health issues. The provisions of this General Law are further developed by regulations, each, tackling a specific issue as rural basic sanitation, safety at the working place, dangerous or radioactive wastes, food and drinks safety and hygiene, cemeteries, among others.

5.2.4. Administrative Regulations

As mentioned in the sector laws section, administrative regulations are regulations that, at the sector level, further develop the provisions established in the general laws. Hierarchically, these are under the law level and cannot modify or derogate those higher provisions, but only specify and clarify. This last element leaves room for manoeuvre, for it is under specification or clarification that regulations can be made more restrictive. This is a tool used frequently in Peru. To solve the conflict, the affected by the application of the norm can sue the administration before Court, which will emit a decision that will only affect the parties involved in the case, *inter partes* (the decision affects only the parts involved in the case).

In the case of the Mining sector, the most important administrative regulation on environmental policy is the “Regulations for Environmental Protection in Mining and Metal Industry Activities.”²⁰⁸ The Regulations have as aim to establish in a clear and reasonable manner the duties and obligations of mining companies and the State for minimising or hampering the degradation of the natural environment to a dangerous level, as consequence of mining activities. Those regulations wish to promote the use of new techniques and adequate processes. The main provisions refer to the obligation of mining companies to present an EIA be-

²⁰⁷ Ley N° 26842, published on 20 July 1997. The relevant articles of this Law can be found at www.minsa.gob.pe.

²⁰⁸ Decreto Supremo N° 059-93 of 13 October 1993, approving *Reglamento para la Proteccion Ambiental en la Actividad Minero-Metalurgica*. The text of this Regulation can be found at www.minem.gob.pe.

fore the DGAA of the Ministry of Energy and Mines starting from 29 April 1993. Mining companies producing before that date should carry on a Monitoring Programme during a period of twelve months, and in the following, they should present a so-called Preliminary Environmental Assessment (EVAP) to the competent authority. Mining companies that have already presented both their Monitoring Programmes and EVAPs must present an Adaptation and Environmental Management Programme (PAMA.) The details of all mentioned procedures are described in the norm.

5.2.5. Regional Laws and Regulations

This set of legislation corresponds to the new regional level authorities elected in 2002. This new level poses a problem that, at present, cannot be analysed specifically, as these authorities are implementing their functions gradually since their election. However, it must be said that it is unavoidable that they receive environmental competences that might affect the regulatory framework. The Constitution of 1993²⁰⁹ is the basis of those powers, for it foresees that the regions have political, economic, and administrative autonomy in their scope of affairs (Art. 197°.) The fact that the regions are to coordinate and execute regional socio-economic plans and programmes (which may include environmental issues) only adds another argument in favour of such assumption.²¹⁰

5.2.6. Municipal Laws and Regulations

This level of legislation corresponds to the local authorities and it is important, for it is at the local level that many environmental conflicts start and escalate. Therefore, in how far local authorities are able to solve or address those problems through regulations can be interpreted as a sign of strength, in the sense that such authorities are taking sides with the citizens affected by environmental problems. On the other side, local authorities can be also the first to affect environmental rights and provoke conflicts, when they approve projects or give permissions and licenses that allow companies or other actors to act against the environment.

²⁰⁹ Constitution of Peru of 1993, Title IV, *De la Estructura del Estado*, Chapter XIV, *De la Descentralización, las Regiones y Municipalidades*, Arts. 188° to 199°.

²¹⁰ Access to the websites of each regional government is found at the Executive branch of Peru website, www.peru.gob.pe.

According to the Organic Law of Municipalities²¹¹ and its Environmental Regulations,²¹² Local Governments can exert wide powers to take action in defence of the environment or against environmental damage. The set of legislation also recognise popular participation and environmental education competences. Based on these elements, Municipalities have often intervened or have been part of many environmental conflicts in the last years.²¹³ Those actions have also provoked conflicts with the Central Government or the Sectors, as on which regulation has precedence over what.

5.2.7. Environmental Jurisprudence

This level of legislative development refers to sentences of the Constitutional Tribunal and the Supreme Court, which have the character of final (*cosa juzgada*). Such decisions either clarify or define the interpretation of specific environmental laws and regulations. In addition, those bodies also refer to decisions on environmental conflicts that were taken up to the courts by citizens, like-minded organisations, or the State.

Both kinds of decisions have to be analysed on its level of influence for the complete environmental regulatory system. On the other side, it should be added that not all decisions are binding, as Peru ascribes to the civil law system, where jurisprudence is not mandatory. Court decisions have mostly effect for the parties involved, being mandatory only for the specific case. *Erga omnes* effect usually applies only when a general law has been challenged before the Constitutional Tribunal.

In the case of Peru, most environmental jurisprudence has been developed using constitutional writs (*acciones de garantía*.) Those are deemed to defend against the violation of or to prevent a violation of the basic human rights of every citizen in the country.²¹⁴ The most important element to be taken into account is that the gradual issuing of decisions on environmental conflicts lead to a growing list of precedents that in fact may influence judicial decision. This situation can influence future actions of the states bodies and organs on environmental affairs, as they might increasingly confront cases questioning their decisions, expressed in laws and regulations. This may provoke or not a change of direction on the way an

²¹¹ Law N° 23853, *Ley Organica de Municipalidades*, Title III *De la Funcion Municipal*, Chapter II *De las Funciones Especificas*, Art. 66°: on the Municipalities competences on population, health, and environmental sanitation.

²¹² *Decreto Supremo* N° 007-85-VC, *Reglamento de la Ley N° 23853, Ley Organica de Municipalidades, sobre Acondicionamiento Territorial, Desarrollo Urbano y Medio Ambiente*.

²¹³ This fact is confirmed by the revision of the environmental jurisprudence in Peru. See additionally: Andaluz and Valdez (1999: 177-264.)

²¹⁴ See also, Andaluz and Valdez (1999: 177-264.)

environmental conflict is dealt. Whatever the decision taken on the part of policy makers, this can lead to either escalation or appeasement.

The first “environmental” case recognised at least as such by the experts in Peru was decided in the fifties. Ganadera Bazo Velarde, a farming and livestock company in the central Andes, sued the former Cerro de Pasco Copper Corporation (later CENTROMIN-PERU.) Bazo Velarde sued for civil liability and punitive damages to be paid for the death of cattle and the destruction of pastures by the fumes emanating of the mining company refineries and melting factories. The Supreme Court decided in favour of the agricultural company and condemned the mining company to pay damages. It has to be stated that such antecedent can be questioned for various reasons. The decision did not mention specifically the term “environmental damages,” but it mentioned the damages to the landscape, soils, and animals. On the other hand, as a *rand note*, the family Bazo Velarde belonged to the landed oligarchy of the country (one of the thirty families) and, therefore, a decision in their favour against an international company, does not surprise. The fact stands that this is the first civil case with environmental consequences and can still be invoked in arguments before the Peruvian courts.

The second case dealing with environmental issues in Peru was Proterra vs. Ferroaleaciones San Ramon S.A. This case had different circumstances. First, it was a constitutional case, a writ of *amparo*, using the tools of the Constitution of 1979, (it was 1987.) Second, the mining company, a private Peruvian-owned, wanted to build a metallic minerals refinery plant in the middle of natural pastures and agricultural areas in the region of Tarma, in the department of Junin. Therefore, this was a trial where the matter of discussion was the eventual danger of environmental damages, rather than an actual threat. In addition, at that time, there was no explicit Peruvian regulation dealing with the environment or EIAs.

The motivation of the NGO to take up the case, at the proposal of local landowners to be affected by the refinery, was the personal circumstance of the former director of being born in the department. He was a friend of some of the possibly affected. Because there was no explicit regulation at the time dealing with the defence of diffuse interests or the environment, the case was taken as an opportunity to test the possibilities the Judiciary offer to defend environmental rights. To provide technical support for the legal arguments exposed in the demand, Proterra presented independent reports elaborated by UNI, the most prestigious engineering university in the country. The landowners who proposed the case paid those studies. Proterra shared the judicial costs with the landowners as well.

In fact, the Judiciary reacted negatively to the plaintiff; the case was dismissed in first (circuit court), second (high court), and third instances (Supreme Court) on the base of formalities. In one case, the argument was that the law did not allow NGOs (as associations) to

sue before tribunals. Other was that the concept of diffuse interests was not recognised explicitly in the legislation. Finally, the Tribunal of Constitutional Guarantees decided in favour of Proterra in year 1993, six years after starting procedures. In the meantime, the mining company has given up its intentions to set a plant in the area, pressured by negative press and judicial costs. The Tribunal recognised the existence of diffuse interests in the Peruvian judicial system.

In the meantime, other NGOs followed suit and, in collaboration with CBOs or citizens organisations, started to test the system demanding before courts for the defence of the right to the environment as a human right. Most cases have been constitutional. Very few have been criminal cases. Civil liability has not been tested by NGOs because of the high costs of those kinds of demands and the low punitive damages ordered by Peruvian courts. A pro-bono law firm or specialised NGO does not operate at present in the country.

5.3. Environmental Policy in Peru

To understand the inclusion of environmental policies in the Peruvian institutional and regulatory framework during the nineties, it is necessary to review specific policy issues related to such analysis. We should explore the forms in which explicit environmental policy (environmental policy instruments) relate to implicit policies (policy instruments in other fields) to understand the interrelation between overall and sector policies for the Peruvian case. Additionally, these concepts will take us to the analysis of the interrelation between explicit environmental policy and sector implicit environmental policy for the specific case of the mining sector in Peru.

5.3.1. Explicit Environmental Policy and Environmental Policy Instruments

Explicit policy is defined as policies and instruments that have the specific and defined purpose of provoking an effect or result in the behaviour of the economic agents dedicated to the sector economic activities object of study (Charpentier and Hidalgo 1999: 12.) In other words, direct environmental policies are those that have as objective the conservation, recovery and improvement of natural resources, and the rural and urban environment. Further, soil, water, and forests use policies; air, rivers, and sea pollution-control policies; and chemical products control affecting the environment (Gonzales de Olarte 1997: 73-74.)

Policies are usually expressed through documents and declarations endorsed by the national authorities (President of the Republic, National Congress), sector authorities (Ministry of Mining, Ministry of Health, INRENA), and environmental authorities (CONAM.)

Policy instruments or policy tools are the means used to carry on a specific policy in practice (Charpentier and Hidalgo 1999: 13.) A connection is meant to be obtained between the purpose expressed in the policy and the effect. Policy instruments have the following elements:

- a. A legal regulation that incorporates either the policy or parts of it in a sanctioned law or decree. For instance, CMARN, and the environmental sections of the different production sector laws.
- b. An organisation in charge of executing and implementing the policy: institutions as standing bodies, and their procedures, methodologies, strategies and decision-making criteria. For instance, CONAM, and the environmental directions and offices of each ministry.
- c. Operational mechanisms as means used by the organisation to execute and implement the decisions and to obtain the desired results. For instance, guidelines, handbooks, task force groups, and special commissions.

Policy instruments are handled by “policy makers” and “decision makers,” the same who in many cases can come together. The difference between might be artificial as it often occurs that the person or entity in charge designs and operates policy instruments alike.

5.3.2. Implicit Environmental Policy

Implicit environmental policies are those policies, other than environmental, designed to affect the behaviour of actors or stakeholders and that can have unforeseen consequences on environmental policy. Those implicit policies can originate in macroeconomic policies of general application or specific sector policies.²¹⁵ They can be agreed upon in international conventions, in external financing agreements, or in contracts between the state and the pri-

²¹⁵ The following are examples of implicit environmental policies sanctioned over time in Peru. The General Law for Mountain Lands (*Ley 1220 Ley General de Tierras de Montaña*) organised the colonisation of the Amazonian region promoting agriculture, for which deforestation has to be practiced. In 1925, President Leguia issued the first regulations on environmental pollution in the case of mining activities, answering to protests of the affected population. A Supreme Resolution (*Resolucion Suprema*) ordered the Cerro de Pasco Corporation to install a Cottrell System to separate dangerous particles suspended in the gas effluents produced by the company. At the end of the forties, the first regulation of general scope for the sanitary control of industrial factories was approved (Decreto Supremo No. 28-60.ASPL, which is still in force.) During the seventies, other important “environmental” regulations were issued: the General Law for Water Resources (Decreto Ley 17752, *Ley General de Aguas*) and the Sanitary Code (*Decreto Ley 17505,Codigo Sanitario*). Both documents have as characteristic: being sector-oriented, without a clear environmental policy line, and based on instruments of command and control.

vate sector (Charpentier and Hidalgo 1999: 18.) In other words, these are policies indirectly having environmental impacts (Gonzales de Olarte 1997: 73.)

Following Gonzales de Olarte (1997: 83-87,) those policies can be divided in long-term economic policies and short-term economic policies. Long-term economic policies have the most impact on natural or urban environment while short-term policies define the level of resources use and of poverty. It is possible that various impacts are generated, which may contradict when those set of policies clash.

Long-term economic policies are investment policy and technological change policies. These can affect renewable and non-renewable natural resources use alike. Short-term economic policies can affect the environment, depending of whether the country is export-oriented or semi-industrialised. In the second category, the environment can be affected when natural resources use diminishes or grows, or when industrial production affects pollution levels.

The typical case of long-term economic policies is mining. Investment concentrates in export-oriented sectors, like mining or oil. Mining exploitation means the depletion of natural stocks without replacing them. Additionally, mining enclaves generate wastes and pollute air, water, and soils. Usually, re-investment in Peru does not take place as most companies acting in the sector are multinational corporations and their interests concentrate where the highest profits are.

In the case of focalised investment, the city of Lima is an example of economic growth at the cost of high levels of pollution: 73 percent of solid wastes are produced in Lima, the Rimac river has high levels of mining pollution, air is highly polluted, over-population and uncontrolled migration add to the picture (Gonzales de Olarte 1997: 85.)

Short-term economic policies can affect the level of use of natural resources. The use of incentives to promote exports will have as consequence an increase in mining production, and consequently, higher levels of water and soil pollution. In the case of incentives to promote higher levels of industrialisation, the mushrooming of factories creates more pollution sources affecting specially the urban environment.

The most important element to be taken into account in the relation between explicit environmental policies and implicit policies is the influence that the latter can have in the implementation and results of the former. In countries like Peru, it is very frequent to find that implicit policies can change or distort the desired results looked for or achieved with explicit environmental policies. A major issue is the lack of proper empirical studies, which compare the impact of economic policies on the environment, *vis-à-vis* environmental policies.

5.3.3. Evolution of State and Government Environmental Policy

To understand the evolution of environmental policies in Peru, both in content and during the years, it is necessary to take into account three crucial points in time, expressed in policy documents of the highest importance in Peru. The first one was the publication of the Environmental Profile of Peru by ONERN and financed by the USAID, in 1986. The second one was the elaboration of the Report of Peru before the UNCED (Rio Summit) published in 1992. The third one is the elaboration of the Report of Peru for the Johannesburg Summit in 2002. At the same time, it is necessary to locate every document in the specific period of its making and the government in power at that moment.²¹⁶

The main reason that leads us to choose these documents as guidelines of the pursued environmental policy in Peru is their importance in establishing a basis for the diagnosis of the environmental situation, and the identification of problems and priorities to be tackled. In our view, the aforementioned documents represent the building blocks of the “state policy”²¹⁷ on environmental issues, and they should be differentiated from the “government policy”²¹⁸ on environmental issues. The former are guidelines that inspire policy makers, regardless of their political line. The latter are policies elaborated at a specific period, which usually should be in the line of the former, however, this does not necessarily occur in practice (Andaluz 2000: 18-28.)

To find the “state environmental policy,” it should be referred to the level of the abstract: declarations and mandates contained in policy instruments (like the Constitution, laws, international treaties adopted by Peru, main policy documents), which frame the acts of the State and the administration.

“Government environmental policy” will be found in the specific acts of the policy makers, especially those of the Executive branch, although the Judiciary and the Parliament can play a role through control and checks and balances. It will be necessary to review the plans, programmes, and strategies designed to implement sustainable development goals established in the “state environmental policy,” the budget assigned for their execution and,

²¹⁶ It has to be noted that other environmental policy documents have been produced by the different authorities in charge, however, those do not have the character of consolidated reports that the documents mentioned in this chapter have. Moreover, they usually concentrate in the Sector that has emitted them, leaving aside other inter-sector issues.

²¹⁷ State refers to a country’s key political institutions that are responsible for making, implementing, enforcing, and adjudicating important policies in that country. The most important state institutions are the national executive, and cabinet, along with the army, police, and administrative bureaucracy, the legislature, and courts (Kesselman, Krieger, and Joseph 2000: 6.)

²¹⁸ Government refers to the key official and offices whose fates are linked by election or appointment to the president or prime minister and who direct major administrative agencies (Kesselman, Krieger, and Joseph 2000: 6.)

specially, the political weight of the designed environmental administrative structure that should cope with those responsibilities. Last, but not least, the government actions on the matter should be revised. Only after such analysis, it will be possible to determine the level of commitment of the governments with the environmental objectives of the state.

A. Environmental Profile of Peru (1986)

As Gonzales de Olarte (1997: 54-58), and Beaumont (2000: 25) appropriately mention, the report of 1986 “is the only analysis that pursues to explicitly relate the behaviour of the different environmental levels,” referring as those to: the human environment, the physical-biological environment, and natural phenomena. This report was elaborated during the government of President Belaunde (1980-1985) and was published during the government of President Garcia (1985-1990.) It had as objective to orderly present the findings of Peruvian and foreign experts working in the natural resources and environmental areas in Peru during the sixties and seventies. The Report was co-ordinated by ONERN,²¹⁹ part of the Agriculture Sector. The publication was financed partially by the USAID. At that time, ONERN had the actual monopoly of resources and information on environment in the country. Its civil servants were highly qualified and well paid as well.

The most important achievement of the report was the identification of problems translated in the so-called “critical areas” which, combined with indicators and specific variables, helped identifying, both geographical, and thematically, the areas of utmost importance for ecological management in Peru. Those were (ONERN: 1986: 257):

- i. Human environment: urbanisation, housing, under-nourishment, unemployment, and underemployment and low life quality.
- ii. Biological and physical environment: seawaters pollution, continental waters pollution, air pollution, salinity, loss of agricultural soils, deforestation, overgrazing, natural soils burning, over fishing, and fauna loss.
- iii. Natural phenomena: floods, earthquakes, tsunamis, drought, El Niño, and landslides.

As geographical axis, related to human environment and poverty the following were identified:

- i. In the Coastal region: Piura-Tumbes; Chimbote-Santa; Trujillo-Moche; Chillón-Rimac-Lurin; Tambo-Ilo-Locumba.

²¹⁹ Today, it is INRENA.

- ii. In the Andean mountains region: Cajamarca; Cerro de Pasco-La Oroya-Huancayo; Puno; Huancavelica-Ayacucho.
- iii. In the Jungle region (Amazonia): Central Huallaga; Central Jungle; Pastaza-Tigre-Amazonas; Madre de Dios.

From those critical areas, eight had mining activities as main degrading factor,²²⁰ while two (Cerro de Pasco-La Oroya, Tambo-Ilo-Locumba) has mining and metallurgic activities as the only cause of environmental pollution (Nunez Barriga and Castaneda Hurtado 1999: 140.) An important element in reference to this dissertation is that the region of Cajamarca was included, in the 1986 Report, as a critical area for intervention due to both ecological and social reasons. This sets the political background for the promotion of foreign investment in that region as an instrument to combat poverty and achieve economic growth as well.

In addition, the effort to combine the “critical areas” analysis with the geographical axis related to human environment and poverty represented an attempt to tackle the economic, social, and environmental aspects of sustainable development, albeit at a stage of diagnosis and analysis. Further steps had to be taken, especially at the level of applied sciences, to enrich the database and baseline of information available on natural resources and environment in Peru. Under the direction of ONERN and the collaboration of universities (as UNALM), such compilation took place and it would constitute the basis for the future policies to be undertaken in Peru.

B. Report of Peru for the UNCED (1992)

This report was elaborated at the end of the government of President Garcia (1985-1990) and the beginning of the first government of President Fujimori (1990-1995.) It was coordinated by the Ministry of Foreign Affairs (Department of Environment,) which convoked all Peruvian governmental institutions with competences in natural resources or environmental issues and a number of non-government organisations (e.g. representatives of civil society and indigenous peoples.) The Report took as basis the findings of 1986 and it focused mainly on the physical-biological environment deterioration in the country, leaving aside issues of poverty and environmental justice, in spite of the large and varied groups and organisations that participated on its elaboration. It identified as environmental critical zones all the

²²⁰ Chimbote-Santa (steel and mining), Chillón-Rimac-Lurin (mining tailings and copper smelters), Trujillo-Moche (mining tailing), Cajamarca (mining tailing), Huancavelica-Ayacucho, Puno (mining tailing), and Madre de Dios (gold production).

areas previously included in the ONERN Report, plus adding the following (Beaumont 2000: 26):

- i. Chimbote-Santa and Trujillo-Moche in the coastal area.
- ii. Huancavelica-Ayacucho and Cusco in the Andean mountains.
- iii. Pucallpa and Putumayo-Yavari in the jungle region (Amazonia.)

Additionally, it added mining pollution as a cause of deterioration in some of the critical areas identified, a specific not considered in the 1986 ONERN Report.

Comparing the ONERN and UNCED reports identified areas with the poverty maps of Peru (FONCODES) there is an overlapping between the critical environmental zones and extreme poverty zones, with the exception of some areas of the Coastal region (Beaumont 2000: 26.) Furthermore, comparison of both Reports may lead to the conclusion that levels of deterioration did not diminish but further increased (Gonzales de Olarte 1997: 60.)

The most important element to be taken from the Peru UNCED Report of 1992 is the attempt to structurally organise the core of the environmental problems of the country (as pollution, loss of soils, deforestation, loss of species,) based on ecological sciences arguments, while, at the same time, advocating its tackling by government organisations with environmental or natural resources competences. On the other side, the Report was the most important overall policy document for environmental policy produced during the nineties, coinciding with the wave of reforms taking place in the country at the same period.

The UNCED Report of 1992 was also an attempt, from the part of government authorities (in this case the Ministry of Foreign Affairs was in charge of its elaboration) to include civil society in the process of information, collection, design and, further, drafting of the report. NGOs and CBOs belonging to the environment and/or indigenous organisations sectors of civil society were invited to participate through inputs and discussions, and to propose on topics that the Report should cover or include. The collaboration and communication went so far as that in the Rio Summit itself, civil society organisations supported (albeit informally) the positions of the Peruvian government on the different agreements on the table.²²¹

The following tables give a snapshot of the ecological richness of the country as for 2001:

²²¹ Interview with Mr Valdez, PROTERRA, Lima, September 2001 and April 2003. Proterra was in charge of administrating the UNDP/NOVIB Fund for the participation of civil society and NGOs from the countries of the Andean region in the PREPCOMs leading to the Rio Summit and the Summit itself. The directors of Proterra and those of the organisations supported by the Fund participated at UNCED as well. Interview with Mr Charvary, former member of the Environmental Team of Taller de Derecho of the Faculty of Law of PUCP, and later at WWF-Peru, Lima, April 2003, who participated in the civil society forums parallel to the Conference and had access to official meetings of UNCED.

TABLE 10: PERU EXISTENT SPECIES OF FAUNA AND FLORA, 1990-2001

	1990	2001	2001
		Species	Endemic Species*
Species of Fauna/Flora			
Total of Species	20611	20955	5784
Amphibians	251	332	124
Reptiles	297	365	98
Birds	1703	1800	110
Mammals	361	460	58
Continental Fisheries	855	855	70
Angiosperms**	17144	17143	5324

Source: UNALM-CDC

* These are species native or autochthonous, only found in Peru.

** These are plants characterised for having seeds in a closed cavity, wrapped in the pericardium or fruit wall.

The table shows the advances in continuously classifying the natural riches of the country, incrementing the data available for not only environmental but also economical purposes. The issue of genetic diversity and its sustainable use for the benefit of people is at stake. On the other hand, the identification of these species help possible prospectors in natural resources to have in mind the impact their activities can have in the intervention zones chosen for extraction or exploration, i.e. what can be lost or savaged.

TABLE 11: PERU EXTENSION OF NATURAL PROTECTED AREAS, 2001

NATURAL PROTECTED AREAS	EXTENSION (HECTARES)
Total	17,360,010
National Parks	4,812,510
National Reserves	3,221,376
National Sanctuaries	48,113
Historical Sanctuaries	41,279
Landscape Reserves	221,268
Reserved Zones	7,849,584
Hunting Areas	124,735
Communal Reserves	651,158
Protection Forests	389,987

Source: INRENA

This table, on the other hand, shows the amount of the territory under protection from a total of 1,280,000 sq km. Many prospective natural resources extraction projects might overlap with the areas under protection and the amount and precision of the data may help to overcome possible pitfalls or negative impacts.

The importance of the UNCED Report for Peru was that, for the first time, environmental data started to be seen and used as part of the policymaking process, as a basis for decision making and consensus-seeking. Its influence cannot be diminished in the light of the boom in natural resources extraction that would occur in the country in the years after.

C. Report of Peru for the WSSD (2002)

This report was elaborated at the beginning of the third government of President Fujimori (2000) and during the Transition Government of President Paniagua (2000-2001,) being concluded at the beginning of the government of President Toledo (2001-up to now.) It was co-ordinated by CONAM and the Ministry of Foreign Affairs, with the participation of a wide range of government and non-governmental organisations, which contributed in the specialised chapters included in the Report.²²²

The first issue to be taken into account in the Report of 2002 is the relevant place given to the combat of poverty in the context of sustainable development, which is a significant change in comparison to the 1992 UNCED Report. The document sets as objective that combating poverty is the “first priority of the government and the Peruvian society, attempting to eliminate extreme poverty and to reduce poverty in general, on the basis of the principles of sustainable development” (Republica del Peru Ministerio de Relaciones Exteriores 2002.) This radical call, linking poverty with sustainable development, can be considered the most significant contribution of the Report in policy terms and it implies a considerable shift from the objectives stated in the UNCED 1992 Report. The meaning of this new direction is still yet to be evaluated, in terms of its effective incorporation in both policy documents and actions, at both the state and government levels. In addition, social considerations related to environment are included in a much more balanced way, leaving aside the strong ecological sciences direction taken in the UNCED 1992 Report.

Another important element considered in the 2002 document was the integration of environment and development in decision-making processes, for which diverse systems were proposed to facilitate information flows and knowledge sharing. It was stressed that inter-sector relations were to be based on technical grounds to reach coherence in the whole picture and to transfer experiences from more advanced sectors to less advanced ones. This inter-sector approach might constitute a key element to tackle issues of environment in the context of natural resources extraction.

It is noticeable the incorporation of elements that before would have been considered outside the sphere of the sustainable development discussion. The development policy approach to environmental policies is a new integration element that will bring about new findings and consequences in the future. Until the publication of the 2002 WSSD Report, sustainable development issues in Peru were dominated by the environmentalists who had been most

²²²

The report is available in full at www.conam.gob.pe

active in the incorporation of those policies in the public policy overall framework. The consequences of this shift in approaches cannot be yet seen but it is expected that such shift would bring a more comprehensive or holistic approach in the design and implementation of policies in the country.

5.3.4. Characteristics of State and Government Environmental Policy

When talking of general environmental policy (or state environmental policy), from 1992 onwards, a new set of legislation and regulations, explicitly environmental, was issued. This new *corpus* tended to be organic and organised towards a purpose: the inclusion of the concept of sustainable development in Peruvian public policy. This process was to fulfil Peru's commitment to implement, at the national level, the Rio Agreements. Furthermore, a new bureaucracy was gradually established because the changes in the legislation included new powers and competences for natural resources management. In an initial phase, the Peruvian environmental policy system took as a model the Chilean scheme of environmental management, with which it still shares some characteristics.²²³

An important issue is that, in the case of Peru, environmental policies have been designed and been implemented as part of the reform of the state process. This means environmental policies have been shaped by the implementation of the economic programme and, consequently, such implementation determined the steps forward-and-backwards that characterised the general policy environment in the last decades (in all stages and at the inter-sector level as well.) Furthermore, it has to be mentioned, the particular development of the Peruvian political system itself (e.g. authoritarian trends, change of government, corruption scandals,) which adds instability and constraints to a sound policymaking process.

In Peru, the environmental policymaking process is formally divided between the body that makes the policies, and the bodies that implement, enforce and regulate. The division takes place according to the different clusters in which public affairs are divided, namely production sectors or theme areas (i.e.: mining, fisheries, agriculture, production). In spite of such separation, environmental policy makers in Peru still have enough space for manoeuvre in the context of a technocratic approach to their functions.

²²³ The Peruvian system for environmental policymaking still keeps some commonalities with the Chilean system, as, for instance, the institutional setting-up for environmental policy, i.e. executive body or Commission in charge of policy elaboration. The Chilean system was in its moment the alternative to the proposed Venezuelan model of establishing a Ministry of the Environment, which in the context of the implementation of the reform programme was considered counter-productive (for expanding the bureaucratic 'establishment' which was meant to be reduced by the reform of the state process).

The model for the institutional and regulatory framework of environmental policy in Peru, as proposed by policy makers, aimed at a gradual incorporation of environmental concerns in the economic agenda, while the production sector smoothly adapted to the requirements and costs such shift involved. Therefore, it focused on the will of the private sector to assume environmental costs, rather than on a command-and-control approach. This approach is very much in line with the background of the structural adjustment and reform of the state programmes, tending to retire state intervention or influence from all possible areas of the economy.

Environmental policy in Peru can be described as the addition and not the combination of measures at three levels: national or overall, regional or widened action, and specific action (Gonzales de Olarte 1997: 79.) There is a huge gap between the policy documents and the institutional and regulatory framework aims, and the government actions in practice. Following Gonzales de Olarte (1997: 81-83,) we can classify the government actions on environment policy (as part of government environmental policy) as follows:

A. National or Overall Action

- a. Population control policy (Ministry of Health.)
- b. Health programmes directed to control epidemic diseases (Ministry of Health-INAPMAS.)
- c. Sewage and clean water programmes (Central Government and Municipalities through the companies in charge of those programmes.)
- d. Wildlife and Flora conservation programmes directed to conserve species as vicuña and guanaco, and endangered animal and plants (Ministry of Agriculture.)

All governments in power have pursued these actions continuously, since the return to democracy in 1980. Significant improvements have been achieved in terms of population control policy and health programmes (as showed by the UNDP and World Bank data presented on Chapter 4.) Conservation programmes have been pursued widely with the support of external funding, through a national environmental fund scheme and international cooperation support. However, results are still to be analysed in terms of increasing (or decrease) of the pool of resources at stake.

With respect to sewage and clear water programmes, government actions have not been sufficient to respond to the growing needs of the urban population and dwellings in the country. During President Fujimori government, an attempt was made (with World Bank support) to pave the way for the privatisation of all sewage and clear water services in the coun-

try. In Peru, those services are in the hands of municipal companies, which have state participation as shareholders as well. However, the scheme failed after consultancy reports demonstrated that privatisation of a “natural monopoly” (as water services are considered) would only lead to a radical increase of prices for the service, which would prove highly unpopular among the population. This scheme was considered in the light of an overall reshape of water policies in the country, abandoning the water framework designed by A. Dourojeanni during the seventies. With the new scheme, water resources would supposedly be given the “right price” and value, which would lead to less waste, optimal use, and improved services (through the revenues obtained by the privatisation process.) The water policies overall rekindle has not taken place although such goal has been in the policymaking agenda since at least 1992. This can be considered a reason for the insufficient government action in this regard.²²⁴

B. Regional or Extended Action

- a. The project of monitoring air pollution in Metropolitan Lima (VICON) (SENAMHI.)
- b. The system of control and research of the use of marine resources, which provides the scientific base for rational administration by the Ministry of Fisheries (IMARPE.)
- c. The national system of conservation units, which administrates and conserves eight national reserves, seven national sanctuaries and three historic sanctuaries, all of them national parks of Peru (Ministry of Agriculture-INRENA.)
- d. The national programme for management of river basins and soil conservation (PRONAMACHS.)

Government actions at this level have been more successful and reliable in design, implementation, and results. The VICON project has become very important to maintain efficient monitoring of the levels of pollution in Metropolitan Lima, a mega-city with more than 8 million inhabitants. Its results are published periodically in the media and followed-up with attention, making the population more sensitive towards urban pollution issues, which was not the case when the project started during the eighties.

In the case of the system of control and research of the use of marine resources, it has served more to the extraction purposes of the fisheries industry in Peru, which is very powerful (Peru is the second fishing country in the world.) In this case, lobbies have influenced gov-

²²⁴ In 1996, the author participated in the consultancy team hired by the World Bank to assess the possibility of privatising SEDAPAL, the water and sewage management company of Lima Metropolitana. The recommendations of the report were for not allowing privatisation as water services were considered a “natural monopoly,” difficult to control by the forces of the market or the regulation authorities.

ernment actions especially when marine resources tended to diminish due to El Niño or other climate phenomena. The data on the pool of resources is reliable and efficient, what is made of it is a reason for questioning. Conflicts emerge often when IMARPE recommends reducing fishing activities during a season for a specific reason and the fishing industry refuses to follow. Through consensus, the government and the industry reach an agreement that usually falls between the extraction quotas recommended by IMARPE and the extraction quotas pursued by the industry. The government then issues a decree with the agreed value. This has been the practice for all governments since the eighties.

The national system of conservation units has been probably the most successful of government actions at the regional or extended level. The reasons are, among others, the strong link of this scheme to international agreements where Peru is an important part (i.e., Convention on Biological Diversity and Climate Change Convention) as being host of outstanding ecological resources. The international environmental community (TNC, CI, Sierra Fund Club, IUCN, and WWF, among the most important) has participated actively and contributed to the success of the system through technical and financial support. Most noticeable, the international donor community (GEF, World Bank, UNEP, UNDP) played an important role in helping to establish a fund for the system to be endowed through debt-for-nature swap (Germany was one of the first countries to engage in the scheme.) All these actions helped to establish an enabling set up for an appropriate management of the areas, providing the administrations with enough material resources to fulfil their functions and carry on successful projects with the communities. In addition, national environmental NGOs (especially FPCN), support those actions through projects and programmes that receive additional funding and widen the bulk available for conservation and environmental management.

The national programme for management of river basins is still an unfinished story as much more needs to be done to prevent the loss of soil through erosion and inappropriate agricultural practices. Funding and resources have been ensured through the international donor community (especially FAO and the French government), however, as this scheme crosses with issues of water management policies, which are in a stalemate, the advances have not been as notorious as in the other cases. The scheme has worked out well at the level of design and policymaking but it is at the level of implementation where much more need to be done. An additional problem is that river basins management schemes also cross municipal and regional governments' competences, and this is one of the levels in which environmental policies find often a gap or lack of commitment to put on the table all actors involved and make them work together towards the achievement of the programme objectives.

C. Specific or Focused Action

- a. The body created to rebuild the department of Ancash after the earthquake of May 1970 (ORDEZA.) This body mutated to a state promoter of local and regional development.
- b. The colonisation programmes in the Peruvian jungle, which allowed to populate and to exploit natural resources in the area from 1940 onwards.
- c. The solid wastes recycling and collection systems implemented by the 1,810 municipal districts in Peru.

Government actions at a specific or focused level have had a mixed result. In the case of ORDEZA, the body was able to fulfil successfully its role in the rebuilding of the department of Ancash. More than 35 years later, there is still much to do in region and foreign investment in mining production as mines Antamina and Pierina are supposed to bring the necessary resources to increment the level of intervention, especially in social and environmental issues. ORDEZA focused on infrastructure programmes, which years after need urgent renewal and modernisation.

The colonisation programmes in the Peruvian jungle have had very mixed results. When those were designed and implemented, during the forties, the Peruvian Amazon region was seen as an “empty” space to be filled with people, which could engage in agricultural, cattle and forestry activities. No consideration was given to the indigenous peoples living in the area, which were considered “wild” to be incorporated to civilisation through education and religious conversion. Some colonisers committed abuses against the indigenous population, using them as forced labour in their enterprises. The communities did not have any protection from the Peruvian state. This situation changed dramatically during the seventies, when the military government of President Velasco Alvarado implemented policies towards the renewal of nationalism in the country, among them, bilingual education for indigenous communities. Abuses did not stop since then, but an increasing self-assurance grew among those communities, which started organising themselves in networks and CBOs to protect their interests. At present, those ethnic-based claims are becoming stronger, following the examples of similar movements in Ecuador and Bolivia. Colonisers were less than successful in their economic activities. Many ended, as petty traders in the main cities (i.e. Iquitos, Pucallpa) after their activities were qualified later as damaging for the environment. Among those, it can be mentioned: indiscriminate forest extraction that produced loss of thousands of hectares of pristine rainforest, cattle keeping in Amazonian slopes that resulted in loss of forest and erosion, or agricultural practices that produced erosion and loss of the jungle soil, which was not suitable for other economic activity afterwards.

In the case of the solid wastes recycling and collection systems, results have been also mixed, based on the performance of municipal governments in the country. This being an issue close to the citizens is usually the most noticeable when local elections take place. Services work at different scale in the cities and it cannot be said that a specific political party or movement has been more successful than others have. The main problem is the lack of appropriate recycling systems for the treatment of solid wastes. Peru is far away from European levels of classification and treatment. Technology is expensive and because of the chronic lack of resources of the municipalities, those modern arrangements cannot be implemented in the country up to date, albeit there is a mood in the public towards them.²²⁵

Finally, another issue in relation to government action has to be included. The only tax with a partial environmental use is the canon for the exploitation of non-renewable natural resources (oil and mining). The tax is shared among the municipalities of the province where the tax is generated, the regional government, and the regional compensation fund. The main limitation is that the canon can only be used for the construction of infrastructure: the replacement of lost natural resources with created (or artificial) resources. It is clear that the value of the new goods cannot substitute the value of the extracted natural resources and, in this regard, the impact of the tax may be limited.

As we observe from the government actions presented, albeit they all have a shared environmental objective it does not constitute a unified environmental policy as it can be judged, at first, from general policy statements. Moreover, the lack of a sole environmental authority with enforcement powers, and the lack of financial resources hamper the achievement of coherence in the actions taken and provoke the overlapping of resources and efforts. Nonetheless, it has to be remarked that all those actions, in spite of its limited impact, can have a much positive effect among the poor, when the objectives are achieved, their main effects being on the welfare and improvement of living conditions on natural and urban environments. At the present state of the question, there are no studies assessing the impacts of these programmes and their costs since the start of their implementation.

²²⁵ Schemes of waste separation at the workplace, university, or school levels have been quite successful, being the most important issue that many of those initiatives came from the citizens, workers, or students. However, what happens with the wastes when they are collected by the municipality services is the usual procedure of mixing all kind of wastes, which are then separated by organised informal “waste workers” who earn a living through the collection of material to be recycled by informal “companies” (i.e. metals, organic waste, plastics, and glass.) In other words, the basis for an organised formal system exists but the informal workers and companies are very powerful and maintain areas of influence that are defended even recurring to violent means. Municipalities have not been successful in opposing them and organising their own recycling schemes.

5.3.5. Instruments of Environmental Policy in Peru

The instruments of environmental policy most frequently used in Peru for implementation are environmental planning, natural protected areas system, and, prevention and control instruments.

A. Environmental Planning

The most important attempt to use this instrument has been CONAM's promotion of environmental action plans at the regional level in Peru. The draft and approval phases of those plans enjoyed a high level of participation and teamwork. However, the lack of financial resources for implementation has hampered them putting into practice.²²⁶ Those action plans have included the identification of problems for the regions, and most importantly, the setting up of a vision and mission for the stakeholders involved in the process. It is expected that the new elected regional governments will take these documents as part of their development strategies, pushing forward their objectives. These actions will depend mainly on the availability of resources for the environment at the regional level, through either the canon scheme or the regional compensation fund described above.

Environmental planning at the municipal level has been restricted to actions related to air and noise pollution, solid wastes systems, and the incompatibility of industrial activities in urban dwellings because of the growth of the cities. Each municipality (1,810 in total) has its own guidelines and policies in relation to those issues.²²⁷

Environmental planning at the central government level is reflected in the government actions at the national or overall level, as it was described in the section above in this chapter. That means, mainly through programmes that overcome (in time) the objectives of the specific government in power and that are less subject to controversy.

²²⁶ See CONAM Home Page www.conam.gob.pe : Reports of the Regional Environmental Commissions (CARs) of Ancash, Madre de Dios, Cusco, and Moquegua.

²²⁷ Those guidelines and policies are usually approved through *Ordenanza* (which has the level of a Law of the Republic) or *Decreto Municipal* (Municipal Decree). The ones approved for the most important municipalities of the country (capitals of departments) are to be found in the different environmental law databases already mentioned in this dissertation, e.g. Proterra (www.proterra.org.pe), SPDA (www.spda.org.pe), Ministry of Health (www.minsa.gob.pe), and Ministry of Justice (www.justicia.gob.pe).

B. Natural Protected Areas System

As mentioned in the section before in this chapter, the natural protected areas system is part of the government actions at a regional or extended level. In the case of Peru, the System's objective is to conserve representative pieces of the country's biodiversity. At present, 9 percent of the Peruvian territory is under some form of protection.²²⁸ The system is in the hands of the Ministry of Agriculture (central government,) through INRENA, and regional and local governments have no direct influence in decision-making processes related to their management. Financial resources for the management and surveillance of the areas have been secured through the creation of a fund, which has received contributions from developed countries (debt-for-nature swap) and the technical support of GEF.

In the last years, participation processes have taken place to include indigenous peoples living in and around the parks in their management.²²⁹ This is the area where much more advances can be achieved, as it would mean to tackle the economic aspects of sustainable development in favour of the population classified under the line of poverty. On the other hand, participation processes might help in empowering indigenous peoples, asserting their rights to economic and social development in a sustainable way. This area of unforeseen consequences needs to be further explored. Some economic schemes have demonstrated a relative success as, for instance, lodges owned and run by the communities, and services to private enterprises operating under ecological tourism schemes in protected areas, being among the most important.²³⁰

In addition, more efforts can be made to incorporate the regional and local governments in the administration of the parks located in their circumscriptions to achieve a better rapport with the non-indigenous local population, which usually have reacted negatively to the absolute protection of resources within the parks. They do not receive the same benefits and schemes that the indigenous peoples receive and this situation has provoked violence or threats to the integrity of the parks (in the form of illegal logging, hunting, or chasing.) The

²²⁸ See INRENA Home Page www.inrena.gob.pe. See also Table N° 10 of this dissertation.

²²⁹ For publications and examples of this approach see, FPCN Home Page, www.fpcn.org.pe. This Peruvian NGO works in direct collaboration with INRENA and parks authorities in almost every natural protected area of the country.

²³⁰ The most successful examples of this kind of arrangements are those concerning the natural protected areas in the department of Madre de Dios (lower tropical rainforest, Southern Peru.) Different NGOs work in collaboration with CBOs to offer ecological tourism offers as an alternative to hotel-run lodges. In some cases, members of the Machiguenga people (who live in that area of the Peruvian Amazon jungle) participate actively owning the huts or accommodation facilities, being in charge of the transport in their own boats, etc. The NGOs are usually concerned to ensure the earnings obtained benefit the community as a whole and not only a group of individuals within the community. Usually improved health care and community services have been the first positive outcomes of those schemes.

central government should pay more attention to the buffer areas around the parks, which are usually under local government control, to protect more efficiently the resources of the natural protected areas.²³¹

C. Prevention and Control Instruments

These are a series of technical instruments used at the sector level to effectively control and prevent environmental damage. Moreover, these belong to the central government scope of powers. Their introduction was meant to be the first step into a comprehensive development policy, which would include environmental issues. Some of them have their equivalent at the international level, like EIAs; others have been designed as transitional solutions, addressing environmental problems that have remained unsolved in the last decades in the country, as in the case of environmental liabilities arising from mining activities.

a. *Environmental Impact Assessment*

The requirement of environmental impact assessments to obtain the approval for new investment projects was established in 1993. The EIA process is responsibility of the environmental authority of the sector where the investment takes place. Being that in Peru there is no central environmental authority; each ministry has an environmental affairs direction or section in charge of it. This means, in the case of the mining sector, the Direction of Environmental Affairs (DGAA) of MEM.

The EIA itself is elaborated by private consulting firms registered in a roster in each sector, which have received a license from the specific ministry to carry on those consulting activities. The report that contains the EIA is handed over to the authorities for its consideration and eventual approval following the administrative regulations set for that purpose.

As part of proceedings, the environmental authority can convoke public hearings to hear the opinions of interested third parties. Participation processes and community issues need to be taken in a more committed fashion by the authorities. In the case of public hearings, these usually take place in the capital city, Lima, and the citizens that wish to participate have to pay a fee. This, of course, hampers the participation of indigenous or peasant commu-

²³¹ Pioneering examples of initiatives to include the municipalities in the process of management of natural protected areas in the country have been set by FPCN (at the national level) and Proterra (central jungle protected areas) projects already in the early nineties. In addition, several local NGOs from the areas near the parks have also favoured working with the communities living in the buffer zones around and with the municipalities. INRENA, as the government agency in charge, has been following this approach only in the last years.

nities of the Andean or Amazonian regions, as they lack enough resources to afford travel to the capital city for the meetings. The EIA documents are available only at the place of the hearing and they are usually extremely technical reports not accessible to the lay citizen. Afterwards, third parties (i.e. the citizens) cannot access the contents of the EIA (only the company and the sector involved keep track.) Therefore, access to information needs to be tackled in a different way to facilitate effective accountability and transparency.

Up to the present, EIA proceedings have been applied regularly to new projects in the Mining, Energy, Oil, and Fisheries sectors. The impact of EIAs within the environmental institutional and regulatory framework in Peru still need to be evaluated and it is a research topic on its own, albeit related to this dissertation.

b. Environmental Adaptation and Management Programme

This instrument was designed to address the environmental consequences of the activities started before the establishment of the EIA requirement in 1993. This means for all production sector activities developed from the fifties up to the nineties. Like in the case of EIA, the PAMA is presented before the sector environmental authority where the investment takes place. Usually, the PAMA contains measures for mitigation, control, and restoration to adequate the old pollution levels to the new standards approved by the sector authorities. The process should take place gradually and periodical reporting is required. PAMA proceedings take place in the fisheries, mining, energy, and industrial sectors. The problems already pointed out for the case of EIAs (participation, access to information, and transparency) repeat in the case of PAMAs.

c. Territorial Environmental Assessment

Based on the concept of river basin management, EVAT is an environmental assessment study of sector or regional scope, in which the purpose centres in defining the combined environmental impacts of the different economic activities that take place in a basin. This instrument is used mainly in the case of closed river basins where the combination of small-scale activities produces large-scale environmental damage. Up to the year 2000, 37 EVATs were presented.²³²

²³² See: Ministerio de Energia y Minas Home Page: www.minem.gob.pe. EVATs have been prepared in the frame of EMTAL programme, covering 150 mining concessions.

This is a most promising instrument that can be used in combination with environmental planning at the regional and local level to both prevent and tackle environmental problems, as it pursues the holistic approach to environmental management promoted by the sustainable development paradigm. Unfortunately, its use has been limited to the case of closed river basins, whereas in the case of open river basins, it can have a higher impact in the case of rivers and valley settlements that depend upon those resources. This instrument can be also used in the framework of PRONAMACHS,²³³ bringing a more comprehensive approach to the environmental problems of a region, and leaving the sector (usually skewed) approach aside.

d. Emission Standards

This has been the most troublesome area of environmental policy in Peru since the start of the implementation of new policies in the early nineties. Emission standards are set or to be set in the Mining, Energy, and Fisheries sectors. Standards for the Industrial sector are foreseen but are not still in place. The standards are to control air, water, and solid wastes management pollution levels.

Until their full implementation, the standards of the Ministry of Health are used, especially in relation to water quality. The latter refer to the tables of WHO and PAHO. The Ministry of Health, in fulfilling their competences according to their sector and organic laws, carries regular controls of the level of pollution in water bodies.²³⁴

The problems are not only in the area of setting of standards but also, because of the lack of them, in the control carried on by the Ministry of Health. The other Ministries usually do not recognise those controls with the purposes of fines or sanctions based upon the argument that the law gives environmental competences to the environmental department of each sector (i.e. Ministry) and not to the Ministry of Health as overall controller.²³⁵ On the other hand, the standards of WHO or PAHO used by the Health sector are usually tighter than the ones of the Mining, Energy, or Fisheries sectors. A conflict of competences at the inter-sector level emerges in this case.

²³³ See, section above where the topic is described.

²³⁴ This can be proved through counterchecking. See: MINSA Home Page www.minsa.gob.pe: reports on levels of pollution are available periodically online. In addition, official gazette "El Peruano" www.editoraperu.gob.pe : decisions on fines due to pollution cases are published compulsorily, including the amount to be paid by the polluter.

²³⁵ Interview with Mr Bonelli, Director of DGAA-MEM, Lima, November 2001. Opinions expressed by participants (i.e., lawyers and general and environmental managers of the main mining companies of the country) in a Seminar on Advances on Mining Law in Peru, Lima, October 2001, UPC.

e. Fines and Sanctions

There are only fines and sanctions in the sectors where specific regulations exist. At present, those are the Mining, Oil, Fisheries, and Industry sectors. In general, the amounts to be paid are considered low in comparison to the environmental damages produced.²³⁶ In addition, there is no reliable information and evidence on the impact of those fines and sanctions towards improved environmental care by the fined or sanctioned. An additional problem is the quality and degree of control that the sectors can carry on. Being part of a command-and-control approach to environmental policy, those instruments are used in a lesser degree by the enforcing agencies, albeit the growth of environmental infractions, being the solution arrangements included in EIAs or PAMAs much preferred for the sake of a smooth relation between the sector and the producers.

f. Polluter-Pays Principle

The principle has been included into the general environmental legislation (CMARN); however, application has not been brought into practice through specific policy instruments. There are problems in the correct valuation and inclusion of natural resources in the national accounts and economic baselines, lacking grounds for a correct calculation towards implementation. This instrument is at a very early stage in Peru.

5.3.6. Role of Stakeholders

Stakeholders in environmental policy in Peru are various and even within groups different interests and programmes are at stake. Recognising those differences and taking into account the many grey areas existent, a revision and characterisation of the most important environmental actors in the country is presented.²³⁷ The revision is based on the concept of

²³⁶ In the case of the mercury spills incurred by a contractor transport company of MYSRL, in spite of the damages produced to several villages, the DGM fined the company US\$500 thousand, which went directly to the MEM arks. For those NGOs and CBOs (CooperAccion, INCAAP, CONACAMI, FEDAPAZ) following the Yanacocha events, the amount was not enough to cover the costs of cleaning and restoring the environment (Interview with INCAAP members, Cajamarca, November 2001; Interview with Mr Sueiro, CooperAccion, Lima, November 2001; Interview with Mr Valdez, Proterra, Lima, September 2001 and April 2003; and Interview with Mr Palacin, CONACAMI, Lima, December 2001.) Health costs were not even considered in the calculations (Interview with Ms Ortiz, DIGESA, Lima, November 2001.) See also, Leyva and Jahncke (2002.)

²³⁷ See, Chapter 2 Building Blocks of Environmental Policy. In addition, the work experience and field-work of the author in Peru are a source. During the period 1991-1997, the author worked directly with key policy

civil society organisations, NGOs, and CBOs, already presented in the theoretical building blocks of this research.

A. Public Stakeholders

In the case of the Peruvian institutional and regulatory framework for the environment, public stakeholders represent mostly state and government interests. In the case of the mining sector, it is to promote private investment in the sector. In theory, they should also represent civil society interests as elected or appointed representatives. However, the latter is rather the exception than the rule because, when addressing environmental problems, the interests of the state, represented by the government in power, may often contradict the interests of society (constituents.)²³⁸

a. Parliament

In Peru, on referring to environmental issues, Parliament has had a specific role in approving and issuing legislation mandated by the Constitution of 1993. In the period 1980-1990, parliamentary work on environment was almost inexistent, because there was no working group on environmental affairs in existence. The Committee of Environment, Ecology, and Amazonia (*Comision de Ambiente, Ecologia y Amazonia*) was created first in the Legislative Period 1996-1997 and the reasons behind were not precisely concerns over the environmental problems of the country.²³⁹

makers and stakeholders on environmental issues in Peru. See also, Vela Vargas 1998: 44-47, which includes an analysis of the experience from the point of view of participation issues.

²³⁸ Albeit this statement might seem contradictory, in the Peruvian case, it can be observed that the interest of the successive Peruvian governments in attracting foreign investment since the early nineties, at any cost, may have taken a toll in what refers to the defence of citizens' interests in environmental conflict cases. The Peruvian government strategy in the last environmental conflicts provoked by mining extraction has been to wait and see how events evolve, in the hopes tension dissipates and mining companies leave the crisis unscathed. In most cases, the strategy has proved to be the wrong alternative, as events usually escalated to a point where the state/government could not do anymore than to restrain the use of public force to avoid bloodshed and comply with citizens' requirements, although that was not the original intention. This only leads to authorities losing credibility when handling environmental conflicts.

²³⁹ Insider information received by the author signals that, in fact, environmental issues were not considered important by President Fujimori's political movement at that particular time. The main reason to create the Committee on Environment was to have more working groups to distribute among those elected representatives who were especially loyal to the President during the presidential campaign, as it was the case of the soon-to-be appointed Chairman. This particular person was considered too influential by his political foes within the *Nueva Mayoria-Cambio 90* movement and the environmental Committee was considered innocuous enough to avoid him rising to a position of further influence. The move, however, did not work out as the Chairman committed himself to work during the Legislative Period 1996-1997, which resulted in the issue of the most important environmental legislation to date in the country, and which helped him to rise to the position of Vice-Speaker of the Parliament of Peru in the following legislative period.

The Committee of Environment, Ecology, and Amazonia had a very active role during the second government of President Fujimori (1996-2000.) During the 1996-1997 Legislative Period, the Committee negotiated and approved the issuing of the most important environmental laws of the country, according to the mandate of the Constitution of 1993. These were the Organic Law for Natural Resources Use (*Ley Organica para el Aprovechamiento de Recursos Naturales*,) Law for the Conservation for Biological Diversity (*Ley para la Conservacion de la Diversidad Biologica*,) and the Law for Natural Protected Areas (*Ley de Areas Naturales Protegidas*,) among the most important. During the 1997-1998 Legislative Period, the Committee concentrated in the approval of the Law for Forestry Resources (*Ley de Recursos Forestales*), as a following move to modernise legislation dating from the mid-seventies.

The Legislative Period 1998-1999 meant a shift in the workload of the Committee, as the presidential campaign for the 2000 elections was the priority of President Fujimori political movement, and members of the Parliament belonging to it awaited re-election. Political courtship started as early as end of 1998 as it was necessary first to ensure President Fujimori's approval to proceed to campaign in mid 1999. Not only the Committee of Environment, but also some others saw their parliamentary production reduced or shifted to topics that were considered priority before the elections. In general, environmental issues were not on the top of the list of politicians.²⁴⁰

After the 2000 elections, the subsequent ousting of President Fujimori, the installation of a Transition Government, and the election of Mr Toledo, the Committee on Environment saw the Amazonian affairs taken out from its scope of influence concerning indigenous people's affairs, due to the creation of a Committee on Indigenous, Amazonian and Afro-Peruvian Peoples Affairs.²⁴¹ This meant that, in the case of environmental conflicts affecting those Peruvians, a joint jurisdiction existed with the new created Committee. The Committee was vocal during the mercury spills incidents under the responsibility of Yanacocha in 2000,

²⁴⁰ For a thorough revision of the work of the Committee on Environment, Ecology and Amazonia during those Legislative Periods, see the *Congreso de la Republica del Peru* Home Page www.congreso.gob.pe. The work record of the Committee during all those periods is documented extensively, as during the 1996-1997 Legislative Period a Home Page for each Committee was created where meetings, minutes and outputs were included with detail. Through those Home Pages, comparisons and statistics on the work of the Committees were prepared for the members of parliament, creating a healthy competition among them on their parliamentary production, and keeping record and track of the real work of each individual member and the working groups. Complete texts of proposals and the background of the drafting of legislation can be also inferred through the vast amount of information now available to the public through the internet.

²⁴¹ According to insider sources, the reason for creating this new Committee was two-folded. On the one hand, President Toledo campaign promised to bring more attention to indigenous issues, and on the other, the personal interest of the Peruvian First Lady, Ms Karp de Toledo, an anthropologist, who had worked several years on indigenous affairs in the country, and who also supported the creation of a new body within the Executive to oversee indigenous issues, CONAPA (*Comision Nacional de Pueblos Indigenas y Amazonicos*). The latter institution has been lately subject to question under accusations of economic mismanagement and cronyism.

and undertook several field visits in that and other cases. On the other hand, no significant legislation has been produced up to date, which has to be underlined in the light of a draft Law on Water Resources (*Ley General de Aguas*) being in the pipeline since 1992, which would be the next important framework law necessary to complete the modernisation of the environmental legislation system of the country.²⁴²

b. Executive Branch

In general, the Executive branch in Peru represents and reflects the interests of the government in power in a particular period. It should actually represent the interests of the Peruvian state without taking into account ideological differences or partisan politics. However, this does not occur in most cases.²⁴³

CONAM's capacities and powers would enable the Executive to pursue collaborative work among the different environmental sector authorities in the ministries. Such fact influences the path and politics the institution is carrying (e.g. environmental policymaking within the frame of the reform of the state process.)

According to its Law of Creation, CONAM has at the top of the bureaucratic ladder a Directive Council with representatives from the production sectors, the regional governments, the local governments, and the Environmental Peruvian Network. The council elects a President, who is the highest representative authority. Under the Council, an Executive Secretary is in charge of heading the institution at the government level.²⁴⁴ Since its creation, the President of CONAM has always come from the ranks of the production sectors (industry and mining,) which contributed to a certain pro-producer bias in the decisions and projects undertaken by

²⁴² The most controversial subject in the proposed new water legislation is the insistence from the part of international financial institutions and donors on privatising water resources to get prices right and to be able to finance the investments necessary to modernise the infrastructure of the sector. Even during the time of the most liberal of President Fujimori's ministers of Economy and Finances (Mr Bolona) such proposal did not encounter much approval, as the agricultural sector, including peasants and farmers, are still an important group for political mobilisation in the country, which is necessary to have under control for political purposes. Privatisation of water resources would mean to affect first those groups, including indigenous and peasants' communities.

²⁴³ An example of this situation is the conflict emerged, at the beginning of the nineties, due to the approval of an exploration license for oils exploration in the Pacaya-Samiria National Reserve, without taking into account it is the only national park where a water ecosystem of the Peruvian Amazonia is being protected. The Peruvian government, and especially the Ministry of Mining and Energy, collaborated with the interested company, giving her all facilities to overcome administrative issues when needed. The interests of the state to protect a sample of a unique ecosystem clashed with the interests of the government needing foreign investment to fill its empty arks.

²⁴⁴ See, Law of Creation of the National Council for the Environment (*Ley de Creacion del Consejo Nacional del Ambiente*) Ley 26410.

the institution.²⁴⁵ In addition, the two appointed Executive Secretaries since the creation of the Council have been professionals close to those sectors as well.

CONAM has avoided to build-up a large administrative structure, concentrating, instead, in partner collaboration with other government and non-government institutions to achieve its goals. In the last years, efforts for joint initiatives at the regional and local levels have been one of the most productive lines of action of the Council (e.g. action plans, reports, assessments, among the most important.)²⁴⁶

*c. Sector Authorities*²⁴⁷

In Peru, the Executive branch appoints Sector Authorities at the highest levels (e.g. Ministers and Vice-Ministers.) Because of this, they share the strengths and weaknesses of the government. In turn, they suffer also from its constraints. Consequently, these high-level bureaucrats lack a long-term perspective in dealing with environmental issues, as they can be replaced often. At this respect, the political instability of Peru in the last two decades should be pointed out. This situation might have hindered a larger range of possibilities in decision-making processes. Sector Authorities have been subject to the political waves at the highest political spheres and this may interrupt or change the course of the environmental policies on implementation.

In the middle and lower levels of the administrative hierarchy, civil servants who have managed to make a career in public service are found. These professionals are more inclined to tackle environmental issues in a long-term perspective, as they may be in charge of the problem directly, for an extended period of time, and not subject to the instability of the higher level of the bureaucracy. The main problem is that they often do not have a wider scope of manoeuvre in comparison with the higher ranks. In many cases, they do not want to hinder their own career possibilities deciding on issues that can be controversial, difficult, or politically sensitive.

In the case of the Mining sector,²⁴⁸ because of the financial resources under its administration, civil servants are well trained for their tasks in comparison to other ministries or organisms of the state. It is the case that some have studied abroad and have experience in the environmental field. The environmental section of the Ministry (Direction of Environmental

²⁴⁵ An example of this is the Project SENREM, funded by USAID, which concentrated in creating environmental database and capacities for the industrial sector in the country.

²⁴⁶ See, CONAM Home Page: www.conam.gob.pe

²⁴⁷ Proterra and GTZ (1993: 81-102.)

²⁴⁸ See, Ministry of Mining Home Page: www.mem.gob.pe.

Affairs) is a small unit, concentrating in an advisory and consultative role within the sector Energy and Mines. In the Mining sector, the competent authority is the Ministry of Energy and Mines, through DGM, in charge of the definition of mining policy, and the DGAA, in charge of regulating and controlling the environmental practices of the mining operators. An additional body is the Public Registry of Mining, in charge of administrating petitions and mining concessions.

Because of the characteristics of mining activities, other Sectors of the Executive branch might be involved when developing the operation. In the Sector Agriculture, the body in charge is INRENA, which concedes permits for use and management of water, soil use, among others. In the Sector Health, DIGESA concedes sanitary permits for water treatment, solid wastes management, approval for food and medical services, among others. The Ministry of Transport and Communications concedes the permits for the transport of personnel and explosives, roads construction, port installations, and communication infrastructure, among others. The Ministry of Production concedes permits for chemical substances management. Finally, the Ministry of Education (through INC) certifies the existence or not of archaeological funds that might be affected by mining activities and authorise the opening of schools in the mining compounds (Glave and Kuramoto 2001: 28.)

Environmental units are found in the Industry, Transport and Communications, and Fisheries sectors as well. Powers and competences differ from one sector to the other because of differing laws of organisation and functions.

d. Regional Authorities

Regional authorities are new to Peru.²⁴⁹ The first official elections under the Constitution of 1993 took place in year 2002, starting officially the process of devolution to the regions. There was a previous attempt to establish a political system based on regions in Peru, the same that took place during President Garcia's government (1985-1990) and it was among the mandates of the Constitution of 1979. However, that process was ended abruptly by President Fujimori's self-coup in 1992. The Constitution of 1993 included a specific provision putting such regionalisation process into a halt, suspending all previously elected regional

²⁴⁹ For a historical review of the claim for decentralisation and local governments, and how regional influences were exerted in Peru (in the context of citizenship and democracy), see Degregori, Coronel and del Pino (1998: 243-246.)

governments, and handing over regional affairs to regional development offices depending directly from the office of the President.²⁵⁰

Regional authorities should have an important role in environmental policy as direct caretakers of national resources. However, how and when this role would be fulfilled is still not clear. The Constitution of 1993 and the Law of Regions (*Ley de Descentralización*) only establish the way in which power and competences would be shared among the different levels of the administration.²⁵¹ Traditionally, in Peru, the central government has not been eager in abdicating functions to other government levels. Even less when the possibility exists of environmental issues triggering other political conflicts, as it has been the case in the last years (e.g. Yanacocha.) That situation might provoke that regional governments under the control of political forces of the opposition question and challenge central government policies.

Regional governments shall implement regional environmental directions, and shall design regional development and environment plans. In the case of the latter, other government bodies, institutions, or civil society organisations have promoted those as initiatives or development proposals even before regional authorities were elected in 2002.²⁵² Those initiatives might be considered as a blueprint for further action to be followed by the elected authorities. In general, institutional arrangements at the regional level are still incomplete or at a very early stage in the case of environmental policy.

e. Local Authorities

Up to the present, local authorities have played an important role in both natural resources conservation and environmental protection in Peru. Especially, in urban areas, where environmental problems are mostly identified as air or noise pollution and lack of green areas, local authorities have addressed environmental issues, either promoting projects, sanctioning

²⁵⁰ See, *Constitucion Politica del Peru, Disposiciones Finales y Transitorias, Decimotercera*. “Mientras no se constituyan las Regiones y hasta que se elija a sus presidentes de acuerdo con esta Constitucion, el Poder Ejecutivo determina la jurisdiccion de los Consejos Transitorios de Administracion Regional actualmente en funciones, segun el area de cada uno de los departamentos establecidos en el pais.”

²⁵¹ See, *Constitucion Politica del Peru*, Title IV *De la Estructura del Estado*, Chapter XIV *De la Descentralización, las Regiones las Municipalidades*, Art. 197°. “Las Regiones tienen autonomia politica, economica y administrativa en los asuntos de su competencia. Les corresponden, dentro de su jurisdiccion, la coordinacion y ejecucion de los planes y programas socio-economicos regionales, asi como la gestion de actividades y servicios inherentes al Estado, conforme a ley. Sus bienes y rentas propias se establecen en la ley. Las Regiones apoyan a los gobiernos locales. No los sustituyen ni duplican su accion ni su competencia.”

²⁵² See, CONAM Home Page: www.conam.gob.pe, and the Peruvian Ombudsman Home Page: www.ombudsman.gob.pe

regulations, or even declaring the unorthodox figure of “municipal protected areas.”²⁵³ In the case of citizens’ complaints against industrial conglomerates in the cities, local governments have acted also protectively of citizens’ interests in various cases. Citizens identify and approve the role of their local authorities through this sort of actions. It is also reasonable that the mayor, and not a minister, solves an issue directly related to the community.²⁵⁴

The role of municipalities in environmental conflicts in the last years has been instrumental in bringing those conflicts to a broader public domain. Green issues are addressed often as part of political platforms at the municipality level,²⁵⁵ situation that is not reproduced at the central or regional government levels. Local governments are also important in the distribution of the mining canon, the amount of state revenues originating from mining activities ascribed to municipalities (Glave and Kuramoto 2001: 31.)

In 2001, the Association of Municipalities of Mining Zones was founded with a coordination committee of five mayors representing some of the affected areas (Espinar, Ilo, Cerro de Pasco, Yauli, and Carhuaz). However, this organisation has kept a low profile in the issue of conflicts originated by mining activities.

f. Political Parties and Movements

Political parties and movements in Peru have not advocated directly or included environmental issues in their political manifestos at the national level. At the local level (Municipalities), environmental issues have been included, especially when a conflict with the population was at stake. As mentioned before, during the last elections for mayor in the capital city Lima, a series of debates were organised to allow candidates to present their environmental positions, implicitly or explicitly included in their manifestos.

An attempt to create a green political movement was undertaken by a group of young graduates of UNALM during the early eighties. They founded “*Los Verdes Movimiento*

²⁵³ An example is the case of the Municipality of Metropolitan Lima (Peru’s capital city,) which declared as “municipal reserved zone” the area of *Pantanos de Villa*, one of the few examples of swamps in the South American desert coast. Such area was not included in the natural reserved areas national system and the local government considered is duty to protect and conserve that specific ecological sample.

²⁵⁴ We refer to the extensive list of cases presented in a following chapter, where it is observed that most cases elevated to the tribunals have as party either a municipality or a mayor, either as an accused or as a plaintiff. Municipalities are therefore the first authority to which citizens refer upon, when having environmental conflicts in their communities.

²⁵⁵ During the last municipal elections in 2000, NGOs and civil society organisations concerned with the environmental issues affecting Metropolitan Lima promoted the formation of public forums that included inviting the main candidates to present political platforms on environmental issues. See, SPDA Home Page www.spda.org.pe and the Minutes of the Public Debates among Candidates for Mayor published by the same organisation.

Ecologista y Pacifista.” This movement, however, did not manage to overcome their beginnings and re-founded itself as an NGO, taking part in advocacy campaigns and addressing conservation issues.²⁵⁶

The general impression is that political parties or movements would take into account environmental issues when they cross one of their political goals or when conflicts escalate to such extent that it is unavoidable to address those. Environmental issues would also be discussed within political parties or movements if the general policy of the state were at stake, as it is the case of the annual negotiations with the International Monetary Fund or the World Bank leading to the Letters of Intent.²⁵⁷ If such environmental topics were included, then those would be part of the political agenda at that particular time.

B. Private Stakeholders

In Peru, private stakeholders, as a group, correspond in a general way to what is defined as civil society. It is difficult to determine in how far they represent and defend the interests of the citizenship as a whole, given their different stakes in relation to environmental conflicts.

From the point of view of stakeholders, the environmental policy context in Peru is characterised by the role played by civil society (grassroots, CBOs, trade unions) and intermediary organisations²⁵⁸ (NGOs,) which have acted as catalysers of public opinion, expressing the concerns of the conservationist community in the country, and acting as ‘echo-box’ of the international environmental movement.²⁵⁹

The role of each organisation has been important in the shaping and setting-up of environmental policy agenda in Peru. At a first stage, NGOs had a lot of influence through research work and lobby. Thereafter, other interest groups became involved in the topic and NGOs as intermediary organisations started playing a different role, either as representative of affected indigenous or citizens groups or as technocratic advisors (think-tank organisations.)

²⁵⁶ For more information about the goals and organisation of this group, see *Directorio Ambiental Peruano* (Proterra and GTZ 1993.)

²⁵⁷ That has been the case when in successive Letters of Intent the issue of privatisation of natural resources (land and water) has come to the table, obliging to measure the environmental consequences of those policies. See those Letters at www.imf.org

²⁵⁸ Usually, intermediary organisations are organised as non-profit associations dedicated to research or projects and programs implementation. Often, they are financed by developed countries’ funding agencies. In the case of environmental NGOs, those funds come mainly from the USA (Interviews with Mr Valdez, Proterra, Lima, September 2001, and April 2003.)

²⁵⁹ It is referred to Chapter II where the topic is discussed at large.

Later, the latter played an active role, co-ordinating and working hand-in-hand with government officials in environmental policy drafting and design.²⁶⁰

The outcome of this process was the increase of the quality of the by-products of the policymaking process (e.g. legislation,) lacking major achievements at the level of implementation where those experts are usually not directly involved. The main reason for collaboration between government and intermediary organisations was that usually government bodies would not have the policy expertise accumulated in specialised intermediary NGOs, which gave the latter a wider space to manoeuvre and influence. Usually government expertise focused on the technical side or applied science research of an environmental issue.

Following the definition of civil society previously presented, in the Peruvian context, it includes mainly citizens associations, grassroots, CBOs, and trade unions. Therefore, NGOs, business associations, or professional circles are part of the private sector, but as intermediary organisations, are not regarded directly as part of civil society. This is important to notice because we have characterised the Peruvian political system as corporate-technocratic from the point of view of the actors, and an analysis of the civil society element confirms such perspective.

*a. Non-Governmental Organisations*²⁶¹

NGOs are an important stakeholder in the role of facilitating dialogue processes to solve conflicts. NGOs fulfil different roles, facilitating the overcoming of the asymmetries of environmental and social conflicts, supporting local populations, defending environmental interests, and facilitating processes at the local level (Glave and Kuramoto 2001: 29.)

In Peru, NGOs act, in general, as intermediary organisations, facilitating the interaction between government and communities. On the other side, other NGOs act as consultants or experts in a technocratic manner and cannot be put in the same group as the first above mentioned. They are more identifiable as think-tank organisations, playing also an important role as lobbyists. We must then carefully separate both kinds of organisations to have an accurate picture of the work, role, and influence they exercise.

The first group of NGOs, intermediary organisations, can be best understood through their role as community or civil society facilitators and as an active actor (e.g. interested

²⁶⁰ This statement can be counterchecked when comparing the names of ad-hoc political advisors or consultants on environmental affairs in government offices at the highest levels with those of experts with NGO affiliation. Especially when policy or law drafting takes place, they would usually coincide.

²⁶¹ See: Proterra and GTZ (1993: 9-68.)

party) in environmental conflicts. They may stand for a specific ideological direction (not necessarily partisan politics) and relate accordingly with a specific community or with civil society leaders. Intermediary NGOs have been successful in the arrangement of financial and technical support for communities. These NGOs have been also important in introducing methods, concepts, and organisational development ideas that have helped communities in their claims and self-help. This group can also be divided among NGOs that are development oriented and have included the environment as one of the elements of their work in an integrated manner, and those NGOs that are specifically environmental as they carry conservation work in the field and do not necessarily include other elements of development work in their package.

An example of the first kind of NGO is *Asociacion Civil Labor Ilo*, based in Moquegua and Lima, and working with other networks at the national level.²⁶² Labor Ilo specialises in working with local and regional governments. An additional example is *CooperAccion*, which works in natural resources issues (fisheries, and mining.)²⁶³ The best example of the second kind of NGO is *FPCN*, working also at the national level in close collaboration with the Peruvian environmental and forestry agencies, e.g. the protected natural areas system.²⁶⁴

In the case of these NGOs as intermediary organisations, we have to distinguish the different levels, characteristics, and interests those represent. For instance, those coming from the capital city, Lima, have more scope of influence, as they are closer to decision- and high-level policy makers. Following this, they may also work in collaboration with government agencies, as in project-oriented partnerships arrangements.

The second group of NGOs, as think-tank organisations, can be identified at best through their role as advisers, consultants, and/or lobbyists. In general, they represent only

²⁶² See, *Asociacion Civil Labor Ilo* Home Page: www.labor.org.pe *Asociacion Labor Ilo* is also one of the NGOs pioneering environmental defence of public interest in the country for the case of mining conflicts. SPCC, the biggest mining company in the country, and one of the biggest copper producers worldwide has been subject to endless controversy due to its activities in the Bay of Ilo, Moquegua. The town of Ilo, immediately near to the copper compound is one of the poorest and more polluted urban dwellings in the country. Labor Ilo allied with local authorities, defence fronts and citizens organisations in the mid-eighties, developing an important body of work related to the problems of mining and development in the country. With the support of NOVIB, a Dutch agency for development cooperation, Labor and the Municipality of Ilo took SPCC before the International Tribunal for Water, which in a landmark decision recognised the existence of pollution in the Bay of Ilo and called SPCC to improve its environmental care measures. However, due to the non-binding character of the Water Tribunal, the decision had mainly a moral value for the citizens of Ilo.

²⁶³ See, *CooperAccion* Home Page: www.cooperaccion.org. This NGO has been instrumental supporting CBOs working towards the defence of citizen interests in the case of environmental conflicts provoked by mining in the Peruvian Andes, mainly the central Sierra. A series of handbooks, manuals, and information leaflets have been produced, and CONACAMI and CORECAMIs have been both supported technically and been facilitated access to funding sources abroad.

²⁶⁴ See, *FPCN* Home Page: www.fpcn.org.pe

themselves and their interests in the environmental conflicts of the country can be described as only personal or group as they do not answer to a specific constituency. Now and then, they can be identified with a specific ideological direction, but less often that in the case of the intermediary organisations. They usually put themselves in a position above politics, underlining their independence as an asset for their work. Accordingly, they work with every government in power, stressing their influence in policymaking and law design as their main successes and expanding their network contacts. As a result, they might relate easily with government officials and high-rank bureaucrats at the central government and sector levels. Their work at the regional authorities and local authorities' levels is less intensive in comparison though. Their main interest is to be present at the highest level of policy-making. The best example of this kind of professional technocratic-oriented NGO is SPDA, working on environmental law and policy at the national level and with projection both at the Latin America and international levels.²⁶⁵

In general, NGOs in Peru (both types) have had a role in, for instance, supporting the Parliament in law drafting, designing environmental regulations for the sectors, and giving advice in the design of the internal regulations of CONAM. However, it should be said that, in numbers, very few NGOs have participated in those processes, and those who did come mainly from the environment, rather than from the development sector.²⁶⁶ This also explains the few attempts made to link poverty and environment issues in their proposals.

However, in spite of the differences in interests and roles, most NGOs agree that mining must reduce its negative impacts and contribute to local development (Glave and Kuramoto 2001: 29.)

b. Community-Based Organisations

Community-based organisations can be characterised as a mixed group of organisations, where uniform trends, sides, or groups cannot be identified straightforwardly.²⁶⁷ Alliances among CBOs are volatile and vary from case to case. CBOs comprise community organisations, indigenous communities associations, trade unions (in a wider definition), women organisations, grassroots organisations (including the youth), neighbours organisations, farm-

²⁶⁵ See, SPDA Home Page: www.spda.org.

²⁶⁶ Interviews with Mr Valdez, Proterra, (also former Co-ordinator of the Peruvian Environmental Network), Lima, September 2001, and April 2003.

²⁶⁷ See Proterra and GTZ (1993), which is the only study of the whole range of environmental organisations in Peru, describing their objectives, activities, and scope, using the information provided by the organisations themselves.

ers organisations, and petty traders organisations, among others. All of them represent approximately the bulk of civil society interests, in terms of groups and constituencies affected by environmental conflicts.

These organisations usually consider and present themselves as the most important representatives of civil society and, accordingly, use their power and influence to advance causes that are in most cases collective or relate to the problems of a specific region in the country. Their interests are clean-cut and can be consequently identified by the public opinion. They also lobby but, because of the collective characteristic, it is mainly for a cause against the state rather than with or in collaboration with the state. The leadership has to respond to the bases showing straight-forwardness and, in most cases, confrontation capacity. It is what is expected from them in most situations. To reach an agreement with other parties can be considered detrimental to their interests even if in the long term it would have been most appropriate. That debilitates their position in most conflicts, as they are often presented as having a “maximal agenda” in their claims. On the other hand, as they usually represent sectors of the Peruvian society that have been, historically and traditionally, marginalised and discriminated, it is understandable that such a militant position is deeply rooted among most of their membership.

The most interesting example of CBOs, which has become important in terms of power shares and stakes in environmental conflicts, is the Amazonian indigenous communities’ organisations. They have become an important element in the negotiation of investment projects, especially *vis-à-vis* multinational corporations. Indigenous representatives are invited often to take part on presentation meetings. The EIA process attempts to include their grievances and accommodate their needs when possible, especially in the case of oil and gas exploration.²⁶⁸ These indigenous organisations have often very good contacts to similar ones in Latin America and other parts of the world and they use the modern tools of globalisation to voice their cause at the international level. At the national level, their influence, coinciding with the general situation of indigenous peoples themselves (poverty, disarray and poor living standards), is limited. The strategy of using international channels to call attention to their causes is only successful if the company setting foot in their territories has an international reputation to lose. If the company is a national one, their complaints will be less effective. The most important examples of these kinds of organisations, CBOs, are AIDSEP and CONAP, which represent mainly indigenous peoples of the Amazonian region of Peru.

²⁶⁸ See, Ministry of Energy and Mines Home Page www.minem.gob.pe.

In the case of the environmental issues related to the mining sector in Peru, the most vocal CBO in the last years has been CONACAMI.²⁶⁹ This CBO presents itself as a decentralised organisation with regional representation through CORECAMIs, at hand in the areas where mining activities take place. However, due to internal politics in the organisation their advocacy activities will be less or more intensive depending of the region.²⁷⁰ In the case of the Yanacocha conflict, for instance, due to the strong presence of other actors in Cajamarca, the CORECAMI-Cajamarca has restrained itself and left most of the advocacy work to other movements and civil society organisations working actively in the zone. However, in other regions, where no similar strong actors are present, the respective CORECAMI and CONACAMI have been stronger.

CONACAMI was founded in October 1999 and it pursues to channel efforts within the different communities at the national level to push their problems at the forefront of the political debate in the country. The central themes of its foundational congress were the rights to land and water, the social and environmental impact of mining, and organisational and conflict resolution strategies. The themes are focused in a perspective of building up a community development model incorporating mining issues, projecting their own vision for the future and the necessary consensus with mining operators and the state. This meant a shift from the (at most) merely compensation claims of the past (Glave and Kuramoto 2001: 31.)

c. Business Umbrella-Organisations

In Peru, BUOs usually represent the interests of the biggest private companies and industrialists and do have a firm position in their demands and concerns relating to environmental issues. In general, they are for taking out hurdles to private investment, free market competition and lesser controls to private initiative.²⁷¹

Because of the importance of their members' activities for the national economy, BUOs relate directly with the highest levels of power and influence within the government (regardless of its partisan or political direction.) At the same time, through their technocratic

²⁶⁹ See CONACAMI Home Page: www.conacami.org

²⁷⁰ Interviews with Mr Valdez, Proterra, Lima, September 2001, and April 2003; and Interview with Mr Sueiro, CooperAccion, Lima, November 2001. Both experts had worked closely with CONACAMI leaders and had close access to the internal issues of the organisation and its strategies.

²⁷¹ See the Home Pages of the main BUOs in Peru: CONFIEP, www.confiep.org.pe, SNMPE, www.snmpe.org.pe, ADEX, www.adex.org.pe, SNP, www.snp.org.pe.

experts, they may exert high influence at the level of high rank bureaucrats within the civil service, especially if the latter develop to decision makers within a sector.²⁷²

The most important BUO, because of its scope, is CONFIEP, which is the umbrella organisation of all sector and production umbrella organisations in the country, a BUO of BUOs. They are the private sector voice when the economic policies of the government are discussed at the highest level. Since its creation, CONFIEP has been keen in sponsoring some environmental studies and promoting research, which had as main focus the use of economic instruments for environmental management in the Peruvian economy (e.g. debt-for-nature swap and taxation policies, among the preferred topics) (Charpentier *et al.* 1996.)

The other BUO, relevant to this dissertation, is SNMPE. SNMPE has as its members the most important Peruvian and international company's subsidiaries developing mining and oil activities in the country. It defends the interests of the member companies and acts as the private sector counterpart in policy issues related to the mining sector. In the case of environmental issues, it has promoted public opinion meetings and opinion-shaping seminars and workshops, where its position as a group has been presented and voiced.²⁷³ The association is loose enough to allow its members to exert their own influence, when needed. SNMPE acts then as an institutional guarantor of the agreements reached at the highest levels. On a daily work level, SNMPE pursues information diffusion among its membership and develops lobby activities before government bodies, especially at the central level.

Some companies have incorporated social and environmental responsibility criteria, while others only take the environmental theme superficially in a formal way, as a public relations strategy. Overall, the Peruvian mining business sector can be divided between modern and traditional. The main mining operators of the country, national and foreign, represented at SNMPE belong to the former. Peruvian modern mining operators belong to traditional mining groups that have achieved management improvement and pursue to follow the path of transnational corporations, e.g. Grupo Benavides (Buenaventura), Hochschild, Baertl (Milpo), among the most important. These have set strategic alliances with foreign companies for exploration and extraction activities (e.g. Buenaventura and Newmont in Yanacocha.) Others

²⁷² It is a usual practice of BUOs, as part of their lobby and expertise advice, that when a policy or law important for the sector and that can influence their activities is discussed, in-house experts are sent to the Sector or offices in charge to explain the position of the BUO at large. The more important the policy or law, the higher the levels of the administration where the experts will be sent. When the minister's office level is reached, the directors of the BUOs themselves take part in the discussions, having the in-house experts as advisers. When a dead point in the negotiation of the contents is reached, the political and business leaders themselves who would solve the more controversial points personally replace the advisors.

²⁷³ See the SNMPE Internet Home Page: www.snmpe.org.pe. A Committee on Environmental Affairs has been set up to deal with issues affecting mining and oil companies, acting as a consultant body within the structure of the organisation, see SNMPE (2000: 55-59) and (101-103.)

have managed access to international credit and have broadened operations in other countries, e.g. Milpo (Mine Ivan Zar, Chile,) Hochschild (exploration in Mexico,) and Buenaventura (exploration in Ecuador). Peruvian traditional mining operators were not able to take advantage of the mining promotion legislation. They work at small-scale with obsolete technology. Many of these companies have closed operations and moved to other segments of mining activities as trade in mining or equipment and spare parts import. Others have kept their mining rights waiting for the chance of an alliance with foreign companies for exploration (Glave and Kuramoto 2001: 29-30.)

Modern companies, both Peruvian and foreign, support policies of incentive to mining, with compensations and tax stability, and declare their support, at least in declarations, for an improved environmental management and for the application of social responsibility policies.

Private Peruvian companies working in the mining and oil sectors will rely strongly on SNMPE forces and advice to advance their causes. Foreign companies will rely on SNMPE on a case-by-case basis, according to the strategies developed at their headquarters abroad (and if they need or not the support of SNMPE.)²⁷⁴ In that regard, we can affirm that SNMPE represents largely the national private mining and oil sector.

d. International Companies developing Activities in Peru

It is important to differentiate and identify this group because they are the biggest foreign investors and, subsequently, the main taxpayers in the country. This is a loose group with no identifiable permanent joint position, where specific companies can act upon defending their interests in a “lone-ranger” fashion, because of their economic importance in natural resources extraction in Peru.

Historically, these companies used to act in the past as foreign enclaves within the country.²⁷⁵ In the seventies, with nationalisation policies, such practices ended. Before the

²⁷⁴ In the case of Minera Yanacocha SRL, it can be said that usually it represents its interests by itself. However, Yanacocha participates eagerly and often in the Gold and Environmental Committees of the SNMPE. See, www.yanacocha.com and www.snmpe.org.pe. Alternatively, Peruvian mining and oil companies will prefer to be represented by SNMPE, move that is turned material through the endorsing of joint communiqués or positions on the issues that matter.

²⁷⁵ The story of the enclaves of international companies in Peru is long and comes from the last third of the nineteenth century when British companies started operating in the country to extract resources as saltpetre, which later cause the Pacific Wars (1879-1881) among Peru, Bolivia, and Chile. During the twentieth century as American capital and investors replaced British interests, there were several examples of production enclaves, which were later nationalised by the military government. The most controversial was of the International Petroleum Corporation IPC, which became afterwards PETROPERU. IPC was so powerful within the geographical scope of its operations that not even the Peruvian authorities could control it fully. IPC was also given special taxation and revenues privileges, which were later used by the military as an excuse to wage its coup. An enclave was characterised for being a self-contained operation-production unit, where the company had not only absolute

seventies, the Cerro de Pasco Copper Corporation was the main mining enclave in Peru along with the IPC. Cerro de Pasco's environmental passives and damages, produced during the forties and fifties, are still visible and waiting for measures of remediation and restoration almost forty years after their nationalisation in the seventies.

Since the nineties, with foreign investment coming slowly back to the country, it can be said that those enclave features have changed or are being avoided, tending more to the model of productive clusters, especially as foreign investors attempt to be in tune with the communities surrounding the physical location of their investment. However, a fully shift cannot be reported in the case of some of the most important. Presently, companies with such mixed productive cluster²⁷⁶ and enclave-driven features are, among others, SPCC,²⁷⁷ the largest copper producer in Peru, a subsidiary of Grupo Mexico, and MYSRL, the largest gold producer in Peru and Latin America.

With the exception of SPCC (now Grupo Mexico, formerly ASARCO, Phelps group) which operates in the country since 1958, most foreign companies operating in Peru settled after the approval of the Law for Promotion of Investment (1992). Some of them acquired state companies through privatisation processes, e.g. Phelps Dodge (Cerro Verde, before property of Cyprus Amax,) BHP (Tintaya,) COMINCO (Cajamarquilla refinery,) Shougang (Marcona,) and Doe Run (CENTROMIN-Peru). Other companies are developing new mining projects, e.g. Antamina (Noranda, Billiton, before Rio Algom, and Teck,) Pierina (Barrick,) and Yanacocha (Newmont and Buenaventura.) Many foreign companies, especially Canadian, are exploring new mining ores (Glave and Kuramoto 2001: 30.)

C. Other Stakeholders

In the following, we focus on a group of actors that while not being active in environmental issues *per se*, still have an important level of influence when environmental conflicts

control of the economical activities taking place within its borders but also of the lives of their workers, as they were provided of housing, shopping and education within the compound. Therefore, the money earned by the workers was spent paying services provided by the company itself, closing completely the economic circle within the unit. Villages and cities near the operation would benefit only marginally from the money circulation.

²⁷⁶ Productive clusters are the opposite of the traditional enclave unit. Whereas in the latter a self-contained economic unit is pursued, in the former the strategy is to chain the economic activities of the unit with the surrounding villages and cities, therefore, becoming a motor for regional and local development. For a study of the productive clusters in the case of Yanacocha, see Kuramoto (2000.)

²⁷⁷ SPCC, for instance, still provides housing and education to its workers and their families within the territorial limits of its extraction units. Yanacocha does not provide housing within the borders of its Cajamarca compound; however, it has founded an English-model private school for the children of the professionals working in the mine (Davy College.)

emerge. The reason is their role as (apparently) neutral observers, who can eventually act as mediators, helping interested parties to find solutions to the problems at stake.

a. The Catholic Church

The Catholic Church in Peru has traditionally been, and still is, very powerful exerting their influence at all levels and in all sectors of society in the country. Especially in the provinces, it has acted as mediator in conflicts and people's advocate, when the poor and disarranged are at stake. This is a role cherished by citizens affected by environmental conflicts, as Catholic Church support can help level up their position vis-à-vis other more powerful stakeholders. The Church may also act on its own initiative and try to use its negotiating powers to scale down conflicts or to sit down in the negotiation table exerting compromises from the parties involved. Consequently, Church intervention would depend of the seriousness of the conflict and the number and social extraction of the population affected. The Catholic Church has been active in the last years when environmental conflicts involving mining activities and affecting poor populations have occurred.²⁷⁸

b. People's Ombudsman

The People's Ombudsman aim in Peru is to defend the constitutional rights of the citizens and the community in cases where those are affected by the State. This institution was introduced for the first time in the Constitution of 1993.²⁷⁹ At present, it does not count with a specific unit dedicated to oversee environmental conflicts in which the state is a part.²⁸⁰ However, in view of the grave situation of some environmental incidents in the last years (including mining activities,) the Ombudsman office has decided on its own initiative to intervene, acting as a mediator or resource body to which interested stakeholders can recur. However, the lack of an own specialised section on environment, only allows limited engagement from

²⁷⁸ In the case of the Yanacocha conflict, the Catholic Church has given itself the role of a guarantor of the agreements reached and, further, the role of administrator of the financial funds for the families affected by Yanacocha's land claims. See, Leyva and Jahnke (2002.) An additional example is the role of mediation taken by Monsignor Cantuarias, Bishop of Piura, during the events of the Tambogrande conflict in Piura, Northern Peru.

²⁷⁹ See, Political Constitution of Peru of 1993 (*Constitucion Politica del Peru de 1993*), Arts. 161° and 162°.

²⁸⁰ In 2004, a person "in charge of environmental affairs" took office. Michael Pollman, a German citizen, is a DED (German Development Service) volunteer taking over those issues under the Programme "Environment and Citizen Participation." Mr Pollman is a member of the German Green Party, and former member of the federal government of Hamburg. It is difficult to expect that he might take public stance, being a foreign citizen, over the environmental conflicts occurring in the country.

the one side, and from the other, obliges the Ombudsman to depend upon other state institutions (i.e. Ministries, CONAM,) which in turn may have conflicting interests. The situation continues unchanged up to date and there is no information so far as if an environmental unit will be created in the near future.²⁸¹

c. Universities

The role of universities in environmental policy in Peru is limited. Projects exist whereas specialised units of universities deal with technical issues related to environment or act as research bodies for projects sponsored by the private sector. Those efforts have had also a limited scope as well (Proterra and GTZ 1993: 107-108, Glave 1995: 33-35.) Universities traditional research areas have been natural resources, biology, forestry and, lately, environmental economics. The most active university in the field of applied sciences related to environment has been the UNALM, based in Lima, through their Faculties of Biology and Forestry Sciences.²⁸²

5.4. Preliminary Conclusions

The environmental institutional framework of Peru draws on the pitfalls and weaknesses of the political system in general. The circumstances have played favourably to the environmental cause only in specific situations, as when dynamic policymakers took central stage, or financial and human resources have been available to the officials. The Legislative branch has shown a great potential to deliver for the environmental cause. However, this also depends of political and personal circumstances. The Judiciary is still developing an environmental practice, ragged by problems of corruption, inefficiency, and lack of human and financial resources. The Executive branch, through the Prime Minister' office and the ministries have the upper hand in environmental policy in Peru. The body created with that purpose, CONAM, has a low profile, which has not allowed developing its full potential as the most important environmental authority in the country. Regional governments still have to develop their own internal environmental structures and regulations, as Municipalities did in the past.

²⁸¹ See, Peruvian Ombudsman Home Page: www.ombudsman.org.pe. In the case of the Yanacocha conflict, the Peruvian Ombudsman office acted in the framework of the initiative of the International Financial Corporation IFC/CAO. It convoked a roundtable where the parties in the conflict would meet and reach basic agreements to be followed up by guarantors (among them the Catholic Church.) Unfortunately, as the conflict escalated, many of the issues discussed and agreed upon were left aside gradually, which meant the roundtable importance faded as well.

²⁸² See, UNALM Home Page, www.unalm.edu.pe.

The latter have been more visible and proactive in reacting to environmental problems affecting their communities.

The environmental regulatory framework of Peru shows a logically determined system where law implementation has occurred gradually. The integration of environmental issues has been smooth with the problems expected to occur in a juridical system characterised by its formality. The main issues arise from the conflicts of competences among sectors and which has the upper hand due to the differences in effective power among them. Environmental jurisprudence has proved to be a new instrument to defend environmental rights in the context of a constrained Judiciary, affected by chronic problems of interference and lack of resources. Nevertheless, the Judiciary has managed to produce a respectable body of decisions, which now guides and influences the actions and omissions of the stakeholders in the environmental field in Peru. In relation to explicit and implicit environmental policies is important to take into account the impact the latter can have in the implementation and results of the former. In the case of Peru, it is often the case that implicit policies can change or even distort the desired results looked for or achieved with explicit environmental policies.

Both state and government environmental policies evolution in Peru follows a parallel direction. On one side, state environmental policy in Peru is expressed in policy documents at the highest level. The identification of problems in the Environmental Profile of Peru of ON-ERN, followed by the Report of Peru for UNCED and the Report of Peru for WSSD, also shows the evolution from a conservationist point of view to a more environment-development approach in which issues of poverty are also main parts of the equation. On the opposite side, government environmental policy in Peru may not follow necessarily the guidelines established by state environmental policy.

State and government environmental policies in Peru are characterised by levels of intervention where the action or the direction of the government in power might show the level of commitment of that specific regime to the state environmental policy. At the level of national or overall action, both sets of policies and, consequently, actions have coincided on the most part. At the level of regional or extended action, results have been mixed. When the economic interests of the country are at stake, as in the case of fisheries, government policies tend to be more permissive. In the case of environmental goods where economic interests are less influential as in the natural protected areas system, results have been more encouraging from a sustainable development point of view. At the level of specific or focused action, results have been less encouraging due to changing circumstances and views on policies that were considered, at first, positive and decades later damaging to the environment.

As observed from the government actions presented, albeit they all have a shared environmental objective, these do not constitute a unified environmental policy as it can be judged, from the outset, analysing general policy statements. Moreover, the lack of a sole environmental authority with enforcement powers and the lack of financial resources hamper the achievement of coherence in the actions undertaken and provoke the overlapping of resources and efforts. Nonetheless, it has to be remarked that all those actions, in spite of its limited impact, can have a much positive effect among the poor, when objectives are achieved, their main effects being on the welfare and improvement of living conditions on natural and urban environments. Unfortunately, at the present state of the question, there are no studies assessing the impacts of these programmes and their costs since the start of their implementation.

The array of instruments of environmental policy available to policy makers in Peru is ample enough to allow environmental management to take place at large. However, the lack of financial resources and the wish from the part of governments to avoid state intervention in the economic activities of the country leads to prefer self-control instruments, leaving environmental damage control in the hands of the economic actors on the most part.

The role of stakeholders in environmental policy in Peru has grown in the last years. A wide field of actors, both public and private, present themselves outspokenly when environmental conflicts occur. Their different interests and viewpoints not only have enriched and helped to put the environmental debate under the right focus with the media and the public opinion, but also have improved the level of the discussion and more importantly have contributed to make environmental policy an integral part of the general public policy in Peru.

VI. THE PERUVIAN MINING AND ENVIRONMENTAL POLICY

Peruvian mining is the seventh most important in the world. Peru is the second world largest producer of silver and bismuth, the third of tellurium and tin, the fourth of lead and zinc, the sixth of tungsten and molybdenum, the seventh of copper, eighth of arsenic and eighth of gold (MEM, Roca 1997 in Campodonico 1999: 10, MEM 2001: 29, Glave and Kuramoto 2001: 2.) Production is mainly oriented to exports. During the period 1990-1997, the export of metallic minerals amounted to 44,5 percent of exports' total value (Pasco-Font 2000). Mining is the economic sector that most contributes to the commercial balance, with 45 percent of total exports (Glave and Kuramoto 2001: 1). The production of metallic minerals in the period 2001-2003 represented more than 6 percent of the GDP of the country, percentage that increased to 10 percent when refining and melting activities were accounted for (INEI 2004.) In terms of labour, because of mining's lower level of production clustering in Peru, it represents only between 4 to 5 percent of the GNP and between 2 to 3 percent of the employment in the country. The latter does not include sub-contracting, informal mining, women and children.

Therefore, mining is an important means of income and currency for the state. However, the economic impact of mining is not enough to generate development without state participation and promotion of other economic sectors in the regions where it takes place. Mining offers limited direct employment, which requires highly qualified labour, not usually available in the areas where extraction occurs. In Peru, one job place in mining generates additional four in other productive sectors (similar to other Latin American countries, but low in comparison to the US, where it generates 15 places) (Glave and Kuramoto 2001: 2.)

Mining activities in Peru are concentrated geographically in the deserts of the South coast and along the highlands of the Andes, in altitude zones 3,000 m above sea level. These areas are usually remote locations where other productive activities do not take place, providing thus infrastructure and basic social services. Environmental impact is mitigated because activities take place mainly in scarcely populated areas. However, river, underground waters, and air pollution is high in those areas (Charpentier and Hidalgo 1999: 47.)

TABLE 12: PERU MINING AND OIL PRODUCTION 2000-2004 (Annual Variation)

Production	2000	2001	2002	2003	2004*
Mining sector and Oil	2,4	12,4	11,2	7,0	12,0
Copper	1,8	38,5	16,1	-2,7	26,8
Iron	-1,0	12,0	0,6	14,0	25,5
Silver	9,2	9,5	3,3	3,3	3,7
Lead	-0,4	6,8	3,1	3,4	-7,0
Zinc	1,2	16,0	15,6	12,0	-3,3
Gold	3,2	1,1	13,4	13,4	20,5
Crude Oil	-6,1	-2,4	-0,2	-5,7	-8,0
Natural Gas	-16,8	7,3	19,1	18,5	55,5

Source: Ministry of Energy and Mines

* January-April

Mining activities are classified in three categories (Campodonico 1999: 11, Charpentier and Hidalgo 1999: 40):

- i. Large-scale mining²⁸³ (53 percent of total production.) Projects operated by only seven companies account for this amount: CENTROMIN, MYSRL, SPPC, Shougang-Hierro Peru, MINSUR, Cyprus-Cerro Verde, and BHP-Tintaya. Another project will join these ranks in the near future: Quellaveco. The production volume of large-scale mining includes 100 percent of iron production, 93 percent of copper, 39 percent of zinc and gold, 37 percent of lead, and 29 percent of silver. In addition, it concentrates 75 percent of the total of actives of the sector, including infrastructure of roads, ports, electricity plants, rails, hospitals, housing, schools, recreation centres, supermarkets, etc.
- ii. Medium-scale mining²⁸⁴ (43 percent of total production.) Projects operated by forty-five companies account for this amount. The total of mines under operation is 70, the same that concentrates between 20 and 22 percent of the total actives of the sector. The medium-scale mining is in hands of private companies, being a high number of them Peruvian. Foreign stakeholders are few. This sector limits its operations to extraction and concentration of minerals, while melting and refinement are in hands of large-scale mining. The production of medium-scale mining is of around 30 percent of the total. It is multi-metallic and produces silver (65 percent of the national production,) zinc (57 percent of the national production,) and lead (57 percent of the national production.)
- iii. Small-scale mining²⁸⁵ (4 percent of total production.) Projects operated by almost seven-hundred and sixty companies account for this amount.

In addition, circa twenty thousand people, working in minor gold extraction, are carrying on informal mining activities. Approximately half of them work in landslide areas in the south Amazonian region of the country (mainly Madre de Dios River). The other half work in gold lodes spread across the Andean mountains.

In 2001, it was calculated that US\$ 977,1 million were necessary to mitigate the environmental pollution occasioned by large-scale operating mining units. In the case of medium- and small-scale mining, the estimate of the value of environmental liabilities was of approxi-

²⁸³ Large-scale mining operates in an integrated fashion, from prospective activities to mineral delivery. It is usually high-tech and extracts huge ores in open pit modus (iron and copper.) In Peru, large-scale mining is exclusively monometallic and it mainly concentrates in copper and gold. See: Roca *et al.* (1997.)

²⁸⁴ Medium-scale mining is characterised for a high degree of technology in its activities and an adequate infrastructure, but its operations are limited to extraction and mineral concentration. In Peru, medium-size mining is mainly poly-metallic and it produces mainly silver, zinc, and lead. See: Roca *et al.* (1997.)

²⁸⁵ Small-scale mining is characterised by operating mainly lode metal ores and the intensive use of work force. The geographical conditions are very difficult (usually between 3,800 and 5000 m above sea level.) Consequently, communication means are inefficient, being transport costs high. See: Roca *et al.* (1997.)

mately US\$ 181,4 millions, mainly for pollution at oil basins and gold landslides sites (Glave and Kuramoto 2001: 1.)

Environmental policy has a different effect upon mining operators, according to the size of the object. In the case of large-scale mining, companies usually pursue to implement environmental management measures, because the competitiveness and reputation of the company may be affected seriously if it does not stick to environmental standards. These are very few companies, usually trans-national, subject to public scrutiny and control and with an international reputation to protect. In exchange, the government expects that large-scale mining extracts and exports its products, and pay the corresponding taxes and rights to the state.

In the case of medium-scale mining, there is a mixed attitude to environmental management measures. Some companies pursue to follow large-scale mining strategies and, subsequently, operate within environmental standards. Others do not have the same amount of technical and human resources to face the challenge and, therefore, opt for a limited implementation of what they consider additional “environmental costs.”

Finally, in the case of small-scale mining, it counts neither with enough technical resources, it has nor the investment capital to implement environmental standards. Most operate under difficult conditions, are not capital intensive and overspend in inefficient extraction techniques or transport costs. Only, through external support (i.e. technology transfer) it will be possible that this group of companies achieve acceptable levels of environmental management.

6.1. Explicit Environmental Policy

In Peru, specific policies aimed to reduce and control environmental pollution of soil, air, and water in mining activities are relatively recent. The Law for Private Investment derogated regulations (CMARN) establishing the obligation of EIAs for activities that cause non-tolerable damage. It was established that norms dealing with environmental impact assessment, environmental management programmes and procedures to establish maximum permissible limits were the sole competence of each of the sectors of the central government.

The Regulation for Environmental Protection in the Mining-Metallurgical Activities recognises the following competences to the Ministry of Energy and Mines:

- i. To establish environmental protection policies for mining activities.
- ii. To approve EIAs and PAMAs.
- iii. To subscribe environmental administrative stability pacts with the persons and companies carrying on mining activities.

iv. To control the environmental impacts caused by mining activities in the operation areas and adjacent areas of scope.

In general, explicit environmental policies in the Mining sector are characterised by a policy declaration supported on a regulation, an organisational structure with the responsibility to carry out the policy (DGAA and DGM), and either direct regulation operational mechanisms or “command-and-control” instruments.

Further, observation suggests that environmental government policy pursues to adjust, in theory, to environmental state policy priorities. However, measures are implemented usually following economic policy considerations. In the case of pollution control levels, those are set having in sight their short-term economic impact, and taking into account ecological considerations only in second place. Likewise, “command-and-control” instruments are preferred to other solutions. In the same line, EIAs are elaborated after project design. Finally, yet important, competent authorities are not directly responsible for the planning of non-pollution activities (Charpentier and Hidalgo 1999: 62.)

The interrelation between mining environmental policies and the general environmental policy of the government is based on the importance of mining activities for the Peruvian economy. Thus, as long as the Mining sector provides high revenues to the economy, its objectives will be regarded as the country’s priorities. Even, to the disadvantage of environmental aims.

6.1.1. Explicit Policy: Environmental Impact Assessment

An EIA is compulsory for all mining activities. EIAs must evaluate and describe all physical-natural, biological, socio-economical, and cultural aspects under the scope of influence of the mining project. The aim of an EIA is to determine the existent conditions and capacities of the environment, analyse their nature and magnitude, and prevent the negative effects and consequences of the implementation of the project. Therefore, the EIA will contain the prevention and control measures to be applied. The highest aim of the Peruvian state policy on EIAs’ is stated as “to reach a harmonic development between mining industry operations and the environment.”²⁸⁶

The presentation of the EIA is obligatory to all companies having a mining concession (regardless the size of the operation), which have completed the exploration phase of the project and are to start the extraction phase. It is also compulsory for those companies to extend

²⁸⁶ See: *Reglamento del Título Decimo Quinto del Texto Unico Ordenado de la Ley General de Minería, sobre medio ambiente, Decreto Supremo 016-93-EM*, published on 01 May 1993.

their operations up to 50 percent of the initial level at the starting point of the operation. In addition, the legislation establishes the terms of reference for the elaboration of EIAs, the same that must contain:

- i. A description of the project area and the activities to be implemented.
- ii. The foreseeable effects of the activity, including their control and mitigation.
- iii. A cost-benefit analysis.
- iv. A determination of the alternatives to the project and the affected environment.

In general, the EIA requirement included in the Peruvian legislation responds to the international standards already set in motion in most countries. The main discrepancy arise from the level of enforcement of the measures recommended contained in EIA documents. As the Ministry of Mines does not have inspectors itself, it relies on the work of private firms that take the role of the state in doing control and reporting. The privatisation of environmental control in mining activities was enacted in 1992.

Compulsory presentation of EIAs for new operations constitutes a step forward in the development of a policy of control and reduction of environmental pollution in comparison with the situation before 1993. Maximum limits have been established as well, although some experts consider their basis somewhat arbitrary (Aste 2000).

The most important problem in relation to EIAs is the lack of transparency in handling the information contained and derived from the documents. It is a fact that no available official information can be obtained in relation to the fulfilment of the requirements and obligations established in those assessments (i.e. fulfilment of objectives and deadlines.) Public participation through direct access to the EIA documents themselves is provided only against an expensive fee during a sole public audience. It is the only opportunity for the public to express concerns about the project.²⁸⁷ Moreover, EIA is the only procedure in the sector, along with PAMA, where such access is possible. The main hurdle lays on the fact that most citizens do not possess the scientific knowledge and information to understand duly the contents of the technical documents put on their hands. However, according to mining regulations, upon attendance to a public audience, citizens cannot claim lack of knowledge or information. Citizens are not allowed to monitor the process of EIA in full, from conception to presentation.

²⁸⁷ The Ministry of Energy and Mines approved in 1996 a Regulation for Public Participation in the Public Audience for Approval of EIAs.

6.1.2. Explicit Policy: Environmental Adaptation and Management Programme

PAMAs are compulsory for all mining operators carrying out activities that started before 01 May 1993. A PAMA must include the procedures and execution schedule for investments, monitoring and effluents control. The Mining sector establishes the timeline for implementation. In any case, it cannot exceed five (05) years, with the exception of activities that include melting, in which case the time span is of ten (10) years. A minimum annual investment of 1 percent of the overall value of sales was set for the fulfilment of the programme.²⁸⁸ The deadline for approval of the PAMA by the Mining sector is four (04) months. The PAMA is considered approved in case of administrative silence.

In practice, PAMAs must contain all actions and investment needed to incorporate technological advances or alternative measures to reduce or eliminate emissions and effluents from mining-metallurgical operations, to reach the maximum permissible levels established by the mining environmental authority.

Controversy emerges from the fact that the PAMA can be used as a basis for a contract between the person carrying out the mining activity and the Ministry of Energy and Mines. In turn, such agreement can evolve into a stability contract (*contrato de estabilidad*). This means that the Ministry cannot set or ask higher or further requisites to the mining operator during the validity of the contract if it is duly fulfilling the approved PAMA.

In addition, conflicts emerged from PAMA rules because, before the enactment of the environmental regulations of the mining sector, no maximum permissible limits were established. Therefore, it was not possible, in practice, to implement the PAMAs, even if they had been agreed upon with the authority. The latter fact could lead to use PAMAs as shields to avoid implementing further or to avoid the additional environmental requirements asked by the Mining sector. This led to wider criticism on the regulations, as it was considered an open window to prevent rigorous control and implementation by the mining operators. An additional problem, already stated in relation to EIAs, applies to PAMAs as well, the lack of transparency in handling the information derived from those documents.

As for the beginning of 1997, more than 90 percent of the mining operators had presented a PAMA (SPDA 1996.) It is not possible to evaluate the level of implementation reached by the operators because the information collected by the mining authority is not available to the public. However, it can be deduced that achievements have been at a low level as the Ministry of Mines issued afterwards complementary legislation, creating the so-

²⁸⁸

Decreto Supremo 016-93-EM, modified by the *Decreto Supremo* 059-93-EM.

called PEMAs, aimed to those operators who did not manage to fulfil the PAMA objectives. PEMAs allow operators to re-structure the PAMA to fulfil the environmental obligations originally agreed in it. The practical consequence of this decision was that deadlines previously established were extended and due sanctions were not applied, as the timelines for implementation were being postponed.

6.1.3. Explicit Policy: Annual Declaration

It is the obligation of mining operators to present yearly a report to the Ministry of Energy and Mines. Such report must follow an approved format and must deal with the generation of emissions or waste effluents by the mining-metallurgical operator. In addition, it must include information on waste treatment and final disposal, and the source of atmospheric emissions, their emission time, fluctuation, and content. The credibility of the information is controlled by the DGM. The results of the evaluation are not available to the public, for which it is not possible at present to establish the level of fulfilment of obligations by mining operators.

6.1.4. Explicit Policy: Specific Obligations

Mining operators shall implement three additional obligations:

- i. Presentation of a closure plan for the concession to guarantee the stability of the terrain.
- ii. Re-vegetation, which must be technically and economically viable.
- iii. Adoption of measures to prevent water pollution.

The obligations are necessary, indispensable to ensure that environmental damage does not extend further to the end of the mining activities (especially the closure plan). Experience with environmental restoration is limited in Peru. The country is still dealing with the historical environmental liabilities of mining activities carried out during previous decades.²⁸⁹

²⁸⁹ The most important case of environmental liabilities in Peru is of the former Cerro de Pasco Copper Corporation, later CENTROMIN-PERU. Reports of environmental damages go back to the fifties, including a civil liability process against the company brought by Compañía Ganadera Bazo Velarde. The cattle company won the case and in a landmark decision, the Supreme Court accounted the damages occasioned by CPCC to the landscape, flora, and fauna of the area. A second important case is of mining wastes produced by companies set along the course of the river Rimac, which feeds the water supply of Lima and the sanitary needs of its 8 million inhabitants. This problem also was noticed during the fifties and, apart of regular measurements and warning to the companies responsible, few attempts have been made to tackle the issue in a comprehensive manner. Lima has one of the worst levels of quality of water in the world.

6.1.5. Explicit Policy: Clauses of Environment Quality

Several obligations referring to environmental quality were established in the regulations of the mining sector, among them:

- i. Appropriate installations for water wastes treatment.
- ii. A collection and drainage system for wastes and effluents, which must contain collection systems for contingency cases.
- iii. Treatment of water wastes from mining camps and of the sanitary services of the mining areas before their disposal.
- iv. Deposit of wastes in pools located near the refinement plants to allow water recycling and to minimise effluent discharge out of the collection area.
- v. Execution of works and installations required to guarantee the stability of the wastes deposits in case of definitive abandonment.
- vi. A meteorological study of the location area for every project, including gas emissions processes.
- vii. Ventilation, recovery, neutralisation systems, and other means to avoid pollutants discharge affecting negatively the atmosphere, for the case of installations losing particles, vapours, and gases.

Such obligations are essential and require vast financial and technical efforts to be put into place, for which problems may emerge when those are to be implemented by medium-scale or small-scale mining operators. Formally, all mining operators have to fulfil these obligations; however, enforcement is difficult, as it requires a full-time controlling body in the Ministry of Energy and Mines, which actually does not exist. Control of fulfilment of obligations is in charge of private companies registered in the consultants' roster of the Ministry. Such in-private-hands control and monitoring system presents shortcomings. Normally, mining companies hire their "own" environmental auditing companies to carry on those controls. This is the case when mining operators participate, through capital assets or shares, in auditing companies. Moreover, the Ministry of Energy and Mines hires auditing companies only in cases where denunciations take place or when a "meaningful" environmental impact occurs. "Meaningful" in this context is to be qualified by the DGM and the opinion of the DGAA on the matter is not mandatory. Yet again, information for evaluating the level of implementation and examples of good and malpractices is not available, as the reporting is confidential.

6.1.6. Explicit Policy: Monitoring Programme

The Monitoring Programme is a systematic scrutiny with environmentally sound methods and technology, based in norms defined by the Ministry of Energy and Mines to evaluate the presence of pollutants in the environment. The programme is elaborated following the lines of the Monitoring Protocols of Air Quality and Emissions, and of Water Quality, both regulations approved by the Ministry. The results of those surveys are not available to the public.

6.1.7. Explicit Policy: Preliminary Environmental Evaluation

The EVAP is an evaluation report aimed to identify the environmental problems generated by the mining operation. The EVAP is based on the information collected in the Monitoring Programme and is made and presented before the elaboration of the PAMA. The Mining authority regards the EVAP as an intermediary phase in the process of environmental damage control that operators must undertake.

6.1.8. Explicit Policy: Environmental Management Mining Guides

The Guides are issued by the Ministry with the aim of establishing the necessary parameters to achieve sustainable development in the mining-metallurgical industry, at the national level. These Guides include procedures for elaboration of PAMAs and EIAs, closure of mining sites, exploration, cyanide management, reactive use and storage, water management and air quality, among others. These Guides are available to the public and can be purchased in the Ministry of Energy and Mines offices throughout the country. According to Glave and Kuramoto (2001), large and medium-scale mining operations are in the position of implementing and carrying on constantly the contents of the guides, while small-scale and informal mining are not able to cope and, consequently, produce negative environmental impacts in the places where those operate.

6.1.9. Explicit Policy: Maximum Permissible Limits for Gas Emissions

The limits help precise the levels of discharge of specific elements in the atmosphere, e.g. sulphuric anhydride, particles, lead, and arsenic.²⁹⁰ Elements are measured in control points. Other types of gas emissions do not have quality parameters (i.e. carbon monoxide, sulphur-hydro acid, sulphur oxides, fluorides, and nitrogen oxides), because the corresponding permissible limits have not been defined at present.

A first gap is that the established policy of maximum permissible limits aims to reduce and control pollution in its source of origin or emission, leaving aside the assessment of the impacts in the receiving bodies, i.e. humans, animals, lakes, rivers, and pastures. This opens the door to conflicts with other sectors, as in the case of human health, where the competent authority is the Ministry of Health. However, the Mining sector accepts neither the control nor the reporting coming from those others, arguing that it constitutes interference in its scope of powers.

6.1.10. Explicit Policy: Maximum Permissible Limits for Liquid Effluents

The mining-metallurgical effluents are those discharged in the environment that are produced by any work or excavation or from any residual waters treatment plant, from waste deposits or other installations producing residual waters, from concentration plants, melting, or refineries, from camps; and, from any combination of the abovementioned. The parameters to be considered for control are sulphur, suspended solids, lead, copper, zinc, iron, arsenic, and cyanide, among others.²⁹¹ As in the case of permissible limits for gas emissions, the main problem with this policy is that the control is in the source of emission (e.g. the installation or factory) and it does not apply to the receiving bodies (e.g., waters, soils or the atmosphere.)

6.1.11. Explicit Policy: Policy Declarations

These include government manifests or declarations on environment. The Ministry of Energy and Mines expressed its objectives for the Mining sector mainly through Annual Reports and Annual Sector Management Plans.²⁹²

²⁹⁰ *Resoluciones Ministeriales* N° 011-96-EM-VMM and N° 015-96-EM-VMM.

²⁹¹ *Resoluciones Ministeriales* N° 011-96-EM-VMM and N° 015-96-EM-VMM.

²⁹² All Mining sector policy manifests and declarations are available at the MEM Home Page: www.minem.gob.pe

The Ministry of Energy and Mines declared the following as its overall policy guidelines in environmental affairs:

- i. To take actions to address the historical environmental liabilities, by means of remediation or mitigation of their effects.
- ii. To issue the required legislation to promote domestic and foreign investment in environment matters.
- iii. To promote the increase of awareness to environmental and social issues among stakeholders involved in mining activities, together with the improvement of relations between investors and communities, within a framework of respect for the culture and customs of the local inhabitants.

The guidelines concentrate on issues that have been controversial and subject to conflict in the sector during the last years. The issue of community relations has become one of the most important for the Sector. Land and property rights are the main source of problems. Action to this respect has been taken in a two-fold fashion. On the one side, a community relations guide has been produced to help mining stakeholders in facing the problems that might arise. Complementary guides have been published every year. On the other, social studies were carried out in Vicco (Cerro de Pasco); Tambogrande (Piura); Huaraz, San Marcos, and Huallanca (all Ancash) and Ilo, and Torata (both Moquegua). These are locations where important mining projects were planned or are underway, as it is the case of Mines Antamina and Pierina (Ancash), and SPCC activities (Moquegua). Tambogrande was the planned site of a gold mine conceded to the Canadian company Manhattan that was cancelled afterwards under pressure of civil society.

The historical environmental liabilities are a very much serious issue where no real advances have occurred in the last years. Remediation projects are usually focused at the micro-level and, consequently, citizens do not perceive that real action is being taken to tackle serious pollution. The most important example is the case of La Oroya area, in the Central Andes of Peru. Environmental liabilities in the area have been identified for decades now, and the level of pollution in air, rivers, and soils already confirmed.²⁹³ The communities of the area were the founders of CONACAMI, a CBO organised against the mining companies with a confrontation agenda and resistance strategies, which does not help the cause of promoting investment in the country.²⁹⁴ Action has been taken through obtaining of financial help from

²⁹³ As noted, already in the fifties, the Supreme Court of Peru established the existence of damage to landscape, flora, and fauna in the area, in the Bazo Velarde vs. Cerro de Pasco Copper Corporation liability plaintiff.

²⁹⁴ See: Cederstav and Barandiaran (2002); also UNES (*Consortio Union para el Desarrollo Sustentable*) has published several reports on the consequences of mining activities in La Oroya area. In addition,

international organisations to carry out restoration projects in the affected areas. Results are still yet to be seen. Sites to be subject of restoration have been identified partially, through PAMAs and EVATs, and it is estimated that the costs of mitigation reach US\$ 1,162,7 millions (Glave and Kuramoto 2001: 25.) However, many other liabilities should be identified. The legislation recognises explicitly that the mining operator that produces emissions, effluents, and wastes is responsible for the remediation.²⁹⁵

In any case, large- and medium-scale mining operations are easy to control and made accountable for historical environmental liabilities. Small-scale and informal operations are very difficult to control and, because of lack of resources, also to motivate in the implementation of environmental management practices.

In addition, objectives and goals were established to help achieving the Sector's policy guidelines:

- i. The availability of a complete and updated legal framework in the sector. Specific goals are to finish norms on procedures for carrying out mines closure plans; to conclude actions for the approval of Maximum Permissible Air Emissions Limits for Hydrocarbons and Electricity; and, to revise environmental, Citizen's Participation, Consultants' Registration, and Mining Exploration regulations as well as monitoring protocols. This objective is focused mainly in further building up the environmental regulatory framework and refining the internal administrative procedures.
- ii. The achievement of harmonious relations between the mining industry and the communities. Specific goals are to organise courses for the spread of environmental knowledge, and to carry out negotiation and conciliation workshops. Relations among the Sector, the mining companies and the communities have become crucial for a sound and peaceful development of mining activities on the ground. In the last years, environmental conflicts have become more frequent due to better community organisation. CBOs and grassroots organisations have become more outspoken in the defence of their ancestral and cultural rights when mining companies plan activities in their territories. The Sector was unprepared to face such citizens' resistance and made mistakes in approaching them. The stated objective and goals are the expected reaction to the problems of the Ministry in managing environmental conflicts.
- iii. The encouragement of a greater environmental awareness in the sector. Specific goals are to publish an Environmental Bulletin; to organise courses and seminars; and, to divulge

CONACAMI publishes reports, bulletins (*Willanaky*) and has a home page (www.conacami.org) with information on conflicts caused by mining activities.

²⁹⁵ *Decreto Supremo* N° 016-93-EM, Art. 5°.

the procedures for community participation during the preparation and the evaluation stages of the EIAs. The third objective, focusing on environmental diffusion and awareness can only be undertaken in a limited way because of the specific groups at which they are aimed: communities in remote locations (where mining activities will take place), companies, and decision makers. Otherwise, the activities may be labelled as a mere public relations exercise, which does not reach the stakeholders in mining activities.

iv. The reduction of environmental liabilities caused in the past by the mining sector activities. The goals are to prepare the inventory of inactive mines; to carry out basic engineering for rehabilitation projects; to undertake complementary monitoring of basins; and, to undertake environmental rehabilitation. This fourth objective and goals are probably the most important in the long run, in the sense, that are expected to be achieved and addressed effectively. The historical environmental damages have been a burden for communities and activities, mainly in the rural areas of the Central Andes dedicated to agriculture and cattle. This has meant also social affects in groups of the population who have been historically the poorest and the less advantaged. Consequently, this had to be recognised as a responsibility of the Peruvian State and not of a specific government in particular, as it deduces from the objective.

6.2. Implicit Environmental Policy

Implicit policies affecting mining operations are those from other sectors of the state with shared competences on natural resources. For instance, if it is the intention to develop mining in an area that was traditionally an agricultural valley, the Sector Agriculture will have, at least, the possibility of giving its opinion. If a mining company needs a harbour to deliver their production abroad, it will have to get permits from the Ministry of Defence, because of the competences of the Navy. Therefore, other sectors, in establishing guidelines or procedures on activities that are also carried out in mining, will have an influence on the latter. This dissertation concentrates particularly on the economic policies issued by the Executive branch, as the most important, and which guide the decisions of policy makers in Peru.

The logic of the macroeconomic policies of the last governments in Peru has been previously acknowledged. Liberalism and free competition are the building blocks of the economic set up of the country. On the other side, development policies are consigned, on the most, to poverty alleviation and combat policies. This, of course, reduces the possibility of an overall public policy that includes environmental issues as an integral part of its design and implementation.

One of the most important implicit environmental policies for all economic activities carried out in the country is the existence of a free market, pursued by the state since 1990. The Law for Private Investment established that the state must create the necessary conditions for private investment in the different productive sectors. Moreover, to fulfil that aim, it was indispensable to eliminate all hurdles and all legal and administrative distortions that hampered the development of economic activities and limited the free private initiative, the same that diminished the competitiveness of private companies, essential for a successful insertion of Peru in the international market.²⁹⁶ The aforementioned Law originated the adoption of general laws to guarantee private investment and of sector laws to promote investment at all levels.

State implicit policies addressed to the Mining sector aim to promote the extraction of mining products for export. As noted, these activities do not generate usually a large number of jobs, which, consequently, indicates that employment generation is not a government priority in the scheme of things (Charpentier and Hidalgo: 1999: 61, Glave and Kuramoto 2001 1-2.) Furthermore, these policies are an example of market instruments' use with direct subsidies to promote selected activities. Finally, these policies are addressed mainly to large-scale investors. These implicit policies affect directly the companies' competitiveness.

6.2.1. Implicit Policy: Guarantee Regime for Private Investment

The Guarantee Regime is expressed in the so-called "Legal Stability Agreements with the State" (stability contract) which guarantee mining operators that, during a period of ten years, no change of rules, or additional obligations will take place in the following issues:

- i. The tax regime referred to their overall wealth.
- ii. The right to non-discrimination.
- iii. The right to use the most favourable exchange rate available in the currency market.
- iv. For foreigners: stability of the regime of free availability of foreign currency, and stability of the right of free transfer of profits, dividends, and capitals.
- v. The contract regimes of workers in any modality.
- vi. The regime of export promotion.

To enter a stability contract, it is necessary to fulfil one of the following conditions:

- i. In the period of two (02) years, to pay capital or make risk investment for an amount of no less than US\$ 2 million, or

²⁹⁶ *Decreto Legislativo N° 757*, published on 13 November 1991.

- ii. in the period of two (02) years, to pay capital or make risk investment for an amount of less than US\$ 2 million but more than US\$ 500 thousand, and furthermore, to generate exports for an amount superior to US\$ 2 million in three (03) years or to generate more than twenty (20) work positions, or
- iii. To acquire more than 50 percent of the shares of a company that is in process of privatisation in an amount no lesser than US\$ 2 million.

The generous conditions for private investors (either national or foreign) can only be understood in the context of the neo-liberal economic policy implemented in the country during the nineties and continue up to the present. An issue is if such generous arrangements can also be translated to the environmental field, being an area of public interest. In general, it has not been the case that flexible environmental clauses have been pursued explicitly in the regulations. However, interpretation and implementation by the Sector authorities has taken on a pro-mining operator bias in many cases.²⁹⁷

Stability contracts is an area where, even if the intention is to put up environmental concerns at the top of the agendas, it will not be possible without hard negotiation at the highest spheres of decision making, as it is one of the main instruments of the country's economic policy to attract foreign capital. The reason is that it is difficult to foresee if public policy, in general, and in particular on environment, would stay stable in time and in the long term. The political instability of Peru may lead to a perceived instability in the overall investment conditions that may drive investors away. In addition, it may not encourage decisions for re-investment, further investment, or first-time investment. In this context, the stability contracts, including their environmental clauses, are instruments that can prevent the upheavals of political instability. However, they can also imply the surrendering of environmental principles for economic reasons, leading to a weakening of the environmental framework as a whole, in creating "islands of exception," waived of higher standards and obligations. Private and, especially, foreign investment are protected under the clauses of the contracts of stability.

However, social upheavals and environmental conflicts in response to the conditions and agreements, when those are seen as unfair, may put also the contracts into question and disrepute generating a difficult situation for all stakeholders. This is the main problem stemming from environmental clauses in stability contracts.

²⁹⁷ Interviews with Mr Valdez, Proterra, Lima, September 2001 and April 2003; and Interview with Mr Sueiro, CooperAccion, Lima, November 2001.

6.2.2. Implicit Policy: Law of Promotion of Investment in the Mining Sector

The Law of Promotion modified the General Law of Mining and incorporated as principles for the development of mining activities:²⁹⁸

- i. Tax, exchange rates and administrative stability.
- ii. Taxation only applicable to the wealth distributed by the mining operators.
- iii. Internal taxes deductions when affecting production.
- iv. Investment on public service infrastructure deductible of the taxable wealth.
- v. Investment on workers housing and welfare deductible of the taxable wealth.
- vi. Compensation for the costs of the health system payments of the workers.
- vii. Non-discrimination on exchange rate, free transfer of profits abroad, free commercialisation, and administrative simplification.

In addition, all reserved geographical areas in favour of the State were eliminated, incorporating those prospective zones to the regime of mining concessions. Those were the base of the process of privatisation in the sector, which has led to the exploration of a number of areas not considered before as potentially containing mining ores.

To qualify for the aforementioned benefits it is necessary to provide a minimum investment, which is operations larger than 350 tm per day to 5,000 tm per day that widen activities in more than 50 percent and up to 100 percent. Small producers (less than 350 tm per day) operating in emergency zones (former internal war areas) and who invest less than US\$ 1 million also can apply for the benefits.

This catalogue of benefits falls again into the context of promoting the development of mining activities in the country. It would have been desirable to have a regulation including tax benefits for the case of mining companies investing on environmental projects or improvements to motivate engagement and self-initiative on the matter.

6.2.3. Implicit Policy: Central Government Production Policy for the Mining sector

This policy is expressed in the Annual Speech (*Discurso a la Nacion*) before the Nation held by the President of the Republic on Independence Day at the Solemn Plenary Session of the Congress. In addition, the Prime Minister Office and the Ministry of Economy and Finance documents on overall objectives and achievements of public and economic policies in

²⁹⁸ *Ley de Promocion de Inversiones en el Sector Minero, Decreto Legislativo N° 708*, published on 14 November 1991.

Peru are also a complementary important source.²⁹⁹ In general, this can be also regarded as the Central Government position on mining affairs.

The most important element is that the Central Government reaffirms itself in the promotion of private investment in mining, giving all necessary facilities and guaranteeing the integrity of the investment. Moreover, environmental issues and social considerations are to be included in any policy of the Mining sector. The practical consequence of these policy lines is the gradual implementation of environmental and social aspects in mining policies in the last years. Likewise, the steps taken at the level of survey and control of mining activities are to be underlined as a positive result.

The downside is showed by the objectives of development policies in Peru, which is mainly wide-scale infrastructure programmes and projects, supported by the international financial institutions (IMF, WB, IADB,) aiming to alleviate or solve human basic needs, in the cities and the countryside.³⁰⁰ This is, of course, the most urgent issue in the country and, it is reasonable that so an objective is pursued. However, in such context the environmental component becomes an accessory to the development project, forgetting that poverty is not only a consequence, but also a cause of environmental damage. Better environmental conditions may lead to improved living standards, accomplishing one of the objectives of human development.

6.2.4. Implicit Policy: Tax Exonerations and Benefits

Mining operators profit from important exonerations and benefits. The import tax for mining equipment was reduced from 15 to 12 percent. In addition, it is allowed to declare deficits in balances for a period of four (04) years. It is possible to fraction and delay the payment of taxes for long-term projects up to seven (07) months. Further, the regime of VAT drawback benefits the companies that have subscribed contracts with the State, based on the sector laws for natural resources exploration, development, and extraction. The operators whose investment requires a period longer than four (04) months have also a right to VAT drawback. Operators who have celebrated a stability tax agreement and whose investment requires two (02) up to four (04) years are also benefited. The only companies excluded are those in exploration phase. The regime includes import and local purchase operations of new

²⁹⁹ Documents are available at the MEF Home Page: www.mef.gob.pe

³⁰⁰ Development projects aimed to combat poverty are under the scope of competences of the Ministry of the Presidency, which has been used in the past, as described in previous chapters, as an instrument of presidential strategies to communicate with the masses, as it occurred during President Garcia's and President Fujimori's governments.

intermediate goods, and construction services and contracts. Tax devolution can be requested monthly, starting from the next month of the correspondent registry in the Registry of Purchases. The devolution takes place monthly, through negotiable credit notes in the national currency. Again, these generous tax policies fall under the overall economic policy pursued in the country in the last decade.

6.3. Mining Sector Institutional Framework

The Ministry of Energy and Mines is the government authority that regulates the use of mineral and oil resources in Peru. It also rules the generation and use of energy. According to the Law of the Executive Power (*Ley del Poder Ejecutivo*), the Ministry of Energy and Mines has competences to formulate and execute national policies in energy, mining and environmental conservation matters.³⁰¹ It also formulates policies aimed at controlling pollution produced as consequence of those activities and it supervises their enforcement.

The Ministry of Energy and Mines³⁰² has four General Directions. The General Direction for Electricity (DGE) and the General Direction for Oil (DGH) are both under the Vice-Ministry Office for Energy. In addition, the General Direction for Environmental Affairs (DGAA) and the General Direction for Mining (DGM) are both under the Vice-Ministry Office for Mining.

The Sectors Energy and Mining carry on activities with the highest environmental impact. The applied technologies for reaching energy demand and for mining extraction entail almost without exception an environmental impact. The mining and metal industry, acknowledging their importance for the national economy, is nevertheless one of the main sources of pollution in the country. The main problems caused by these activities are water and air pollution, and negative impacts on human health.

Mining makes use of rivers, lakes, and seas as disposal places for the waste it produces. The fluids produced by mineral treatment processes contain either chemical wastes or minerals in excess, which affect the chemical and physical quality of waters, limiting its use for fisheries, agriculture, or human consumption. Mining also affects the atmosphere with serious consequences for ecosystems in general and health in particular.

In practice, the competent authorities (DGM and DGAA) do not have the required capacity to assess and analyse the consequences of the aforementioned activities in the natural environment. The control exerted through privatised schemes is limited. Auditing companies

³⁰¹ *Decreto Legislativo N° 560*, published on 29 March 1990.

³⁰² Legal basis: *Decreto Legislativo N° 25962* and *Decreto Supremo N° 027-93-EM*.

are authorised by the sector to operate but are hired by the mining operators. In addition, coordination with other sectors is, in practice, almost inexistent. However, it should be recognised that improvements at the institutional and regulatory levels make of the mining sector, in comparison to others, one of the most advanced in the area of environmental public policy in Peru (Glave and Kuramoto 2001: 21.)

6.3.1. General Direction for Environmental Affairs

The DGAA is the body in charge of advising the High Directorate (*Alta Direccion*) on environmental issues. It is a technical, regulatory and promotion body, hierarchically under the Vice-Ministry of Mines and it was created in 1992.³⁰³ It is very important to notice that the DGAA does not have decision and enforcement powers on the environmental issues under its jurisdiction. Those are solely the power of the DGM. The DGAA accounts with staff responsible for legal, social, technical, environment-mining, environment-oil, and environment-electricity aspects.

The DGAA has as competences:

- i. To propose policy and regulations to conserve and protect the environment, and to promote and strength the relations between companies of the Sector and civil society.
- ii. To approve technical norms for adequate application of the regulations on conservation and protection of the environment.
- iii. To rule, qualify and decide upon EIAs and social studies, establishing prevention and correction measures.
- iv. To evaluate, approve and disapprove the EIA, EVAP, EA, Closure Plans, and PAMA.
- v. To elaborate and promote environmental and social studies needed for the growth of the Sector activities.
- vi. To evaluate denunciations for not fulfilling the environmental regulations of the Sector and to propose possible sanctions.
- vii. To advise the High Directorate of the Ministry on environmental and community affairs.
- viii. To promote the rational use of natural resources in the programmes, projects, and activities of the Sector.

³⁰³ *Decreto Supremo N° 008-92-EM/SG*, published on 02 March 1992. It approves the Organisational Structure and the Regulation of Organisation and Functions of the Ministry of Energy and Mines. This scheme was ratified by a further *Decreto Supremo N° 027-93-EM*, published on 19 June 1993.

- ix. To elaborate and promote environmental protection and sustainable development programmes in collaboration with civil society, and in coordination with other Directions of the Sector, so that their operators contribute to those programmes.
- x. To propose projects and analyse International Technical Cooperation requests related to environment and community issues.
- xi. To propose training and capacity building programmes on environment and community issues.
- xii. To update the registries related to environment and community issues.

The most important projects developed by the DGAA in the last years are the environmental information system (SIA), and the elimination of historical environmental liabilities (EPA.)

The Environmental Information System (SIA) is a dependency of the DGAA in charge of registering, processing, and disseminating environmental information for the Sector Energy and Mines. Among its objectives are:

- i. To measure and control the pollution of monitored physical-chemical elements.
- ii. To research the environmental performance of mining operators.
- iii. To identify monitoring stations, operational units and the location of EIAs through UTM WGS84 coordinates.
- iv. To be a tool for consulting and support of the Ministry and related bodies.

The project for the elimination of the historical environmental damages and liabilities was created to carry out studies and work for the rehabilitation of the affected areas and it has as objectives:

- i. An environmental diagnosis of the effects caused by the historical environmental liabilities in the Sector.
- ii. Identification and development of environmental rehabilitation technologies.
- iii. Studies and works to rehabilitate affected areas.
- iv. Prevention of acid drainages and spills in abandoned mines or waste deposits.
- v. Reduction of the risk of grave failure of abandoned waste deposits.
- vi. Reduction and elimination of the damaging effects caused by the historical environmental damages on the population's health, flora, fauna, and economic activities, through the recovery of affected water bodies, soils, and land.

In practice, this Direction works solidly but at a relative scale, as it does not count with enough human resources to undertake larger efforts. Therefore, the policy is to concentrate in few projects with a high quality of research and results. The downside is that the achievements do not have an impact with the public opinion, much centred on cases of gross envi-

ronmental damage. That selective internal policy includes DGAA's orientation towards large- and medium scale mining. The operations of small-scale and informal mining do not receive the same prioritisation (Glave and Kuramoto 2001: 27.)

In relation to EIAs, DGAA pursues a collaborative approach with the mining operators, and the policy is to help towards EIA approval rather than to exert controls that would prevent private investors in their aim of setting up mining operations in the country.³⁰⁴

6.3.2. General Direction for Mining

The DGM is a unit depending directly of the Vice-Ministry of Mines, and it is in charge of regulating, controlling, and promoting mining activities, looking to achieve a balance between those and the environment. It is also the sole decision body in the environmental affairs under the jurisdiction of the Sector. Among its competences and powers are:³⁰⁵

- i. To confer concessions for the activities developed in the Sector.
- ii. To approve investment programmes with implementation deadlines related to tax stability agreements.³⁰⁶
- iii. To approve economic-technical feasibility studies.³⁰⁷
- iv. To propose the model contracts considered in the Law of Mining.
- v. To survey the fulfilment of tax stability agreements.
- vi. To decide on the creation of Administrative Economic Units.
- vii. To evaluate the Consolidated Annual Declaration to be presented by the mining operators.
- viii. To evaluate and decide on the requests for non-admission of denounced mining areas.
- ix. To approve location, design, and functioning of concession projects.
- x. To propose regulations on mining welfare, safety and hygiene.
- xi. To impose sanctions and fines on mining operators who do not fulfil their obligations.
- xii. To prepare the List of Mining Requests.
- xiii. To impose sanctions to the Controllers who do not fulfil their obligations.
- xiv. To solve *ad officio* or *ex parte* the denunciations referred to illegal mineral extraction.
- xv. To administrate the monies coming from the payment of mining rights.
- xvi. To approve and control mining housing, health, welfare and safety programmes.

³⁰⁴ Interviews with Mr Valdez, Proterra, Lima, September 2001 and April 2003; and Interview with Mr Sueiro, CooperAccion, Lima, November 2001.

³⁰⁵ Chapter III, Art. 101° of the General Law of Mining.

³⁰⁶ Arts. 78° and 79° of the General Law of Mining.

³⁰⁷ Arts. 82° and 83° of the General Law of Mining.

- xvii. To classify mining operators as large-scale, medium-scale, or small-scale mining.
- xviii. To emit opinion on the request to end or reduce mining activities.
- xix. To solve appeals and concede revision actions in the procedures in the administrative jurisdiction.
- xx. To solve complaints on the procedures in the administrative jurisdiction.

As seen by the array of competences, this Direction is not only in theory but also in practice the most powerful unit in the Sector and at the inter-sector level as well. Large financial resources provided by mining rights fees translate into economic independency and a wider scope of manoeuvre for the officials working in the area. They are not constrained by tight Executive branch budgets as they can administrate the additional resources received through the increase of mining activities in the last years.

The DGM is organised in three sub-units: the Technical-Regulatory Office, the Direction for Mining Control, and the Direction for Mining Promotion and Development. Likewise, the DGM has representation at the national level, through regional offices (*direcciones regionales de minería*). However, regional offices are always under the power of central offices in Lima.

Being the powers of the DGM, it is of crucial importance the level of interaction with CONAM, as the environmental policy designed by the latter must be implemented by the former. In practice, however, DGM has as much power as CONAM, as MEM interprets that CONAM regulations do not necessarily affect but complement the environmental framework set by the Sector Energy and Mines (MEM 2000b: 6.) Besides, the DGM takes decisions and enforces the fulfilment of environmental obligations, while CONAM can only propose policies and offer coordination capacities.

6.4. Mining Sector Regulatory Framework

Between 1991 and 1993, the Executive branch issued a large number of regulations to promote exploration, investment, and activities in mining. The most important, as mentioned before, were the General Law of Mining and the Law for Private Investment.

The General Law of Mining and the administrative regulations of the Sector regulate mining activities on the first place.³⁰⁸ The Law classifies mining activities in eight catego-

³⁰⁸ *Texto Unico Ordenado de la Ley General de Minería, Decreto Supremo N° 014-92-EM, publicado el 04.06.92.*

ries.³⁰⁹ Five of them are carried out under the system of concessions. Three activities, early prospective activities (*cateo*), prospecting activities (*prospeccion*), and commercialisation, are not carried out under the concession system. The system of concessions has among its most important characteristics the obligation to invest in the production of mineral substances. The investment per year and per hectare cannot be under US\$ 100 or its equivalent in the national currency for metallic substances, and US\$ 50 for the case of non-metallic substances. Such level of production must be obtained at the end of the eighth year of activities.

The Law for Private Investment of 1991 ruled that each Ministry is the environmental authority for its sector. Consequently, the environmental competences and responsibilities of the Ministry of Energy and Mines are decisions of each of the General Directions in charge of production (Energy, Oil, and Mining), while the General Direction for Environmental Affairs has an advisory and technical role.

From 1991, there have been several efforts to regulate environmental pollution in mining activities. As part of this process, in July 1992 a registry of entities authorised to carry out EIAs in the sector Energy and Mines was created.³¹⁰ This regulation enshrines the privatisation of environmental control in Peru, a circumstance that has originated much criticism in the years after, under accusation of bias. The main problem in the system is that auditing companies in charge of EIAs are hired by the mining companies, and not by the ministry (Glave and Kuramoto 2001: 24.) It is obvious that the danger of bias in the opinions contained in the EIAs can be avoided hardly.

The same year a Regulation of Mining Procedures, which included the presentation of EIAs as a requisite for concessions, was enacted.³¹¹ This procedure has been criticised because of the hurdles it poses to public participation in the process of EIA. Interested third parties only are able to access EIA documents at one public audience against fee payment. The public audience takes place in Lima, and not in the location where mining operations are planned, meaning extra costs for the communities, who have to travel considerable distances to the capital. Mining projects are located mostly in remote areas of the country. The proce-

³⁰⁹ Those activities are: *cateo* (activities to detect traces of minerals through elemental mining works); *prospeccion* (research to determine areas with possible mineral content, through chemical and physical tests with precision instruments and techniques); *exploracion* (activities to explore the minerals contained in an ore); *explotacion* (activities to extract the minerals contained in an ore); *labor general* (auxiliary services in the mining activity like ventilation or sewage); *beneficio* (physical, chemical or physic-chemical processes to extract or concentrate the valuable parts of the mineral and/or to purify, melt, or refine the materials; it includes mechanical preparation, metallurgy and refinement); *comercializacion* (is free, internal and external trade); *transporte minero* (all transport used for the continued massive transport of mineral products through non-conventional methods.)

³¹⁰ *Resolucion Ministerial* 143-92-EM/VMM, published on 13 July 1992.

³¹¹ *Decreto Supremo* 050-92-EM, published on 08 September 1992.

ture does not facilitate an informed participation by the citizens, who do not have the opportunity to study and analyse the documents in advance to give an opinion.

In 1993, the Regulation for Environmental Protection in the Mining-Metallurgical Activities was promulgated.³¹² This Regulation recognises the liability of the persons carrying on mining activities for the emissions, effluents, and disposal of wastes in the environment, because of processes taking place in mining factories and installations. Accordingly, in 1998, the Environmental Regulation for Mining Exploration Activities was approved.³¹³ It establishes that mining operators are responsible for the emissions, effluents, and waste disposal in the environment, produced as result of mining exploration activities carried out in the concession area. In that line, is their obligation to prevent that those maximum permissible levels are surpassed, in the case of elements or substances that can have negative effects in the environment. Further, it establishes that any adverse effect caused to the environment must be repaired using the best available practices. As discussed before, responsibilities are defined clearly in Peruvian legislation and regulations, and problems emerge at the level of control of the operations, which is carried out under a privatised system.

In addition, the Environmental Regulation of 1998 specifies that the development of mining exploration activities require the previous agreement with the surface landowner or the arrangement of an *ad hoc* contract allowing land use. Moreover, it details three categories of projects, defined according to the intensity of the activity and the area affected by the execution. Category A comprises activities that cause almost no alteration on the surface. Category B includes projects that originate effluents for which it is necessary waste disposal and where the required disturbed area can include up to 20 perforation platforms, and cannot be larger than 10 hectares. Finally, category C includes all of Category B requirements but in areas larger than ten hectares. In addition, it considers the construction of tunnels of at least fifty meters. Mining operators in the Category A do not need an authorisation, while the operators of Category B must present a sworn Declaration. The operators of Category C must present a complete Environmental Evaluation that will be revised by the Ministry of Energy and Mines. This Regulation poses problems because of the asymmetrical or uneven relations between landowners and the companies. Usually, mining operations present landowners a TINA scenario, where the latter, usually peasants or indigenous communities, can only agree to the contracts presented, and, at most, can negotiate on the compensation to be paid per hectare. There is no previous evaluation of the situation of the communities, if they practice agri-

³¹² *Reglamento del Título Decimo Quinto del Texto Unico Ordenado de la Ley General de Minería, sobre medio ambiente, Decreto Supremo 016-93-EM*, published on 01 May 1993.

³¹³ *Decreto Supremo 038-98-EM*, published on 30 November 1998.

culture for subsistence, or the social and cultural issues attached to the loss of land, to name the most important. This led to many unfair deals with communities and peasants, which later provoked the emergence of conflicts in the areas where mining takes place.³¹⁴

In addition, the Ministry of Energy and Mines approved maximum permissible limits of pollution by emissions in all mining-metallurgical units in 1996.³¹⁵ The main problem of these regulations is the policy of control in the source of pollution or point of emission, leaving aside the consequences in the receiving bodies. This policy has not been put into question up to the present.

6.5. Conflicts in the Institutional and Regulatory Framework

Environmental issues have been a source of conflicts among branches of the state and within them in the last years. The main issue is, on the one side, the overlapping of competences, and on the other, the existence of gaps and “grey” areas in the legislation. A very important issue, inherent to the political system in Peru is the prevalence of the Executive branch over other branches. In addition, the special situation of power of the Ministry of Energy and Mines in relation to other ministries, because of its position as the most important source of income for the Peruvian state, cannot be underestimated. These conflicts show the complexity and the variety of factors that policy makers have to face when deciding on environmental issues in Peru.

6.5.1. The Judiciary and the Ministry of Energy and Mines

The Executive branch exerts an inconceivable interference in the Judiciary. In the last years, as environmental issues have been the source of legal conflicts, it was foreseeable that the Executive would respond making use of its powers in cases taken to the tribunals that could evolve into a contestation of its policies.

The CMARN contained a section dedicated to environmental crimes that was derogated by legislation enacted by the government of national reconstruction of Mr Fujimori. A new Peruvian Criminal Code was approved later with a section devoted to environmental

³¹⁴ Interviews with Mr Valdez, Proterra, Lima, September 2001 and April 2003; Interview with Mr Sueiro, CooperAccion, Lima, November 2001; Interview with Mr Palacin, CONACAMI, Lima, December 2001; Interview with Ms Garcia, MEM, Lima, November 2001; and Interview with Mr Benites, INCAAP, Cajamarca, November 2001.

³¹⁵ *Resolucion Ministerial N° 315-96-EM/VMM*, published on 19 July 1996 and *Resolucion Ministerial N° 011-96-EM/VMM Aprueban Niveles Maximos Permisibles para Efluentes Liquidos Minero Metalurgicos*, published on 13 January 1996.

crimes. Standing to sue for environmental cases in the Peruvian judicial system was a new phenomenon that continued evolving with more cases every year. In the first years, the preferred instrument was constitutional guarantees writs (*amparo, habeas data*) because of the belief (by NGOs using the instrument) that a judicial decision on constitutional issues would have more weight within the Judiciary, and eventually would make environmental cases less resisted.³¹⁶ Therefore, although environmental crimes were part of the system, there was no attempt to test the efficacy of the legislation through such a case.

The opportunity emerged in the mid-nineties when Asociacion Civil Labor Ilo, a NGO based in Ilo, Moquegua, and a long-standing foe of SPCC, decided to take action at the criminal level. These actions have to be analysed in the light of procedures initiated and won by “Labor” against the company before the International Water Tribunal. Afterwards, “Labor” pursued without success that SPCC agreed on the improvement of environmental measures recommended by the Tribunal.

In the meantime, in 1994, the Peruvian government and SPCC signed a Basis Agreement (*Acuerdo de Bases*) through which the conditions in which SPCC operated in the country were renewed and which included stability agreements with environmental clauses. The documents were not officially available to interested third parties; however, some of contents became known. In the context of loans asked by SPCC to international banks for the renewal of some of its installations, the banks requested the inclusion of environmental guarantees in the contracts.³¹⁷

Labor and the Municipality of Ilo presented a petition before the police of Ilo against SPCC for environmental crimes. In particular, the pollution caused by the melting plants of SPCC in the Bay of Ilo was named. SPCC responded through a pool of lawyers of the best firms in Lima. According to the usual criminal proceedings at the time, after a denunciation was presented at the police, the state prosecutor of the jurisdiction had to study the case and emit opinion on whether or not it proceeded to follow criminal prosecution against the accused. This period between police and decision could take several weeks. While waiting for the prosecutor’s decision, the Peruvian Congress approved a law that contained only three articles and that modified the section of environmental crimes of the Criminal Code, for which an additional administrative requirement for the opening of criminal prosecution was

³¹⁶ This information has as source the experience of the author working on environmental defence of public interest between 1993 and 1996. In addition, Interviews with Mr Valdez, Proterra, Lima, September 2001; and Interview with Ms Balvin, Asociacion Civil Labor Ilo, Lima, April 2003.

³¹⁷ Interviews with Mr Valdez, Proterra, Lima, September 2001, and April 2003; Interview with Ms Balvin, Asociacion Civil Labor Ilo, Lima, April 2003; and Interview with Ms Böttger, formerly at a Lima-based law firm overseeing the negotiations between the Peruvian state and SPCC, Lima, October 2001.

included. Specifically, it was necessary for the competent authority of the sector where the operation that allegedly violated the law occurred to emit an opinion confirming the existence or the occurrence of the environmental crime, to proceed to the level of prosecution. In the case of the mining sector, the Ministry of Energy and Mines through the DGM must emit such opinion, which is final and cannot be appealed. This means that the opinion of an administrative body is compulsory and binding for the functioning of the Judiciary in the case of environmental crimes. After this law was approved, it was not possible to sue SPCC for environmental crimes. It was clear that the MEM would pronounce itself against the existence of an environmental crime, which in fact occurred some weeks later. Thus, the state prosecutor closed the case without possibility to reopen it.

This was again a gross case of interference of the Executive branch in the independence of the Judiciary, with the participation of the Congress. This means that the criminal sanctions for environmental pollution included in the Criminal Code of Peru are almost impossible to use because of the additional administrative legislation requirements put into place. It is taken for granted that, in most cases, the competent authorities will decide in favour of the mining operators because of the priority of attracting and keeping private investment in the country. This is a distorting regulation that it should be simply abolished because it affects the principle of separation of powers, one of the democratic principles over which the Peruvian constitutional state lays. In addition, the resources needed to put the Mining sector bureaucratic machine into movement are not accessible to normal citizens.

6.5.2. Local Governments and the Ministry of Energy and Mines

Conflicts between the Central Government and decentralised governments elected by the people, Local Governments (provinces and districts) often emerge. Local Governments are autonomous entities with competences given by law and that can enact their own legislation. The most important of the municipal regulations is the “*Ordenanza Municipal*” that has the level of a law of the Parliament and only can be repelled through a constitutionality writ (*accion de inconstitucionalidad*) before the Constitutional Tribunal.

The Law of Municipalities bestows on Local Governments environmental competences and powers. Based on those regulations, Municipalities carry on (i) information request, (ii) water and air quality periodical reporting and monitoring obligations, and (iii) the creation of so-called “municipal natural protected areas.” Subsequently, conflicts emerge for each of powers conferred by the law. Local Governments request information on the mining operations underway to the mining companies. Then, the usual reaction of the operator is to

answer that they only are obliged to release information to the competent authority, the MEM. To that, MEM supports the companies answering that the information provided by the operator to the authority is confidential and cannot be given to third parties, even if they have an interest. When Local Governments request reports on the results of the quality of water and air monitoring carried on by the companies, the mining operators and MEM would follow a similar answer and strategy. The third competence has provided fertile ground for intervention of Local Governments in environmental affairs and has put MEM and the companies into trouble.

It occurred in the past that some Local Governments created local protected areas to preserve the surface and landscape where a mining operation would take place, using social, cultural, and ecological arguments. For that step, an *Ordenanza* is used as legal instrument for the creation of the areas. This made difficult the interference of the Executive branch in municipalities' decisions.³¹⁸

The assertion of powers by Local Governments leads usually to a worsening of the relationships between mining operators and them. It should be added that ministries authorities at the local level (*direcciones regionales*) do not intervene at the actions of the Municipalities, unless it considered as interference in their own powers. The Mining sector has been careful in dealing with possible conflicts with Local Governments. This restrained attitude of the Mining sector is explained by the following facts. While in the case of other Sectors (more often Health and Agriculture), it does not hesitates defending its own powers, and actively bars their intervention; in the case of Local Governments, it cannot act in the same way, as Municipalities in Peru emerge from popular elections, which give them another political standing at the local level. An open conflict with Local Governments would only open another front, which may hamper the successful development of the mining operation in the

³¹⁸ The first Municipality to use this strategy to protect areas under its jurisdiction was the Provincial Municipality of Metropolitan Lima, which created the "municipal protected area" of Pantanos de Villa, South of Lima. Pantanos is a wetland ecosystem home to migratory birds on its way to and from the Antarctica. A municipal protected area does not belong to the SINANPE, which is managed by INRENA. It is completely under municipality control. At the time of creation, there was no foreseeable environmental conflict. However, at the end of the nineties, problems emerged when a noodle company from Chile, Lucchetti, was given a permit to build a production plant in the area. Through the old declaration of protection by an *Ordenanza*, the Municipality of Lima managed to close up the plant, and oppose the strategy of the Executive branch, through the Ministry of Industries, of prevailing of investment over environmental conservation. Several lawsuits were interposed during the period of confrontation on the issue, which had also an important coverage in the media. However, it is important to note that the trigger in this case was again the citizens, who started the lawsuits, which in turn, obliged the Municipality to act and enforce its own norms.

locality in the future.³¹⁹ When a conflict in fact occurs is because the Local Government is pushing the envelope either in defence of citizens' interests or for political reasons.

Another source of conflict between Local Governments and the Ministry of Energy and Mines is mining activities as a source of income for the municipalities. Local authorities, being another level of government representation in the country, had expected to receive a substantial part of the benefits obtained by the Peruvian state through mining operations. This income was meant for local development, e.g. infrastructure, public works and services. Up to 2002, Peruvian regulations did not include norms to make Local Governments beneficiaries of the revenues obtained through mining projects. The Law of Mining Canon established that Regional and Local Governments should receive a percentage of the monies that the Central Government collects from mining operations. The money should be transferred to the governments (regional and local) of the areas where the project takes place. Unfortunately, this law came a decade after the start of some of the most profitable mining projects in the country (e.g. Yanacocha), and important amounts were not transferred to the regions in those years, which would have been necessary for undertaking development initiatives.³²⁰

Strategies to be followed by the Mining sector in dealing with possible conflicts are either cooptation of Local Governments, or secrecy of information. In both cases, the objective is to avoid a reaction against the project. In any case, MEM cannot count on firm alliances because backlashes and side shifting are usual, as Local Governments are tied to a political clientele to which they must respond. If the Local Government belongs to the same political party or movement than the Central one, it is possible that it would ally with it and consequently with the interests of mining operators. If that is not the case, the Local Government would side with CBOs, NGOs, and other grassroots organisations opposing the project, and it could lead the resistance. Additionally, local public opinion plays a much important role in a municipal jurisdiction, as often the authorities of the region are well acquainted and family and kinship play an important role in power sharing. Alliances are unstable and loyalties changeable. Local Governments would act according to the circumstances developing in their constituencies. Citizens' attitude exerts a big influence in the position Municipalities take before mining operations (and thus environmental problems). Depending of the situation, Municipalities will intervene in the conflict through legislation, standing to sue, and public mobilisation. It is very important to note that local authorities are usually the first authority to

³¹⁹ Interviews with Mr Valdez, Proterra, Lima, September 2001 and April 2003; Interview with Mr Sueiro, CooperAccion, Lima, November 2001; Interview with Mr Benites, INCAAP, Cajamarca, November 2001; and Interview with Ms Balvin, Asociacion Civil Labor Ilo, Lima, April 2003.

³²⁰ Interview with Mr Sueiro, CooperAccion, Lima, November 2001.

which citizens recur in case of violations of law and regulations. Therefore, action in favour or against will have a huge impact on local politics and actors.

6.5.3. The Executive branch: Inter-Sector Conflicts

At this level, the main problems originate by the exercise of powers and competences on environmental matters by the different government sectors. Since there is no unified environmental authority (or Sector Environment as such) within the Executive branch, conflicts emerge from the interaction of the sectors, *vis-à-vis* the environmental rules those are to follow and apply. The main issue is mining activities affecting goods (public and private) shared under the regulatory scope of the different sectors. This occurs when mining activities affect water sources used for agricultural purposes (Ministry of Agriculture,) or when those affect ecosystems protected under law (INRENA,) or when mining affects human health and working conditions (Ministries of Health and of Labour,) or when it affects the quality of water for human consumption (Ministry of Health and Local Governments.)

The mining sector regards itself as the only authority responsible for mining activities developed in Peru. Thus, if there are environmental issues at stake, those are to be analysed and decided upon on the grounds of what the mining sector understands as permissible and legal. Therefore, it is likely that conflicts emerge, in case public environmental goods are affected, if what the mining sector understands as damage does not coincide with what other authorities sharing competences on those environmental goods understand as such.

An example of the aforementioned situation is the case of deforestation to give place to mining activities. The mining sector considers that deforestation is a necessary step, even at the risk of affecting ecosystems or people's livelihoods, as the purpose of mining is to extract minerals from an ore or a source. Therefore, deforestation is acceptable in mining activities if it has been approved under the regulations of the mining sector. At the same time, it may occur that INRENA considers that the ecosystem to be affected is worth protection, and may act upon as its competences allow it.³²¹ However, in practice, the decisions of the mining sector prevail in conflict situations over other sectors responsible or with powers, as the latter cannot directly oppose the decisions of the mining sector through a procedure at the administrative

³²¹ In the case of deforestation for mining purposes, an example is the slopes of the areas surrounding the Yanacocha gold site in Cajamarca. During the seventies and eighties, those slopes were the site of successful reforestation programmes carried out by local NGOs with the financial support of the Belgian development cooperation. After MYSRL obtained authorisation to explore in the area, the company was allowed to deforest many of the areas previously reforested. The Ministry of Agriculture, which also supported those reforestation schemes, could not oppose that decision. Interview with Mr Benites, INCAAP, Cajamarca, November 2001.

level. The citizens find themselves in a similar situation. The administrative regulations of the Mining sector do not provide for representation to third parties. Consequently, space for grievances and protest is opened here. The alternatives are lawsuits or resistance through political actions, which only would add to the escalation conflicts.

A. Mining Sector and Health Sector

The Health sector is responsible for the protection of human health in Peru and, thus, for the prevention of pollution and spills which may cause damage to the population. In that direction, the Health sector will control the quality of waters, soils, and air, taking into account human health protection as aim.

Problems emerge when Health sector authorities carry out quality controls in the context of mining activities. Pollution permits are conceded under mining sector regulations, as a degree of pollution is considered an unavoidable fact in mining operations. However, those authorisations may not necessarily meet the standards set under Health sector regulations. The main reason is the lack of unified pollution standards compulsory to all Sectors. Actually, those maximum permissible limits have been avoided explicitly to stress the right of each sector to set its own standards, based on the specific characteristics of the economic activities developed under its jurisdiction. In addition, competition among sectors makes very difficult a common pollution, not only in relation to the particular economic activity, but also to the population affected. The most important consequence of this situation is that the existence of double pollution standards implies that companies must implement double measuring systems, to be able to report to each Sector accordingly, increasing their costs.

In such context, the main conflict between the mining and the health sectors is the control and monitoring of the maximum permissible limits of pollution. The General Law of Health (Art. 128°) confers Health authorities the powers to: (i) carry on orientation and education actions; (ii) practice inspections in any property; (iii) take samples and carry the corresponding tests; (iv) collect information; (v) carry on any action considered adequate to fulfil its functions; and, (vi) apply security and safety measures and sanctions.

Based in the aforementioned law and the additional regulations giving environmental powers to the Ministry of Health, it is expected from the Health sector to impose obligations and restrictions to, and to implement control of mining activities. This occurs because all mining operators require a permit to discharge effluents in a water source. The Health sector, through DIGESA, concedes such “sanitary authorisation of discharge” (*autorización sanitaria de vertimiento*). At the same time, mining laws and regulations establish the maximum per-

missible levels of pollution and effluents operators are allowed to discharge into water, soils, and air. It occurs that the “sanitary authorisations for discharge” of the Health sector establishes more restrictive discharge levels in comparison with the limits approved by the Mining sector. The reason behind the position of the Health sector to ask for an additional pollution permit is based on the argument that depending on the other kinds of use given to the reception bodies (for instance in the case of water,) it may be possible that human health is affected.³²² Following this interpretation of its powers, the Health sector imposes more restrictive criteria in pollution control to mining operators than the Mining sector, being that the latter does not include human health as a factor in its calculations. Yet again, we see that the problem stems from the policy in the mining sector to control at the source, while the policy in the health sector is to control at both the source and the receiving body. Therefore, from the outset, conflicts should not emerge, but the different aims of each sector trigger those. On the one side, the Health sector protects the population’s health; on the other, the Mining sector promotes the development of mining activities in the country.

The Health sector, through DIGESA, does inspections, establishes controls, and imposes the obligation of maintaining a system of quality monitoring for waters and air that differs from the one established by the mining sector. As mentioned before, this situation leads to double costs for mining operators and a constant tension between the two Sectors, Mining and Health, on to who is the authority called to exert control on the environmental consequences of mining operations.

During the field trip for this dissertation, in interviews at the DGAA-MEM, and at DIGESA-MINSA, these opposite points of view were expressed as well. At DGAA³²³ it was explicitly stated the need of establishing the “principle of one window” (*principio de ventanilla unica*), meaning that only one Sector should be responsible on environmental affairs in the mining sector. The principle was supported by the argument that the lesser costs produced by the intervention of only one Sector would make Peru a more attractive destination for investment. A second argument was the simplification of procedures for prospective investors in mining. Civil servants at the mining sector were very much aware of which other bodies in the administration had a say in environmental control, mentioning not only DIGESA (Sector Health), but also DICAPI (Ministry of Defence), INC (Ministry of Education) and INRENA (Sector Agriculture) as important bodies to be taken into account, and which often criss-crossed competence boundaries with Mining.

³²² Interview with Ms Ortiz, DIGESA- MINSA, Lima, November 2001.

³²³ Interviews with Mr Bonelli, DGAA-MEM, Lima, 21 and 26 November 2001; and Interview with Ms Garcia, MEM, November 2001.

At the Health sector,³²⁴ opinions went into the opposite direction. It was considered very important that the powers of the Health sector were clearly defined to avoid conflicts with other sectors, but without losing their own powers in the process. In this sense, the verb to “reaffirm” was very much present when inquiring on the issue of conflicts with the Mining sector. The most important argument is that the “right to life” and the “right to human health” contain values higher than the ones promoted by the mining sector (e.g. right to free initiative and right to work, among others), as established in the scale of rights of the Peruvian Constitution. The Health sector officials expressed the wish to be consulted in everything related to the operations of the mining sector: from the permissible levels of pollution, through the process of participation including the communities affected by the operations, to further pollution control of mining operations sites.

An important issue in the debate is if the mining sector can set standards different to those set for the protection of human and animal health. Until now, it has been widely accepted by the stakeholders that both the Sectors Mining and Health can have each a different set of standards. This situation has been possible only under the argument that both sets have as final aim to protect life. Because, in practice, mining sector actions concentrate on promoting investment in its sector, there is place for distrust and doubt on the application of its standards when human life is at stake.

At the present state of the controversy, the situation has not changed considerably and both sides have contradictory positions, which make difficult a collaborative process among the bodies of the administration. The issue of “losing” and “reaffirming” powers is at the centre of the discussion for both Sectors. The issue of how citizens are being affected and how environmental damages are being tackled is secondary. While the mining sector shows proclivity to smooth collaboration with mining operators and possible investors, and is confident of its influence within the Executive branch, the Health sector is worried of being overridden by the mining sector and, in the process, of losing influence and resources. The Health sector usually cannot prevent and only can react to a specific environmental conflict. This situation weakens the possibility of avoiding conflicts in the mid- and long terms.

B. Mining Sector and Sector Agriculture

The main conflicts between the Mining and Agriculture sectors emerge from the interaction of mining activities with either renewable natural resources, or agriculture and cattle

³²⁴ Interview with Ms Ortiz, DIGESA-MINSA, Lima, 29 November 2001.

activities in the areas of mining operations. It is very difficult that both set of activities coexist, especially if the mining ore is located under an agricultural valley or a renewable natural resources location. The main issue is which Sector should prevail. Each has sufficiently strong arguments to present their case and levels of lobby, power, and influence will therefore shift the balance to one or the other side. Up to the present, it has been the case that the Mining sector has been more successful in shifting the balance. Mining operators will usually solve the problems for good buying the land where the operation will take place (in case it is in private hands), thus avoiding the problems of having to explore in grounds where the surface belongs to others. If the land belongs to the State, it is almost sure that it will be conceded to the mining operator without reservations, unless a natural protected area is on the surface. In such case, INRENA will have a say, according to the laws and regulations. Up to the present the latter case has not occurred.

Specifically, the main conflict between the Mining and the Agriculture sectors derives of the powers of INRENA. According to CMARN (Art. 62°) and the Law for Private Investment, the EIAs for the development of production activities have to be approved by the competent sector authority, i.e. the Ministry that regulates the development of such activities. In the case of mining activities, the competent sector authority is the mining sector. However, the complementary Regulation of the Law of Natural Protected Areas (Articles 115°, num. 1°, and 116°, lit. f) establishes that the extraction of non-renewable natural resources and, specifically, mining and oil activities in natural protected areas or in their buffer zones, requires an EIA. For the EIA to be approved by the competent sector authority (Energy and Mining sectors), it has to count additionally with the “previous technical opinion” of INRENA. The Regulation of the Law of Natural Protected Areas adds to the conditions when it requires that the technical opinion shall be “in favour”, which can open the way to a possible veto of INRENA, when approving EIAs related to extraction projects in natural protected areas or their buffer zones.

However, the latter regulation has been “softened” in its effects through the inclusion (in a regulation of the mining sector) of the “positive administrative silence” that sets a strict deadline for INRENA to emit opinion on the matter. If INRENA does not reach the deadline and does not emit opinion, it is considered thus that the opinion is in favour. In other words, INRENA has approved the EIA. This is a thorny issue in the mining regulations, as usually it occurs that operations are very complex and that the time set might not be long enough to evaluate sufficiently the environmental consequences of the project. Yet again, the main consideration in the inclusion of the “positive administrative silence” was to facilitate the procedures available to private investors. However, in spite of the balance swinging to its side, the

Mining sector as competent sector authority still feels constrained by the powers given to the Agriculture sector, even if those have been softened and, therefore, advocates in addition for the “principle of the sole window.”³²⁵

In interviews with former INRENA officers,³²⁶ it was stated that it was felt in the organisation that the Agriculture sector did not have a word on how the Mining sector carried on its affairs with the mining operators, even if it was established in the law that consultations with the Agriculture sector should take place. It was particularly serious in the case of natural protected areas that are special ecosystems meant to be protected under any circumstances. In those cases, to exert some influence, INRENA officers would use informal ways to tackle the problem. The easiest was to coordinate efforts with like-minded NGOs that would bring the problem to the public arena. This would avoid concerned INRENA officers being in an inconvenient position before the mining sector and the Executive branch, while at the same time defending their stance and powers within the administration. This, of course, was not the general behaviour. It was the case that, the highest-ranking officers of INRENA would not meddle in conflicts with the Mining sector to avoid risking their own position. Those actions were usually the initiative of engaged professionals, at the mid- and higher levels of the hierarchy, in hopes of stirring some reaction in the Agriculture sector towards pursuing a showdown with the Mining sector.

As in the case of the conflicts with the Health sector, here it is observed that the Mining sector cannot count with the Agriculture sector as a straightforward ally in its affairs and usually, in the case of natural protected areas, would even find a rival in the handling of the environmental consequences of mining operations.

The only conflict that, at present, has showed clearly the contradictions between the priorities of the Mining and Agriculture sectors was the Tambogrande gold mining project, in the department of Piura, Northern Peru. Tambogrande lays in the San Lorenzo Valley, specialised in the production of oranges, lemons and citric for Peruvian and foreign markets. Farmers in the valley are fairly well off in comparison to others in Peru. They sell high quality products, have in average good living standards, and defend their interests accordingly. During the seventies and eighties, the Valley of San Lorenzo had received public and private investment of around US\$ 400 million from the Peruvian government, the World Bank, and the

³²⁵ Interviews with Mr Valdez, Proterra, Lima, September 2001; Interview with Mr Sueiro, CooperAccion, Lima, September 2001; and Interview with Mr Bonelli, DGAA-MEM, November 2001.

³²⁶ Interview with Mr Chavarry, formerly at INRENA, later at WWF-Peru, Lima, April 2003.

government of Yugoslavia, among others, to gain land to desertification. It was a model project.³²⁷

The conflict emerged when Canadian company Manhattan obtained a permit to explore gold in the area of the valley. Outrageously, the mining plot conceded by the Ministry of Energy and Mines was located across the main town and some of the most important agricultural farms of the valley. Manhattan showed up one day and started working without previous announcement to the local authorities or the owners of the agricultural plots. The company argued that they had a permit of MEM, which allowed exploring in the area without having to inform other authorities on its activities. This led to a highly explosive conflict that reached its peak with the, until now, unsolved murder of one of the leaders of the Tambogrande farmers' association. From that point on, it was clear that Manhattan would not manage to stand the pressure to retire, even if it would take a long time to be evicted from the area.

Manhattan was never accused of ordering the murder of the local leader, but in the eyes of the population, they were the moral culprits because of their ways in handling the issues and the lack of respect to the citizens' complaints. In addition, the MEM was overburdened with the scale of the conflict. The Catholic Church was called to mediate, and it was later object of a smear campaign, including personal attacks to the Bishop of Piura, the mediator. This only confirmed in the eyes of the population that something foul was going on and, neither Manhattan, nor their representatives in the country could be trusted. In addition, OXFAM America started a worldwide campaign, through their Advocacy Programme, supporting the population claims with funding for conferences, studies, research, lobby, and a public ballot (a sort of unofficial "referendum") to cast the opinion of the citizens on agreeing or not to the exploration. Of course, the large majority pronounced themselves against the project. Finally, in 2004, Manhattan announced that they declined to continue the project and would retire of the area, giving back their permits and exploration rights to the Ministry of Energy and Mines.

The lesson in this case is that the Sector Agriculture could only resist the pressure put on them to emit a "favourable technical opinion" on the Manhattan project and could stay firm in their position of not supporting it because of the citizens' resistance movement. By itself, INRENA could not do anything but stare at the decisions of the Mining sector, even if those would imply putting environmental aims at the bottom of the page. Again, the Agriculture sector cannot act preventively and can only react to an environmental conflict. Further,

³²⁷ Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

the use of informal methods and strategies to gain space in the political arena only weakens their position overall among the Executive branch sectors.

6.5.4. The Ministry of Energy and Mines: Intra-Sector Conflicts

Internal conflicts in other Sectors may not necessarily influence the result in an inter-sector conflict at the institutional and regulatory levels, because of the Mining sector powers. Internal conflicts in other sectors (other than Mining) will only weaken the position of such in the negotiation and resolution of conflicts, and will further strengthen the position of the Mining sector.

The main conflicts that may emerge in the Mining sector are those between the DGM and the DGAA. However, it must be said in advance, those conflicts do not occur or have even being discussed in public ever. Albeit both Directions have the same level in the internal hierarchy of the Ministry of Energy and Mines, in practice, the DGAA acts under the guidelines established by the DGM. The advisory role of the DGAA is appreciated by all stakeholders and it seems to accommodate all interests.³²⁸ However, it must not be forgotten that the DGAA should actually have stronger decision powers in case of environmental damage.

According to regulations of the Mining sector, the DGAA does not have authoritative or enforcing powers in relation to the decisions of the DGM. The DGAA plays an advisory role in environmental issues affecting mining activities, and an intermediary role in relation to the actors involved or affected by such activities. However, the ultimate decision making process takes place at the DGM.

Usually, open direct conflicts do not emerge at the intra-sector level, because it is understood that the DGAA does not have the decisive role the DGM has. In addition, the DGAA does not take a proactive role in the conflicts. As a result, its decisions for solving environmental problems are regarded (by third parties or citizens affected) as weak or biased. DGAA supports the sector opinions and decisions on environmental issues, even if those do not necessarily reflect the environmental priorities of the state. Mining activities have precedence. The DGAA cannot take decisions on environmental issues at the highest level, including the negotiation of mining projects. This means that the conditions for the investment and the space of manoeuvre of the Peruvian state (and the government in power) in contracts, rights and taxes cannot be “greened.”

³²⁸ Interviews with Mr Valdez, Proterra, Lima, September 2001; and Interview with Mr Sueiro, CooperAcion, Lima, November 2001.

The Mining sector acts in defence of the interests of the Central Government, while collaborating with the mining operators investing in projects in Peru. The Sector is interested in improving the overall results in terms of macroeconomic numbers, achieving growth in production results and income for the Peruvian state (counting on tax payments and returns plus payments for mining rights).

6.5.5. Implications for Environmental Policy

The conflicts described above emerge from different reasons, which can be resumed as political interference, gaps in the institutional and regulatory framework, and lack of resources. Political interference of the Executive branch in other branches, sectors, or bodies cannot be solved without modification of practices at the level of democratic institutions in the country. The concepts and conditions for democracy must take deeper roots in the Peruvian political system to avoid recurring to informal or non-legal methods to obtain goods and services. The environmental realm is not an exception in the way political practices are carried on. It only confirms what occurs at other levels of the system. The Constitution and the Law have established clear distinctions and separation of powers. However, every time those threaten the interests of the Executive branch (represented in this case in those of the Mining sector), the latter responds through counter regulations to favour its own.

The gaps in the institutional and regulatory framework only can be understood in such context. Sometimes, those originated through the lack of knowledge or understanding of policy makers on environmental issues. Most times, those originate by an explicit intention of the Executive branch, as central government, to maintain a *status quo* that favours its policies and undertakings. The contradictions in the regulations must be corrected, either in a balanced and consensual way, or in favour of a sector, in a clear and indisputable manner, leaving no room for incoherencies in the system, and without weakening Sectors in the process.

The lack of resources can be addressed and solved, at least partially, through international cooperation schemes, development projects, and funds. In fact, some of those have been working with different degrees of success in the country, as it is the case of PROFONANPE.

A. Costs

Conflicts impose additional costs that are unnecessary. The most blatant example of this is the need to have parallel control systems to satisfy the requirements of both Mining and Health sectors. If both Sectors would reach an agreement (based on consensus) about a uni-

fied system of maximum permissible levels then companies will only need to have one control system. This is a clear example where the logic of a sector environmental authority (as an alternative to a unitary one) instead of facilitating administrative procedures for mining operators, as was the alleged intention behind the decision, complicates those further. On the other hand, political will to reach a solution for the conflicts will be necessary, after so many years of misunderstandings and petty clashes between the Mining and Health sectors. Only a collaborative effort can bring a solution to avoid a showdown that only will weaken one sector in relation to the other.

The costs of the bill of the historical environmental liabilities have to be assumed. At present, an Environmental National Fund (*Fondo Nacional del Ambiente FONAM*) is trying to establish a coordinated approach with the Ministry of Energy and Mines.³²⁹ However, a starting date for programmes and projects has not been set yet.

B. Relations with private investors

Conflicts create distrust and insecurity among private investors.³³⁰ A first issue is how to interpret the powers of the different Sectors. Based on the scale of the conflict and the stakeholders involved, it can be that the central government decides differently in every case, even if the core issue at stake is the same. This does not help efforts to attract additional private investment to the country. This argument is valid not only for the Mining sector but also for all others in a similar position.

Conflicts put mining operators in the situation of being subject to administrative sanctions and criminal procedures without being fully aware of the legal grounds that base those accusations. This may occur when the Mining sector does not consult with others (Local Governments, other sectors) over the implications of a mining project. Something that is permissible under the rules of the Mining sector may not be under the regulations of others. This very delicate issue complicates the more by the fact that, at a certain point, environmental regulations in mining activities become a matter of tables, formulas, and scientific information. In addition, conflicts delay unnecessarily the extension of permits, authorisations, and licenses.

³²⁹ See, FONAM home page, www.fonamperu.gob.pe

³³⁰ Most of the statements in this section resume the opinions of representatives of mining companies (managers and lawyers) participating in a conference on the legal framework of the mining sector in Peru, organised by UPC, in 2001.

A third issue is the social responsibility of private investors in the areas of operation.³³¹ In particular, they refuse to be obliged to provide services and conditions that are an obligation of states and governments. This situation is expressed when populations ask the companies for health or education facilities, which are, in the first place, a responsibility of the Peruvian state, not being fulfilled for political or economic reasons. Moreover, private investors fear those social claims attached to the escalation of conflicts (through demonstrations, mass mobilisations, citizens' opposition, etc.) may disrupt conditions for mining development.

With some right, investors fear they have to pay the bill in case the state negotiates an agreement with the citizens. Investors consider that in paying their rights and taxes all obligations are fulfilled. To reallocate resources to the region where the investment is taking place is a problem of the state. At the same time, investors are aware that when social demands are not fulfilled, mining activities can become a target for social grievances. This is an issue where there is no consensus in the mining operators about what kind of social responsibilities should be taken over. This topic is related also to the fact that there is still a large component of paternalism and discrimination towards indigenous and farmer communities among the cadres of professionals working for mining companies, which makes it difficult for them to understand the nature of the conflicts and the possible strategies to address those. Here, there is a gap between what the mining operators' policy may prescribe, and what the ones in charge of implementing it effectively understand.

Another source of conflict is the possible contradictory decisions of policy makers. This is a source of confusion for private investors in their activities. In the case of environmental conflicts emerging after the signing of a contract, usually governments and investors have not seen the situation coming, and private companies are not prepared to change their position unless conflict escalates to such a point that is obliged to do so. That was the case of Manhattan in Tambogrande.

Finally, conflicts generate an unnecessary showdown between mining operators and the different authorities (especially at the local level), which deteriorates not only the relationships with them, but also deepens the distrust among the citizens.

³³¹ This issue may need another research on its own. In the case of Peru, private investors tend to view social responsibilities of the company in a narrow approach. They provide handouts, and small infrastructure works or health facilities. They consider that they came to the mining areas to make business and not to do charity. They demand the state to take up responsibility for the development of the areas with its own resources. Social responsibility of companies is the support companies provide to society, the same that goes further than its contract and legal obligations. The most important document at this respect is "Global Compact," subscribed by trans-national corporations with the United Nations. See also, the Global Mining Initiative GMI.

C. Participation

Instruments for reducing and avoiding escalation of conflicts with the communities are not available in the regulations of the Mining sector. Some measures to improve communication and relationships with local communities have been established. The Ministry of Energy and Mines has created a Direction of Community Relations in its bureaucratic structure to deal with the problems derived from the interaction with communities and local actors. The Direction has produced theoretical and methodological handbooks to deal with conflicts, which may prove helpful for mining operators. However, there is no proof of factual improvement of relations in the field based on the information on conflicts in mining areas in the last years.³³² An attempt to modify administrative procedures of the Mining sector to allow third parties to have a voice to express their concerns is not acceptable by the officers of the Sector, which consider such as an attack to the competences and powers of the Ministry.³³³ Therefore, the issue of participation through access to information still needs to be tackled and acted upon by the authorities of the sector.

Another important issue is participation of the citizens in the benefits obtained through mining operations in the country. As explained before, the introduction of the mining canon might help to diffuse conflict when resources are invested in projects and programmes sensitive to the needs of people in mining areas.³³⁴ It is also important that citizens have a say in the way resources are spent, and that transparency and accountability instruments are introduced to ensure sound management. This should be the first step towards a fair participation in benefits. A second might be the introduction of schemes to make communities affected stakeholders in the projects.³³⁵ This would mean a radical change in the way mining projects are conceded and the role of the state to ensure that citizens receive a stake.

Finally, yet importantly, another cause of discontent is the issue of monetary compensation in case of environmental liabilities. This may vary from case to case. The Mining sector recommends that mining operators negotiate directly with the community or population af-

³³² Apart from Yanacocha, which will be presented in the next chapter, there have been a number of conflicts derived from mining operations in the last five years. The most serious has been Tambogrande. Others are Antamina (local anglers burned to the ground a port in construction intended to be used by the company to export its products), and Espinar, where the population has presented aggressive resistance against the attempts of the mining company to enlarge its operations.

³³³ Interviews with Mr Bonelli, DGAA-MEM, Lima, November 2001.

³³⁴ In the case of the Yanacocha gold mining exploration, the mining canon received by Cajamarca represented only a small percentage of the revenues obtained by MYSRL (MEM 2004.) In 1996, it was 0,1 percent; in 1998, it was 2,6 percent; in 2000, it amounted to 1,4 percent; in 2002, it went down to 1,0 percent; and, finally in 2004, it reached for the first time a highest of 3,4 percent.

³³⁵ Father Marco Arana, Director of GRUFIDES, has brought this proposal to the negotiation table, see, www.grufides.org. It is also mentioned in Knecht (2004.)

ected, ending in an unequal (asymmetric) negotiation because of the differences in resources, access to power, and knowledge. This is a clear example of why citizens can claim the intervention of the government in defence of their interests. From the outset, citizens are in a very weak position. The state (and the respective government) is called to be an impartial arbitrator that can hinder the unbalances of such negotiation. Unfortunately, this has not been the case in Peru. The rule is the state or government being more interested to support the position of the mining operator, and, consequently, citizens' rights are not represented and protected fully.

Therefore, conflicts produce discontent, distrust and a feeling of injustice among people.³³⁶ This sentiment is aggravated when the authorities do not act timely to their complaints. The interaction between mining operators and the local population becomes conflictive and can reach the point of violence. Citizens perceive the ministries, and central government authorities, as biased in favour of mining operators.

6.6. Preliminary Conclusions

The influence that the mining sector exerts on the Peruvian public policy for the environment is based on the strength of the sector in comparison to others, and its importance for the development of the country in terms of economic development. In the last years, Peru can report positive macroeconomic numbers based on the export value of mineral resources. This has been favoured by the constant increase of prices in mineral markets through the demand of Asian economies.

Explicit environmental policies in the Peruvian mining sector are directed to address the problems occasioned by mining activities, while at the same time, pursuing self-regulation and control through privatised schemes. Instruments of command and control are still preferred. Problems originated because of the lack of public participation channels in the administrative procedures of the Ministry of Energy and Mines. An attempt has been made to include those in EIA and PAMA procedures, but those are not been satisfactory enough to respond to the demands of the citizens, who have recurred in most cases to other instruments to exert pressure on the authorities. Policies also centred on controlling pollution and effluents at the source or point of emission, and not at the receiving bodies, which has led to problems with other sectors with control competences. In addition, the privatisation of the control schemes has proved insufficient and subject to controversy because of the modalities of contracting and payment.

³³⁶

Interview with Mr Palacin, CONACAMI, Lima, December 2001.

Implicit environmental policies in the Peruvian mining sector are based on the priorities of the overall public policy implemented by the Executive branch. This means that economic considerations take precedence over environmental ones. This situation is not meant to change in the future.

The mining sector institutional framework confirms, in practice, the upper hand of the DGM over other units not only within the Ministry of Mines but also over equivalent units in other ministries of the Executive branch. This situation should be either incorporated explicitly in the regulations to avoid grey areas that weaken further the political standing of the bodies left aside (DIGESA, INRENA), enhancing the stance of the DGM, or modified to reach a balance among the different units.

The mining sector regulatory framework is one of the most complete in the context of the Executive branch in Peru. However, it has a clear bias towards mining operators in contrast to the communities affected by projects. Regulations to incorporate spaces for citizens' concerns should be included.

Conflicts emerging in the institutional and regulatory framework reflect only the pitfalls of the policies implemented through it. The prevalence of the Executive branch and its interference in the powers and competences of other sectors and bodies can only be explained by a narrow understanding of how public policy is carried on. This is demonstrated by the implications of those conflicts in the overall situation of the Sector. Instead of a sound management towards conflict resolution, escalation and even violence occur. Additional costs, incertitude at the level of relations with private investors, and lack of credibility before the citizens are the consequences. With a pro-investor policy that does not allow any possibility of participation by the citizens, the Mining sector is achieving exactly the contrary of what is meant to, risking the attraction of further private investment for mining projects in Peru.

VII. THE PROBLEMS IN A NUTSHELL: MYSRL AND GOLD MINING IN CAJAMARCA

In this chapter, the case of gold exploration in the Northern Peruvian Andes by *Minera Yanacocha Sociedad de Responsabilidad Limitada* (MYSRL) is analysed. This is an example of the problems stemming from large-scale mining projects. Yanacocha was meant to be the start of a gilded era for mining in Peru. On the contrary, the situation has evolved to a myriad of conflicts among the population, the mining company, and the state, in part because of long due social and economic claims by the citizens, who pursue to improve their living conditions and to have the right to model their own development. Gold mining in Cajamarca shows that positive macroeconomic numbers do not necessarily reflect on better conditions for the population. Mining is not the sole answer to the development problems of Peru.

Before the entrance of MYSRL in the Peruvian mining sector, the country had as main mineral exports copper and silver. Gold was extracted mainly at small-scale and informal levels and it was meant for the internal market. The Yanacocha mining project meant the incorporation of Peru to the group of big gold producers and exporters in the world. At present, Peru is the eight largest and its gold potential is only started to be exploited.³³⁷ The Yanacocha project was also the first important large mining investment in the country since the seventies, and therefore, meant the re-incorporation of Peru to the global economy, after years of pariah status provoked by the disastrous economic and political conditions of the end of the eighties.

7.1. The Case

The Yanacocha mining project is a special case because it was the first project implemented in the country as a direct consequence of the reform of the state process of the nineties that led to an open economy and the promotion of private investment in natural resources. The psychological effect was important because policy makers believed that the new economic and market conditions would help to multiply large-scale mining endeavours. Yanacocha would set the example for the next projects to come. The participation of the IFC in the project through a share in the joint venture was a further guarantee for prospective investors. It

³³⁷ Gold production in Peru has grown steadily since 1990. In 1990, before the starting of production of Yanacocha, it was of 20,2 thousands k. In 1995, after the starting of production, it was of 57, 8 thousands k. In 2000, numbers went up to 131,2 thousands k. Finally, in 2003, it reached the record numbers of 172,9 and it continues growing because of new ores that started production in the last three years. In fact, in 2002, the reserves in the site were calculated at 36,6 millions tm, enough for extraction in the next 30 years (Zileri 2002.)

was important to stress that the conditions agreed between the Peruvian state and MYSRL investors would be respected in full and would not be subject to change. The start of the Yanacocha project also meant a huge political gain for the Executive branch and the economic policies pursued by the government of President Fujimori.³³⁸ It was proof of the right direction of the policies, and an incentive to carry on further. Politicians at the local, regional, and national level rode on the Yanacocha project success as well.

A second characteristic was that the Yanacocha project was to be carried out with the latest technologies available for gold extraction, including the highest possible environmental protection standards. This was an innovation in the context of mining projects in Peru, and it became a milestone because of the importance of those activities for the overall economy. For the first time, environmental issues were addressed as part of a large-scale investment project and this was to be a further signal for future investors. Yanacocha would constitute the measure for every mining project to be implemented in Peru in the future. Yanacocha was part of a new generation of mining projects that helped introduce state-of-the-art technologies and new working systems (Kuramoto 2000: 5 and 8, Newmont Mining Corporation 2001.)

The MYSRL gold mining project is a joint venture of Newmont Mining Corporation (51,35 percent), Compañía Minera Buenaventura S.A. (43,65 percent), and the International Financial Corporation IFC of the World Bank (5 percent). Newmont is the largest gold explorer in the world³³⁹ and it operates in Peru under a subsidiary: Newmont Peru Limited. The latter rents operation rights from the Peruvian company *Sociedad Minera de Responsabilidad Limitada Chaupiloma Dos de Cajamarca*. Buenaventura is one of the biggest Peruvian mining companies, whose major shareholders are the Benavides family. The IFC belongs to The World Bank Group.³⁴⁰ At present, Newmont Peru is in charge of the operative management of the project.

The project represented the first important foreign investment in the Peruvian mining sector in twenty years. At present, it is already the largest gold producer in Latin America (Newmont 2001, OXFAM 2002, and Zileri 2002.) The MYSRL operation represented, in 2000, 55 percent of Newmont Mining Corporation overseas production (19 percent of its total

³³⁸ The mine complex was inaugurated on 23 July 1992, in presence of President Fujimori.

³³⁹ In the last years, Newmont acquired the control of Australian Normandy Mining Limited and Franco-Nevada Mining Corporation Limited of Canada, becoming the largest gold producer in the world, the company with the largest gold reserves in the world and the company that offers the lowest prices in the international market. It operates in the United States, Mexico, Indonesia, Australia, Uzbekistan and Peru (Leyva and Jahncke 2002: 18.)

³⁴⁰ IFC has planned to sell its share in the joint venture in 2004. Up to the present, the sell has not taken place.

production). The operation is located in the Northern Peruvian Andes, near the city of Cajamarca.

The department of Cajamarca has a total area of 33,317 sq km. 72,1 percent of the population is urban, against 27,9 living in rural areas. Around a quarter of the total area is used for agricultural purposes, over the national average. Only around 10 percent of agricultural land has access to irrigation systems. Life expectancy in the region is 67 years, lower than the national average. Illiteracy rate is of 27,2 more than double of the national average of 10,3 percent (Municipalidad de Cajamarca 2004.) Only, 11 percent of the population has access to water for human consumption in Cajamarca (OXFAM 2002.) The distance from Cajamarca city to the capital city, Lima, is 856 km. The department of Cajamarca has 13 provinces divided in districts. The latter are divided in “*caserios*” or “*comunidades*.”³⁴¹ The capital city, Cajamarca, has around 140,000 inhabitants. The department of Cajamarca has 1,6 million inhabitants, the most populated of the Andes of Peru. The department has the highest percentage of rural population in the country. Cajamarca has been historically one of the poorest departments of Peru. In 1962, it was the second poorest. In 1994, it was the fourth poorest (Knecht 2004.)

The MYSRL complex in the department includes five open pit mines; three leach pads and two gold recovery plants. It is located 25 and 48 km north of the city of Cajamarca, at an altitude between 3,400 m and 4,200 m above sea level. The mines are Carachugo, Maqui Maqui, San Jose Sur, Cerro Yanacocha, and Cerro La Quinoa. The total area of the mines is 25,000 hectares (Leyva and Jahncke 2002:16.) Yanacocha has identified additional fourteen potential mines in the area of its concession (Deza 2002: 56.)

MYSRL employs directly approximately 1,200 workers and it has 2,000 companies under contract. The company does not need to employ a higher number of workers due to the high technology it uses. Moreover, it does not generate industrial clusters in the area of Cajamarca as it acquires its materials outside the region, mainly in the capital city, Lima. Only 3 percent of MYSRL goods purchases are made in Cajamarca and, in the case of services, it amounts to 15 percent (Kuramoto 2000: 59.) Yanacocha is considered the most profitable gold mine in South America (OXFAM America 2002), because of the extremely porous ores that can be mined and placed directly on to leach pads without crushing the mineral (Newmont 2000: 10.)

³⁴¹ A community counts among 30 to 300 families. They do not live in a village, but spread over the terrain, near their fields. A “*comunidad*” is formed by “*campesinos*,” who have grouped themselves in the time. There is strong identification between a campesino and his community (Knecht 2004.)

The mine has comparatively low cash costs due to the above-mentioned heap-leach-without-crushing process. The costs per ounce dropped since 1999 and averaged US\$ 88 per ounce. In 2000, the operation reduced costs per mined tonne 35 percent to 77 cents. Total production at Yanacocha, in 2001, reached approximately two million ounces. The mineral reserves have ten folded from 3,7 million ounces in 1993 to nearly 37 million at the end of 2000. The current oxide reserves provide a projected twenty year mine life (Newmont 2001: 10-11).

The growth in the number of conflicts has been steady. The environmental conflicts emerged in the region in the last years can be divided in the following categories. The first one is soil and water resources pollution (e.g. rivers, underground waters, and lakes), provoking the death of cattle and fisheries, and originated by the mining operations. Soil and water pollution occurs within the mining complex and adjacent areas. Danger of pollution of the sources of water for human consumption has emerged as a problem in the last years. A second kind of conflicts refers to the spill of toxic substances originated as by-product of the mining operations in populated areas. There have been threats and actual accidents with consequences for human health (e.g. mercury, cyanide, arsenic.) In addition, a third type of conflict has a socio-economic character and relates to the land problem originated by the entrance of MYSRL in the region. During the period 1993-1996, there were few discordant voices on MYSRL activities. The conflicts were mainly about the company buying the land of the local peasants (*campesinos*) at very low prices, and over the cultural and social changes emerging from the attitudes and behaviour of the newcomers (e.g. difference with local salaries, growing criminality.)

It is very important here to explain the characteristics of the local population in Cajamarca. It is not what is understood traditionally as indigenous peoples as the term is used at present in international documents. In Peru, the term "indigenous peoples" is applied to those who had a "pure" ethnic origin and may assert a nation claim. However, Peru is a society where a great deal of intermarriage takes place. Knecht (2004) properly explains the issue as of two interpretations. On the one hand, it is thought that 60 percent of the population of Peru can be qualified as indigenous based on race considerations. On the other, it is argued that 90 percent of the population is actually of mixed ancestry, reducing the number of persons of "pure" indigenous descent to 10 percent. In reality, it can be argued both ways because in Peru, the term "indigenous" has an ethnic connotation, and historically, differences in the country have been set upon race and not ethnic criteria. This is a sort of consensus even at the political level, when the parties of the left refer to rural populations as "*campesinos*" (peasants) and not "*indios*" (indigenous) to stress that economic causes and not ethnic ones deter-

mine the situation of the poor in the countryside.³⁴² Hence, the term “indigenous peoples” in Peru is only applicable to the Amazonian ethnic groups (around 200 hundred thousand citizens). The Constitution of 1993 (and previously the ones of 1933 and 1979) refers to *comunidades campesinas y nativas* (peasant and native communities). “Peasant” refers to the inhabitants of the rural areas in the Peruvian Andes, and “native” refers to the nationalities of the Amazonian basin. In this analysis, the terms are applied as in the Peruvian Constitutions.

In the case of Cajamarca, an important historical factor makes even more difficult to use the term “indigenous” to refer to the populations of the rural areas. Before the Spanish *conquista*, the region of Cajamarca was an independent kingdom with its own language, Cuismanco. It opposed fierce resistance to the Inca rule in their territories and a twenty-year war was necessary to defeat them. Therefore, when the Incas conquered the area they enforced Draconian measures to put down local rebellion. One of those was a policy of forced settlements and resettlements. People from the region were taken to areas as far apart as the Southern Andes,³⁴³ and people of Quechua origin (the ethnic group of the Incas) were taken to Cajamarca. In fact, the name Cajamarca comes from the Quechua language (Caxamalca) and means “the land where the crops frost”. The Cuismanco people did not learn Quechua as a form of resistance. The Quechua people settled in the areas of Chetila and Porcon (the actual site of the MYSRL compound) and remained among themselves, keeping their language. When the Spaniards came to Cajamarca, the Cuismanco considered them as liberators, and many joined their armies against the Incas. They identified to the point that they became Spanish speakers and the Cuismanco language disappeared (Knecht 2004).

The Spaniards felt so comfortable in such loyal region that they organised several waves of settlers from the Peninsula, mostly poor or persecuted. A group of *conversos* (Jews forced to convert to Catholicism) settled in and around Celendin, one of the most important trade centres of the department. Several groups of Extremenos, Basques, and Galicians also settled in the highlands. This people on most did not adopt the feudal manners of the original Conquistadores and many did intermarriage with the locals and adopted their culture, customs, and dressings. To the present, it is possible to find descendants of these groups, white and green-eyed dressed in *campesino* attire, in the communities of the highlands of Cajamarca.³⁴⁴ Again, all these groups, which represent an important number of the population of

³⁴² In fact, the most important intellectual of the left in Peru, Jose Carlos Mariategui, established those differences in the political discourse during the thirties.

³⁴³ Researchers calculate that 60 percent of the population of Cuismanco may have been forced to resettle in other areas of the Inca Empire (Knecht 2004.)

³⁴⁴ Interview with Mr Benites, INCAAP, Cajamarca, November 2001. Another feature of life in these communities is the Sunday mass ritual, when, dressed in full mourning attire, people go down to the village

the rural areas in Cajamarca, are Spanish speaking. These makes very difficult for Peruvians to use the term “indigenous” to refer to them, as it is used mainly to connote people who speak Quechua. In addition, in Peru, another term, “*indio*,” has a negative connotation associated to barbaric, wild, backward, non-urban, and therefore, it is considered politically incorrect to use it. The terms in use are “*campesino*,” “*nativo*,” or “*indigena*.” Hence, the communities in Cajamarca affected by MYSRL activities can be referred to as *campesinas*, in general, with one case (Porcon) of *indigena*. For Knecht (2004), the terms “*indio*” and “*campesino*” in Peru denote a sociological and cultural status.

After 1996, grievances and discontent emerged because of the failure of MYSRL to offer effectively jobs to the local population. This has to do with the limited generation of direct employment of mining operations, which is an activity requiring specialised labour (Glave and Kuramoto 2001: 2 and 15.) Such kind of trained personnel is not available in the region of Cajamarca, and has to be brought in from coastal urban areas or other mining zones. This is cause of frustration in the local communities, which had expected most of their members to be hired by MYSRL. On top, to reduce its operative costs, MYSRL essays long-shift systems in exchange of longer rest days for the workers. Instead of three eight-hour shifts, two twelve-hour shifts are used, additionally reducing the number of workers.³⁴⁵

Besides, some Peruvian NGOs, at the local level, tracked down Newmont’s international environmental record.³⁴⁶ A series of environmental concerns started being expressed through the local press. Among the most active NGOs were GRUFIDES and ECOVIDA.³⁴⁷ In the meantime, in Lima, the story of Yanacocha was still being presented as a success for the country’s economy and for the government’s policies to attract foreign investment.

In 2000, after the mercury spills incidents, population and local authorities asked themselves what would be the consequences in case of spill of other dangerous substances

church, women carrying baskets with flowers. Cajamarquinos note that the people of Extremadura (Spain) brought this costume to the region.

³⁴⁵ Total employment in the mining sector grew only in 12 percent during the nineties, whereas production of metals grew more than 50 percent and, in some cases, more than 2,000 percent. In the large-scale mining employment diminished from 29 thousand to 23 thousand workers up to 2001. Medium-scale mining doubled employment (from 15 thousand in 1990 to 30 thousand in 1999), making up to 50 percent of employment in the sector (Glave and Kuramoto 2001: 15.)

³⁴⁶ It was found out that Newmont had several processes before the US EPA due to environmental pollution. Among the cases were Midnite in the Indian Reservation of Spokane (pollution of the river Cala Azul), where Newmont had to undergo Superfund procedures. A second case was California Gulch, through Newmont’s subsidiary Resurrection Mining Company. In this case, there is a threat of starting of Superfund procedures. A third case is Grey Eagle (pollution of the river Klamath and the “Cala Indio” pound). Finally, a fourth case is the Idarado Mining Company where remediation and restoration were to be paid by the company in full.

³⁴⁷ See the websites of GRUFIDES, www.grufides.org, ECOVIDA, www.ecovida.org, and OXFAM America, www.oxfamamerica.org (which finances the activities of the former) to find daily information on campaigns, activities, and opinion articles. In addition, see the websites of international campaigns led by Project Underground, www.moles.org, and No Dirty Gold, www.nodirtygold.org.

used in gold refining, as arsenic, where those substances were being disposed, what kind of measures were foreseen, etc. The environmental impact assessment of the Yanacocha operation was never discussed publicly. NGOs at the local and national level, plus citizens and local leaders, put the government officials at the national level under pressure requesting access to information. Subsequently, it was confirmed that government officials at the local level had little information of the conditions of the MYSRL operation, including contractual clauses.

In the last three years, a process of questioning the model of development pursued by the government in Cajamarca, and represented by the purpose and achievements of Yanacocha is taking place. This has been manifested mainly through the active resistance of the population to its activities (organised strikes and protests), and the local governments (especially at the district level) strong stance against the company. An example is the declaration of the site of a new operation, Cerro Quilish, the legal status of a municipal natural reserved area, actively resisting the decisions of the Ministry of Energy and Mines. At the same time, the Yanacocha resistance has triggered further opposition to similar projects in other areas of the country (specifically, the Tambogrande operation in Piura, by Manhattan Co. (Canada), the Antamina operation in Ancash by Barrick Co., and lately, the Espinar operation in Cusco). These last developments have provoked a re-arrangement in the role of the different actors, especially at the local level, who in being very active, have managed to open and take a wider space in the public debate of mining, environment, and development.

Finally, yet importantly, after twelve years of MYSRL operations in Cajamarca, the department has gone of being the fourth poorest department in Peru, to be the second poorest, with poverty levels comparable to Africa and Asia less developed regions (Leyva and Jahneke 2002). This blunt fact should call the attention of policy makers at all levels to find measures to address the conflicts in a balanced and impartial way.

7.2. Main Conflicts and its Consequences

The conflicts emerged in Cajamarca because of MYSRL activities represent the different sides of social claims and grievances largely shunned by governments in Peru. Conflicts are crosscut by issues of centralism against decentralisation, poverty, development models, urban versus rural, the capital against the provinces, among the most important. In such context, environmental issues are important as part of the paradigm of sustainable development that is being championed by NGOs and CBOs, active in the processes emerging in the last years, and also as an instrument to question the prevalent model of development based on

purely neo-liberal considerations towards the inclusion of issues of social justice and redistribution.

7.2.1. Economic and Social Conflicts: The Land Issue and Yanacocha

The main economic and social conflicts in the region of Cajamarca derive from the loss of land at the hands of MYSRL. In the Peruvian Andes context, land is related closely to customs and traditions of communities and its loss has been the trigger of social and cultural problems as well. MYSRL started operations in 1992 through a concession for mining activities from the Ministry of Energy and Mines (DGM). The area of the concession, albeit sparsely populated, included several peasants and indigenous communities who depended on petty agricultural and cattle activities to provide for income, in almost self-subsistence fashion.

To accede to the mining ores in the Cajamarca region, MYSRL opted for the strategy of buying the land from its proprietors or tenants, once the concession rights were secured. The alternative would have been to use the system of “*servidumbre*.”³⁴⁸ The purchase of land meant that MYSRL not only had mining concession rights to the sub-soil, but also was owner of the surface, avoiding payments, compensation, and restoration costs in the future. That strategy should have secured MYSRL’s tenancy without conflicts.

Between 1992 and 1996, MYSRL bought the land belonging to forty-one (41) families in the areas of Carachugo, Puruay Alto, Maqui Maqui, Negritos Alto, Cerro Yanacocha, and Combayo. The total area of the land was of 4,068,95 hectares. 87 percent of it was used by the proprietors to graze their cattle, while 12,2 percent was used to cultivate wheat and potatoes (Vicaria de la Solidaridad 1998, Leyva and Jahncke 2002: 22-33). The prices were paid in cash.

The first problem was occasioned by the prices paid by the company to the peasants. Although the report of IFC-CAO states that according to the Judiciary the prices were fair, it has been demonstrated that differentiated treatment upon the families existed. Families who sold first received lower prices (almost under market levels) than those who sold one or two years later. This, of course, led to critique and complaints from the peasants accusing MYSRL of unfair treatment (Leyva and Jahncke 2002, Knecht 2004.)

³⁴⁸ “*Servidumbre*” is a juridical figure where the proprietors of the land are obliged to give the surface of their property in use to the concessionary of mining rights, because the mineral substances are located in the underground soil. The mining concessionary must pay to the proprietor a rent for the right to use the surface, which belongs to the proprietor. At the end of the activities, the mining operator should return the plot, properly restored, to its original state.

A second issue derives from the uneven (asymmetrical) sides in the negotiation table. Most owners were illiterate, or with only two years of schooling, only one of them had reached secondary school without graduating. The child rate average in the families was of 4,8 children per family, meaning that approximately 240 persons in total were affected. On the other side was MYSRL with their Lima or foreign educated engineers and lawyers, pushing negotiations to the limits.³⁴⁹ The parties were not in the same position when discussing the conditions for selling of the land.

As a reaction, the peasants wrote a letter to the CNDH where they accused MYSRL representatives of lying, having exerted psychological pressure and verbal abuse. Peasants were “informed” that if they did not sell, the state would expropriate their lands without paying any compensation (which of course is not correct as any expropriation in Peru is against compensation). Additionally, MYSRL offered the peasants permanent jobs in the mine, social security, education for the children, roads improvement, pastures improvement, reforestation, and the right to live in their former lands and practice their petty agricultural and cattle grazing activities. None of the promises was fulfilled. *Vicaria de la Solidaridad* reports that Yanacocha gave employment only to some of the peasants and their children (26 families in total were benefited) for an average of two months at most.

In the Arana report (2002), additional details of the negotiation came up. The peasants of Cerro Quilish actually presented official complaints to the local authorities, especially for the abuse they were suffering (verbal and with the threat of violence). None of the authorities reacted. A complaint to the provincial state prosecutor was presented, accusing the company of usurpation and fraud attempt. The Cerro Quilish peasants were the latest to sell and got better prices than the other families. This means that those who had a hard stance and reaffirmed their rights were less overpowered by MYSRL, but that did not mean that later on, they would not experience the consequences of the sale.

Through the loss of their lands, the following social problems emerged in the communities. These were identified by both *Vicaria de la Solidaridad* (1998) and CEDAS (1999) reports:

- i. Twelve families moved to the city of Cajamarca, they lived in rented houses and were using the money for daily subsistence. Most of them are unemployed and do not manage to

³⁴⁹ In Knecht (2004), harrowing testimonies of the peasants on the treatment and humiliation they suffered in the hands of some MYSRL personnel are found. Some of these injustices were reversed through the intervention of the Catholic Church, which acted as mediator to obtain late compensation for the peasants. The strategy of denouncing these ill treatments to the main office of Newmont Corporation in Denver also worked out in favour of some of the affected.

get jobs. They have lost the social support networks of the countryside. Therefore, family violence problems and alcoholism had emerged.

- ii. Six families stayed at the land sold because they did not have other place to go.
- iii. A group of families have very small plots and the production is not enough even for self-subsistence.
- iv. On receiving the money, some families engaged in small businesses like taxi, transport, or petty trade. However, most of them, being people from the countryside, were not used to deal or work in the city under stress situations. The businesses went bankrupt leaving the people poorer than before.
- v. Most of the families do not have an own house. They have hardly access to health services and electricity service as well.
- vi. The children of the families have serious difficulties to attend school. Some of them have to work to help their families subsist.
- vii. The families do not belong to any sector or group organisation, in the city they are like “fishes out of the bowl.”
- viii. Problems of family disintegration due to the poverty they are suffering. Members start to leave the family unit and migrate to other cities and towns.
- ix. Most members of the families (women and the aged) are illiterate and they are the most affected by the instability situation.

In other words, the selling of land to MYSRL, with very few exceptions, threw most of the families affected into a life of extreme poverty as displaced in the cities. The peasants recurred to the Catholic Church to press for a solution to alleviate the social and economic consequences of the purchase of land by MYSRL. The Catholic Church acted as a mediator between the citizens and the company. At present, it manages the revolving fund set up to implement projects and programmes to support the families (Leyva and Jahncke 2002.)

7.2.2. Environmental Conflicts

Environmental conflicts in Cajamarca have to be analysed against the background of the delicate ecosystem of the area. A first issue is the sensible geographical environment where MYSRL carries on its operations. The mine sits atop the continental divide, water draining into four watersheds (one runs to the Atlantic, three run to the Pacific). Therefore, it was clear from the outset that proper water resources management was to be essential in the environmental plan of the operation.

A second issue is that most of the environmental problems caused by MYSRL were caused by the nature of the operation itself. Gold mining is an extremely damaging type of extraction activity and it was foreseeable from the beginning that efforts were to be undertaken to prevent or minimise the risks. The mine employs a cyanide leaching process to extract gold from the ore (OXFAM America 2002.)

Because of the hopes the population of Cajamarca put in the MYSRL operation, the environmental incidents in the period 1993-1998 were largely ignored or dismissed by the competent authorities (DGM, regional offices.) However, at the end of the nineties, a feeling of disappointment in the success of Yanacocha took root in the population, leading the citizens to start harshly criticising the methods, strategies, and actions of the company before and during the operation. This change of mood in the public opinion had consequences at the level of policy makers and political movers and shakers, not only in Cajamarca, but also in the country. Because of Yanacocha, other large-scale-mining projects started to be questioned. This was exactly the contrary of what the example of Yanacocha was meant to be, at least from the point of view of the government.

A series of environmental incidences have been attributed to the MYSRL operation. Most following up has been taken over by like-minded NGOs as ECOVIDA and GRUFIDES, because of the inaction of the competent authorities of the Mining sector in answering to the complaints of the citizens.

TABLE 13: TIMELINE OF ENVIRONMENTAL INCIDENTS ATTRIBUTED TO MYSRL (1993-2001)

Date	Attributed Facts	Place of Occurrence	Attributed Danger or Consequence
Nov. 1993	Chemical substances spilling at exploration camp.	Quilish	Poisoning of cattle. Health problems for population.
Sep. 1998	Heavy metals in water for human consumption.	Quebrada Encajon	Risk for Cajamarca population.
Dec. 1998	Mineral waste of in River Llapino.	San Pablo, San Miguel	Death of fishes in 20 km of River Llapino.
Dec. 1998	Spill of ammoniac due to a transport accident.	Way from Tembladera to Chilete.	Death of fishes in River Jequetepeque.
Jan. 2000	Mineral wastes of Yanacocha with arsenic.	Granja Porcon, Gallito Ciego.	Death of fishes in 180 km of River Jequetepeque and of 12,000 in Granja Porcon.
Jan. 2000	Mineral wastes of Yanacocha.	River Llaucano basin.	Death of fishes in River Llaucano.
Jun. 2000	Mercury spilling	San Juan, Choropampa, Magdalena	Poisoning and intoxication of circa 1,200 persons.
Aug. 2000	Mercury traces in houses and a school in the city of Cajamarca.	Jr. Ayacucho and CE Rafael Loayza, Cajamarca.	Intoxication of circa 40 persons.
Jan. 2001	Mineral wastes of Yanacocha	Rio Llaucano basin.	Death of fishes at El Ahijadero farm and in River Llaucano.

Jan.-Mar. 2001	Two oil spills in River Jequetepeque basin.	River Jequetepeque.	Fishing activities stop and intoxication of inhabitants.
Mar. 2001	Heavy metals in River Grande and high acidity in water for human consumption in Cajamarca city.	Puruay.	Death of fishes in River Grande and Posada del Puruay, 4 km from Cajamarca city.
Aug. 2001	High levels of water acidity.	Granja Porcon fish farm.	Death of fishes.

Source: Ecovida and GRUFIDES, Cajamarca, December 2002

It is important to point out that all these incidents are put to the account of MYSRL by the population and local leaders. In interviews, people did not have any doubt that those were the sole responsibility of Yanacocha.³⁵⁰ In most cases, no action was taken on the part of the company, arguing that it could not be scientifically demonstrated that the operation effectively produced those damages.³⁵¹

Scientific proof that the damages effectively can be attributed to MYSRL is actually the Achilles heel of the citizens of Cajamarca. They do not count with the wider financial resources to pay for expensive studies that would demonstrate so. Diverse attempts from the part of local NGOs, with the support of international foundations have been made to close the gap,³⁵² but the amounts of money are not comparable to the ones available to the company. In this crucial issue, MYSRL has an advantage.

Apart from the above listed incidents, three environmental conflicts are very much at the core of the struggles in the region. The first was the so-called “Choropampa disaster,” mercury spills by MYSRL contracted transports in different locations in 2000. The second has emerged in the last years and it was triggered by the mercury scandal: heavy metals pollution in the water for human and animal consumption in Cajamarca. The third one is the start of exploration and extraction activities in Cerro Quilish, threatening the wetlands and natural draining areas of various mountains (*bofedales andinos*).

³⁵⁰ Interviews with Mr Sueiro, CooperAccion, Lima, November 2001; Interview with Mr Palacin, CONACAMI, Lima, December 2001; Interview with Mr Benites, INCAAP, Cajamarca, November 2001; Interview with a Leader of the Ronderos of Bambamarca, Bambamarca, November 2001; Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003; and Interview with Mr Aroca, OXFAM America, Lima, April 2003. In addition, the testimonies and opinions of ronderos and peasants encountered in field visits to the areas of Bambamarca, Chota, and Cutervo, in November 2001, are taken into account.

³⁵¹ See MYSRL website, www.yanacocha.com. Several press communiqués have been released refuting the accusations of NGOs and CBOs.

³⁵² According to Mr Benites (INCAAP) and Mr Jahncke (FEDEPAZ), there was talk on setting a system of citizen monitoring following similar initiatives in the USA. However, the funding, training, and institutional setting were lacking. Mr Benites was in favour of basing the system on the rondero organisation, while Mr Jahncke considered local NGOs would be appropriate to host it.

A. Mercury Spills in Choropampa

For the moment, this has been the most serious environmental pollution incident since MYSRL started operating in the region of Cajamarca. The victims were mainly the population of the town of Choropampa and nearby villages. The consequences for the environment in the area of the spills did not attract the same attention because of the serious injuries sustained by the people through mercury poisoning.

In the gold production methods carried on by MYSRL, a sub-product is obtained, inorganic metallic mercury. Due to the growing gold production, the mercury production has incremented as well. Mercury is produced at the Carachugo refinery (Defensoria del Pueblo 2001: 14). The sole inhalation of mercury is one of the most dangerous forms of mercury poisoning. It is important to point out that MYSRL did not consider the production, transport and trading of mercury in the EIA of the Carachugo refinery (Leyva and Jahncke 2002: 34.) The report of IFC-CAO also mentioned that mercury emissions were identified only in November 1993, when the metal was visible in the refinery (IFC 2000: 14.) In addition, at the time of the spills, no specific regulations on the transport of mercury and other hazardous substances existed in the Mining sector. MYSRL's mercury is taken to Lima by land, using open trucks. The transport route crosses several villages and towns. The approximate drive duration is fifteen (15) hours. A contractor company, RANSA Comercial S.A., carried on the mercury transport.

On 2 June 2000, one-hundred fifty-one (151) kg of mercury were spilled along fifty km of the driving route to Lima in sixteen points. The spills were located among the towns of San Juan, and Magdalena, and the village of San Sebastian de Choropampa. The reports of IFC-CAO and ECOVIDA, the documentary of Guarango, and the press reporting on the incidents are a list of everything that is not supposed to be done in environmental safety matters in the context of corporate social responsibility.³⁵³

An outline of the most important facts related to the mercury spills in Choropampa follows (Arana 2000: 37-77, Defensoria del Pueblo 2001, ECOVIDA 2000, IFC-CAO 2002, Leyva and Jahncke 2002: 36-84, Newmont 2001: 24, 46.) On 1 June 2000, the driver of the corresponding truck received a mercury cargo from MYSRL. The driver pointed out that the cargo was not properly sealed. In addition, he felt unwell. Mercury tones were transported on

³⁵³ Wayne Murdy, Chairman & CEO of Newmont Mining Corporation stated in a speech to external stakeholders in Australia that Newmont's social responsibility policy "is built on the principles of sustainable development, acknowledging that our future is dependent on our ability to develop, operate, and close mines consistent with our commitment to sustainable development, protection of human life, health, the environment, and to adding value to the communities in which we operate." (Murdy 17 November 2003.)

open trucks. The tones were not labelled properly. Hence, it was not possible to identify them as mercury. On 2 June, the spill occurred.

Once the spill was reported no action was taken, neither from MYSRL, from RANSA, or from the competent authorities. MYSRL representatives in the site and medical personnel of the area dismissed the mercury effects in the people as harmless. Only on 14 June 2000, when the results of the blood and urine tests of the population became public, it was acknowledged that a massive poisoning with inorganic mercury had taken place. MYSRL and RANSA representatives mislead the population informing that the mineral was not harmful and that did not pollute. Moreover, they offered a reward for each kilo of mercury recovered and taken back to them. Furthermore, MYSRL and RANSA reported a lesser amount of mercury being spilled (four litres, later eighty kilos) than it actually was. As it was later stated, the total was of 151 kg. One person fell in coma and has no recovered since.

After demonstrations and strikes of the population affected, MYSRL proceeded to pay a compensation fee to some of the victims of the disaster, through extra-judicial settlements. It also assumed some commitments in the area of San Sebastian de Choropampa, e.g. infrastructure, health care. In addition, it contracted a short-period health insurance for the women of the area.

Shortly after the spills and following a mining sector report on the causes and the failures in safety procedures, the Peruvian government fined MYSRL with the amount of US\$ 500 thousand the same that went directly to the Sector arks in Lima. It has not been reported if part of the monies was used in restoration measures in the areas impacted by the spills.³⁵⁴

In addition, up to the present, there is also the suspicion by the population and NGOs that the spill was not only of mercury but also of arsenic.³⁵⁵ The confirmation of such hypothesis would mean, first, a most serious damage to the image of MYSRL, and second, that the consequences for the health of the population of Choropampa are still to be evaluated and to be seen in the years to come. The only indication for such suspicion is the levels of arsenic found in one of the victims of the disaster, and in the soil where the spills occurred. The latter case cannot be attributed to a source other than surface pollution.

The Choropampa spills were, in terms of conflict management, a public relations disaster for MYSRL. At the time of the incident, a government delegation was visiting the area accompanied by journalists of the main newspapers and radios of Lima. It was reported that

³⁵⁴ Interview with Mr Jahncke, FEDAPAZ, Lima, April 2003.

³⁵⁵ Interviews with Mr Jahncke, FEDAPAZ, Lima, April 2003; and Interview with Mr Aroca, OXFAM America, Lima, April 2003. See also Leyva and Jahncke (2002,) and Arana (2002.) In addition, GRUFIDES and ECOVIDA websites, www.grufides.org , www.ecovida.org .

the victims of poisoning were informed that they suffered an allergic reaction and not mercury poisoning. Besides, patients were brought to a hospital in Cajamarca where they were kept as inmates without the right to contact their families and inform anybody of their condition.³⁵⁶ Moreover, they did not receive any medical report or analysis results from the doctors and nurses (hired by MYSRL) in charge of surveying their condition. Finally, they were given a medicine to treat mercury poisoning, brought from the USA (DMPS, also used for arsenic poisoning) which is not approved by health authorities in Peru. All those incidents were reported to Church representatives by the patients and their families. The Catholic Church again took the role of mediator and broker to try to exact from the company better conditions for the victims.

Sixty-three kg of mercury were never recovered. It either evaporated or stayed in the atmosphere in suspension, as the area is a deep enclosed valley. In 2001, citizens of Choropampa underwent blood analysis to identify mercury levels. All of them had levels double or triple over the toxic values of the Ministry of Health. Additional consequences have been:

- i. Trade, commerce, and commercial transport in the area have diminished because of fear of contamination.
- ii. Reduction of the number of Choropampa inhabitants from 2,000 to 1,200 (through migration.)

The mercury spills in Choropampa have been the most serious environmental incident occurred in Peru in the last years. It was also a situation broadcasted up to the minute in the media, for which the sense of urgency and danger in the population grew. The management of the case by MYSRL constituted an attempt to minimise the issue and to hide the consequences to the victims. This fact should not be forgotten when analysing the conflict. To be underlined is the role of the Catholic Church, which under its pastoral mandate acted as mediator for the victims and as defender of their interests. The role of the government at its different levels was contradictory and inconsistent. Each sector pursued to reaffirm its own competences and not to find out what really happened and what would be the consequences for the population.

³⁵⁶

This is equivalent to kidnapping according to Peruvian criminal legislation.

B. Alleged Water Resources Pollution in Cajamarca

The most important likely source of pollution for water resources in Cajamarca is the cyanide and arsenic present in the lixiviation and refinement processes of MYSRL (Leyva and Jahncke: 2002: 85-90). Cyanide is obtained from the process of separation of gold from other metals, the Merrill-Crowe process. The presence of arsenic has not been confirmed by the company, albeit it is predictable that it can be obtained under the methods of extraction used. Both heavy metals are highly polluting and their leak in water sources would mean the death of all living bodies in the ecosystem affected.

Since 1996, the water supplier company of Cajamarca, SEDACAJ, has intensified quality controls in the sources of water for human consumption in the region. Those controls have showed the presence of rare heavy metals in the waters, some of them only possible to obtain as by-products of industrial mining processes. In almost all cases, the levels found were many times higher to the allowed maximum levels established by WHO and the Law of Water Resources.³⁵⁷ Officials of SEDACAJ, in collaboration with PAHO experts, elaborated the reports.

In 2001, as the amount of evidence grew, SEDACAJ took the step of requesting MYSRL start negotiations to assume the costs of the growing environmental pollution of water sources and to pay the costs of the scientific tests made by SEDACAJ since 1996. Up to the present, there has not been an answer from MYSRL, albeit the issue has been presented to the negotiation commission of the Dialogue Table of Cajamarca (*Mesa de Dialogo de Cajamarca*).

In addition, various cases of pollution of rivers and lakes were reported to the authorities, most of them mentioned in Table 13. The most serious impact reported by the population is the death of fishes in both open water bodies and fish farms recipient of those waters. Fish farms are a very important source of income for the communities of the area and the death of the resource would mean to narrow even more their sources of income. Among the cases are (Leyva and Jahncke 2002):³⁵⁸

- i. Death of fishes in the River Llaucano basin and in the origins of the River Tinte-Rejo. Analysis of two independent scientific laboratories, credited before Peruvian authorities, and of the Direction of Environment of the Ministry of Fisheries (now Ministry of Production)

³⁵⁷ Interviews with Mr Sueiro, CooperAccion, Lima, November 2001; and Interview with Mr Jahncke, FEDAPAZ, Lima, April 2003.

³⁵⁸ See also GRUFIDES and ECOVIDA websites, www.grufides.org, www.ecovida.org.

confirmed the presence of heavy metals in such amounts that only pollution from an external source could be the cause.

- ii. Death of fishes in Bambamarca. Analyses carried on by DIGESA confirm highest levels of heavy metals over the maximum permissible levels.
- iii. Death of fishes in River Grande and the Puruhuay site. DIGESA reported the presence of high levels of heavy metals. In addition, a report of the UNC confirmed the presence of cadmium and mercury in skin and parts of the fishes.
- iv. Death of fishes in the Porcon fish farm. Twenty-thousand fishes died due to precipitation coming from MYSRL factories. In this case, the company accepted its responsibility in a joint communiqué with the fish farm.³⁵⁹
- v. Oil and petrol spills. These have been produced mainly by accidents along the routes of transport, polluting agricultural areas. Victims have taken judicial action against the responsible companies (sub-contractors of MYSRL).
- vi. Spills on River Jequetepeque. The incident was reported in the Cajamarca press.

In the mid- and long terms, water resources pollution will be likely the most serious environmental problem in the region of Cajamarca. As the end of the operation is not foreseeable for the next three generations (Zileri 2002), the impact of the constant occurrence of spills incidents in the water sources can lead to most serious consequences for human health in the area.

C. The Conflict of Cerro Quilish

By year 2000, the irritation among the people of Cajamarca had extended from the rural to the urban areas of the department, mainly because of the Choropampa incidents. The articulation of rural and urban populations of the department determined that for the first time the claims and grievances of the people entered the public agenda. Therefore, the situation caught the attention of local and regional politicians who, surprisingly (in the light of their previous support to MYSRL), opted for a resistance strategy towards MYSRL. The clearest signal was the declaration of the Provincial Municipality of Cajamarca of Cerro Quilish and surroundings as a “municipal protected reserved zone.”

Cerro Quilish is a mountain located in the river Mashcon basin, at 3,800 m above sea level. It is considered the water reserve of the city of Cajamarca because the sources of water of the rivers feeding the treatment plants of water for human consumption originate there.

³⁵⁹ See MYSRL website, www.yanacocha.com.

Specifically, these are rivers Grande (60 percent of the water source) and Porcon (40 percent of the water source). The mountain acts as a collector of rainwater, which flows in the rivers and lakes of the region at different altitude levels. Cerro Quilish was part of the original area of concession of MYSRL in 1992. In 1993, MYSRL announced that its reserves amounted 333,000,00 gold ounces. This amount was corrected in 2002, as it was informed that the Cerro's reserves were at the level of 4,2 million ounces.³⁶⁰ In May 2000, the Ministry of Energy and Mines approved the EIA for the exploration phase at the site.³⁶¹ Exploration activities started the same year.

In August 2000, the Municipality carried on technical studies to determine the consequences of the beginning of mining activities in Cerro Quilish for the population of Cajamarca.³⁶² Having as background a previous municipal resolution of 1994, which declared the area intangible, local authorities went further proclaiming, through an "*Ordenanza*," a "Municipal Reserved Zone of Cerro Quilish and the Micro River Basins of the Rivers Grande and Porcon."³⁶³

In 2001, MYSRL and its contractors presented a writ of *amparo* against the Provincial Municipality of Cajamarca for violation of the rights to free private initiative, to work, to private property of land, and to the minerals in the underground soil. At Circuit Court and Higher Court of Cajamarca levels, the Judiciary decided in favour of the Municipality with the argument that the common good prevails over private interests. MYSRL took the case to the Constitutional Tribunal, which, in 2003, decided municipalities have the competence to declare municipal conservation areas. Notwithstanding, MYSRL had the right to extract minerals after the approval of an EIA process with the participation of the Provincial Municipality.

After the decision of the Tribunal, MYSRL started a PR campaign to convince the population of the viability of the Cerro Quilish project. In September 2001, several mass demonstrations took place in the city of Cajamarca. The conflict escalated to the point that the offices of MYSRL in Cajamarca were attacked and burned down. At the same time, a strange mercury incident occurred that created more distrust in the population.³⁶⁴

³⁶⁰ See MYSRL website, www.yanacocha.com.

³⁶¹ See, MEM website www.minem.gob.pe.

³⁶² The outline of facts has as sources GRUFIDES, www.grufides.org, FEDEPAZ (several email communications during year 2004,) MYSRL, www.yanacocha.com, and OXFAM America, www.oxfamamerica.org.

³⁶³ *Ordenanza Municipal N° 012-2000-MPC*, of 5 October 2000.

³⁶⁴ Mercury traces were found in the water pipes and taps of different houses in Cajamarca. This incident was never subject to investigation by any competent authority. Thus, the inaction only added to the tension that was building up among the population.

In July 2002, the Dialogue Roundtable of the Transitory Regional Office approved an independent EIA to be carried out by an international consultancy company. In December 2003, the final report of that EIA (by INGETEC) was presented. The report included 278 environmental recommendations to MYSRL for the improvement of its environmental management systems. Interested third parties interpreted this as a proof of the deficiencies of the environmental measures put in place by the company. In year 2003, MYSRL centred efforts in contesting the findings of the INGETEC EIA and discontinued its participation in dialogue roundtables or initiatives.

In January 2004, MYSRL presented before MEM a supplementary report to the EIA for the exploration phase at Cerro Quilish. NGOs from Cajamarca (GRUFIDES, ECOVIDA) and Lima (FEDEPAZ) presented observations to the document because of incongruence in the information. MEM also answered with a battery of observations. The authorities of Cajamarca, local and regional, did not react.

In April 2004, mass demonstrations around Cerro Quilish started. The population announced that MYSRL would not receive the so-called “social license” to extract in the area. In July 2004, the conflict escalated after MYSRL refused to comply with the decision of the Ministry of Agriculture that ordered the re-opening of *La Ramada* water canal, closed by the company affecting several communities.³⁶⁵ On 16 July 2004, MEM authorised the restart of exploration activities in Cerro Quilish.³⁶⁶ MYSRL immediately announced that activities would commence in 60 days, however, peasants of the area reported on 25 July that machinery had been brought already to the Quilish. On 16 August 2004, a mass mobilisation of peasants went to the city of Cajamarca. MYSRL answered with a PR campaign attacking the peasants, their leaders, and local NGOs.

On 26 August 2004, the peasants took the decision to escalate their protests, after an attempt to install a dialogue roundtable with the company failed. On 28 August, first clashes between police forces and peasants occurred in Cerro Quilish. From 01 to 04 September, the conflict escalated. Around 2,000 peasants took the highway of access to the mine. Further clashes occurred and the police forces made use of tear gas and helicopters to attack the peasants. Police and peasants were injured. Some peasants were arrested and mistreated.³⁶⁷ On

³⁶⁵ This decision was confirmed by the Regional Government of Cajamarca through Regional Resolution N° 006-2004-GR.CAJ/GRDE. Interview with Mr Waschl, MISEREOR, Aachen, May 2003. Mr Waschl travelled to the area and saw *in situ* the closed canal. MISEREOR supports financially church organisations in Cajamarca.

³⁶⁶ *Resolucion Directoral* N° 361-2004-MEM/AAM.

³⁶⁷ These incidents were reported in the national and international press. See Diarios “El Comercio”, www.elcomerciope.com.pe, “La Republica”, www.larepublica.com.pe, “Peru 21”, www.peru21.com.pe, and

Saturday 04 September, after negotiations between peasants, authorities, and MEM, with the participation of local NGOs, an agreement was reached for which the peasants would not attack the police forces trapped in the area, and, at the same time, the police would not attack the peasants. The most important issue however was the signature of the *Directorial Resolution* N° 427-2004-MEM/AAM that suspended the exploration activities of MYSRL in Cerro Quilish. However, the citizens had to wait some days until the Resolution was published in the official gazette. On 15 September, an indefinite strike in the whole department of Cajamarca started with mass demonstrations in the capitals of the provinces. In the city of Cajamarca, 40 thousand people attended the main demonstration. After the publication of Resolution 427, the people of Cajamarca suspended their protest measures.

On 4 November 2004, the Board of MYSRL released a communiqué where it was announced that it had asked for the revocation of its exploration authorisation in Cerro Quilish. In the same document, the company recognised that its presence in Cajamarca had provoked negative changes affecting the life and costumes of the population and expressing its willingness to hear the citizens, recognising mistakes committed and changing its strategy towards a renewal of its relation with the people of Cajamarca. MYSRL also announced its commitment to search for a solution to protect water resources, and its intention to establish dialogue mechanisms and consensus to overcome the disagreements towards the welfare and sustainable development of Cajamarca.

On 5 November, the Minister of Energy and Mines, Mr Glodomiro Sanchez Mejia, travelled to the city of Cajamarca to announce the revocation, upon request of MYSRL, of the exploration authorisation in Cerro Quilish. The Minister declared that the Cerro Quilish case was closed. However, on 7 November 2004, Mr Alberto Benavides de la Quintana of MYSRL³⁶⁸ declared to a local newspaper that the problem of Cerro Quilish reduces to an irrigation canal (Tual) in poor state that did not allow water to flow to the Cerro and that such situation was not related to the mining operations of the company. The problem could be solved if the canal was rebuilt. Once the problem of water was solved and, in agreement with the population, MYSRL would present again to the MEM a request to restart exploration in Cerro Quilish. Mr Benavides gave similar declarations to the television programme “Prensa Libre” broadcasted on 5 November 2004.

“Correo”, of 3 September 2004. Articles were also published in the political magazine “Caretas” and “The New York Times.”

³⁶⁸ Mr Benavides is Director of MYSRL and President of Compañia Minera Buenaventura, Peruvian shareholder of the company.

The conflict of Cerro Quilish is solved only for the time now, as deduced for the intentions of MYSRL, explicitly stated in the declarations of Mr Benavides. In the long term, if strategies to address conflicts with the communities do not change, it is foreseeable that the operations of MYSRL in the region may be seriously hampered. On the other hand, the citizens of the region of Cajamarca showed a great degree of commitment and solidarity with the grievances of the rural communities affected by the company, but only after the occurrence of other environmental incidents that threatened urban areas.

7.3. The Role of Stakeholders in the Yanacocha Conflicts

In the present section, the role of stakeholders in the Yanacocha conflicts in Cajamarca is analysed. Special attention is paid to the evolution of attitudes and the positions taken.

7.3.1. Compañía Minera Yanacocha S.R.L.

MYSRL plays a central role in the environmental conflicts emerged in the region of Cajamarca in the last years. Economically, it is the second most important taxpayer in Peru, after SPCC, and it plays an economic role in the region through donations and handouts. The situation of the company in relation to other economic activities in Cajamarca has been explained already. First, the lack of clustering between mining and other activities in the region, which provokes that most services and goods are contracted, hired or brought to Cajamarca from other parts of the country (Kuramoto 2000.) Being that MYSRL operations are highly sophisticated, it did not find possible sub-contractors among the local companies operating. In fact, there was almost no company in the position to offer services to MYSRL. The second issue is the promise of creation of employment for the region that MYSRL is not in the position to fulfil for various reasons (Glave and Kuramoto 2001.) First, a serious issue is the lack of qualified workers in Cajamarca that can be employed by the company. Second, the strategy of extending shifts hours in exchange of more resting days for the workers, thus employing less labour. Third, it is the nature of large-scale mining operations, which is a capital-, and not a labour-intensive activity. Those characteristics contradicted the official discourse managed by the government and the company to obtain the social license to operate in Cajamarca, which was that MYSRL would bring economic development and employment to the region. In turn, this would have an impact in the welfare of the population. This, of course, did not occur. In addition, because of those characteristics the economic impact of MYSRL is reduced to donations and handouts, strategy that will not bring development to the region in the

long term.³⁶⁹ MYSRL donates small infrastructure projects in transport, health, sports, and education; and, it presents different institutions (schools, universities, state bodies) with libraries, laboratories, and computers. This can be considered as part of a public relations' and not of a social development strategy.

In terms of political power, MYSRL has become a factor due to its strategies of cooptation to achieve collaboration towards its objectives. The company maintains a network of friendly politicians, media outlets, and other officers (e.g. police and military) that in exchange pay favours through political support at the local and regional levels. Politicians publish statements backing MYSRL positions, and the local media outlets inform only the side of MYSRL and attack critics and independent personalities.³⁷⁰ The company hires police and military personnel to escort their transport convoys from and to the coast.³⁷¹ Their influence extends even to some sectors of the Catholic Church in Cajamarca, through scholarships for students that prepare to priesthood (Knecht 2004.) This networking includes inviting personalities of Peru to visit MYSRL installations offering a tour of the complex.³⁷² At the national level, MYSRL does not use such explicit strategies, as it is understood that, in general, the opinion of the political and economic elite and the public in the capital city and other cities of the country is in favour of the project. The company also courts the community of NGOs, CBOs, and grassroots organisations in the region, using cooptation through the support of small development projects.³⁷³ MYSRL explains the support to the church and local organisations as part of its social engagement in the region.

Internally, the role of the different stakeholders of MYSRL presents some differences. Newmont and Buenaventura carry on the operative daily business and administration. Until 2001, this was arranged in turns: two years the “Americans,” two years the “Peruvians.” Both companies appointed trusted managers in each period. However, this scheme was put into question when increasing environmental problems emerged. Both sides (the “Americans” and

³⁶⁹ See, GRUFIDES, www.grufides.org, and Arana (2002.) Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

³⁷⁰ This instrument served MYSRL very well until the Cerro Quilish conflict escalated. Two newspapers, a radio, and a local TV channel report on every activity of Yanacocha in the most positive light. During the Cerro Quilish conflict, those outlets called the resistant peasants, “*campesinos borracho*,” (drunken peasants), and a local priest who played an important role as mediator, “*cura rojo*” (red priest). Gross insults were also published in other tabloids with the purpose of eroding the image of the citizens and NGOs active in defence of the peasant interests.

³⁷¹ See Wilfredo Ardito columns at www.aprodeh.org.pe, and www.cemisa.com.pe/reflexionesperuanas, and Knecht (2004).

³⁷² An example of the way MYRSL cares about institutional relations with the political class is showed in “Dore,” the internal magazine of Yanacocha. Several pages are dedicated to report on visits of important political leaders of the country to the complex, as for instance, parliamentarians, regional authorities, mayors, civil servants of Ministries, among others. See “Dore,” October 2001.

³⁷³ Interviews with Mr Jahncke, FEDEPAZ, Lima, April 2003; and Interview with Mr Aroca, OXFAM America, Lima, April 2003.

the “Peruvians”) denied each time being directly responsible of the environmental damages produced, alleging that the previous administration was in charge when incidents occurred or when the causes for the damage were provoked.³⁷⁴ This mutual denial reached its cusp, again, when the “Choropampa disaster” occurred. At that time, a Peruvian administration (Buenaventura) was in charge of the mining complex, and in the reports on the causes of the incidents, accusations were made in the sense that the lack of controls and reporting that took place was because of the sloppiness of the “Peruvians”, under Newmont control measures, the incident would have not happened. Since January 2002, Newmont is in charge of the daily affairs of MYSRL with Peruvian personnel. Another side of the differences between both sets of managers was showed during the conflict for land bought to unfair prices by the company. Peasants accused some of the Peruvian engineers of MYSRL of using abusive, threatening, and humiliating manners, putting them under duress to force them to sell the land. Through the intervention of the Catholic Church, some of these abuses were compensated, but the strategy was to complain directly to the Newmont headquarters in Denver so that they would take action over the behaviour of the Peruvian engineers and administration. The strategy worked in some cases of gross abuse (Knecht 2004.)

The IFC has had a relatively low profile in the conflicts. The IFC refers to MYSRL’s annual reports to inform other bodies of the World Bank Group. There is no direct intervention in the daily affairs and administration of MYSRL. This situation changed, again, when the “Choropampa disaster.” As news of the seriousness of the damage spread, like-minded NGOs and concerned groups asked for the intervention of the IFC, taking into account that the environmental standards of the World Bank were at stake in the project as well. The IFC’s Compliance Advisor/Ombudsman (CAO) sponsored the creation of an investigation commission to establish the causes of the damages and the responsibility of Minera Yanacocha in the spills (IFC 2002.) The IFC regards itself as an informal “honest broker” that can be trusted alike by all stakeholders.³⁷⁵ The report by the commission sponsored by CAO made recommendations to address the failures in procedures and communications that led to the mercury spills. In 2004, IFC announced that it would sell part of its 5 percent stake in the Yanacocha project. However, the transaction, planned for the second quarter of the year, did not take place. Peter Woicke, IFC Executive Vice-President, stated that the region of Cajamarca “required planning and technical assistance” in coping with royalties from the mine that would be allocated to local communities.³⁷⁶

³⁷⁴ Interview with Mr Sueiro, CooperAccion, Lima, November 2001.

³⁷⁵ See World Bank Home Page at www.worldbank.org.

³⁷⁶ See Global Development Briefing, www.developmentex.com, 27 January 2005.

Most recently, MYSRL has established a foundation, *Asociacion Civil Los Andes de Cajamarca*, to carry on development and civil projects.³⁷⁷ The most important topics tackled by the organisation are small- and medium-scale enterprises and cultural initiatives.

7.3.2. The Citizens

Citizens taking an active stand in the conflicts derived from the Yanacocha project in Cajamarca are a varied group of actors. Rural communities and their leaders, urban grassroots organisations, students, among the most important, have formed an alliance against the company and the state to assert their rights to a healthy environment and to development. The articulation of the different sectors of society started with the aftermath of the Choropampa mercury spills. The Cerro Quilish conflict was the catalysis element that pulled together these uneven groups.³⁷⁸

Rural communities (peasant and indigenous) have a very diverse composition and form alliances according to the position assumed before the conflicts and its degree of impact. These communities are small and live at levels of self-subsistence. Some of them have been co-opted by MYSRL through small infrastructure projects or plain payment to their leaders. Others oppose strong resistance. In Cajamarca, the structures called “*rondas campesinas*” play a very important role in the organisation of rural communities. Communities with strong *ronda* leaders have resisted, on the most, attempts of cooptation. They were also an important factor in the articulation of rural and urban citizens towards a common objective.

Rondas are self-defence groups emerged in the mid-seventies with the purpose of fighting criminality committed in the rural areas. The first *ronda* was founded in the community of Cuyumalca (province of Chota), and was led by Mr Regulo Oblitas (Ardito 2005.) At first, they concentrated in petty criminals and bands operating around the communities, stealing cattle and goods, and attacking women and children. In 1978, 30 communities have organised their *rondas*. The communities were keen to obtain recognition from the local authorities, at police and district levels to carry on with their activities. Problems emerged with the police because the captured criminals were freed the next day, usually because the amount of stolen goods was so low that the case did not fall under criminal law, or because of corruption. This

³⁷⁷ See *Los Andes* website, www.losandes.org.pe.

³⁷⁸ It is important here to remind the abysmal differences between urban and rural citizens in Peru, which makes difficult to the former to take on defending and identifying with the causes of the latter. Issues of discrimination and racism play also a role in this situation. However, those differences were overcome by the threat of environmental damages by MYSRL.

led the *rondas* to take justice in their hands, which meant a major step in their evolution (Knecht 2004.)

The *rondas* developed to a parallel system of justice and vigilante force, solving most of the conflicts of the population in the countryside. Meeting in general assemblies, *ronderos* take decisions in cases of adultery, inheritance, and conflicts of delimitation of plots. They became the alternative to the Judiciary, which was seen as far away and not accessible to the poor.³⁷⁹ Their resistance to attempts of infiltration by SL strengthened the *rondas*. In fact, the existence of *rondas* was the reason for which, SL could not extend their activities to the Northern Andes of Peru. The *ronderos* most important achievement was to fight SL and avoid its entrance in zones under *rondero* control. The departments of Cajamarca and Amazonas, where the *rondas* existed, were the only ones who did not suffer the tragedy of internal war and terrorism during the eighties and nineties. Because of their success, the *rondero* model was copied by the military and reproduced all over the country. Only afterwards, a military defeat of SL was possible. The *rondas* are the institution with the largest moral authority and legitimacy in the rural areas of Cajamarca. *Rondero* leaders usually do not run for office in elections, as they consider that politics is a dirty activity that would only put them into disrepute in the eyes of their “*campesino*” brothers and sisters, and most importantly, it can put the *rondas* under pressure and affect their independence.

The *rondas* collaborate with the Police or the Military, but only if there is a relation of trust, which is an exception to the rule. *Ronderos* presume of being politically independent, although they are usually closer to centre-left or left parties.³⁸⁰ They distrust almost everything and everyone coming from the cities or the central government. During interviews with “*rondero*” leaders, it was clearly stated³⁸¹ that their final aim was to expulse MYSRL from the region. Not all “*rondero*” leaders take such position; others pursue to engage in talks and negotiations. However, the most radical would not engage in talks of any kind (informal or formal), as this would count as betrayal to their communities.

Ronderos were left out in the MYSRL scheme of things. An explanation for this could be only that they were not considered powerful enough to be taken into account at the time the company engaged in its lobby activities. *Ronderos* are peasants with almost no formal education and, therefore, it is probable that MYSRL officials regarded them as not “educated

³⁷⁹ In fact, in 2004, the Supreme Court, through Decision 975-04, declared that the *rondas campesinas* are competent to carry on detentions and administrate justice, as long as sanctions did not violate human rights.

³⁸⁰ In year 1987 and 1988, the APRA government pursued to divide the *rondas* movement through cooptation under the promises of small development projects. The same strategy used by MYSRL at present. APRA did not succeed, albeit it managed to co-opt some communities (Knecht 2004.)

³⁸¹ Interviews with one of the leaders of the *ronda* of Bambamarca, Bambamarca, November 2001. Encounters and meetings with *ronderos* and leaders in Bambamarca, Chota, and Cutervo, November 2001.

enough” to be included in negotiations. The reality is the opposite around, *ronderos* are a hardcore political force of seasoned and well-trained leaders, who may not have a school certificate, but are most experienced in political struggles and handlings.

With this background, it is strange, to say the less, that by 2000 MYSRL had not taken the *ronderos* into account as stakeholders in the project, and later in the following environmental conflicts that emerged. Especially, considering that *rondero* powers and functions do not reduce to secure and protect the areas under their control, but also to exert judiciary powers on them. Therefore, it was foreseeable that in case environmental conflicts came up, *rondero* leaders would emerge as a formidable force.³⁸² By now, that the *ronderos* are a powerful force it is even recognised by the IFC and the World Bank, who have met on an ongoing basis with the representatives of the Federation of Rondas Campesinas of Northern Peru, as reported in the IFC brief on MYSRL.

In 2004, after the incidents of Cerro Quilish, MYSRL started a campaign through friendly media outlets attacking *rondero* leaders as “violent, primitive, and irascible people” (Ardito 2005.) In addition, the CNDH has denounced threats to some of the leaders. The Ministry of Interior of Peru is supporting MYSRL strategy with the attempt to oblige the *rondas* to collaborate with the police and put them under its jurisdiction. This strategy is most unethical because the destruction of the *rondas* to facilitate mining activities would only worsen the situation of the poor in the countryside. As no police or military is present, this would leave citizens in the rural areas at the mercy of delinquents, as it is the case in the Andes of La Libertad. The police or military is only present in places to protect the mining compounds (Knecht 2004, Ardito 2005.) The protection of companies is more important than the safety of the citizens.

Urban citizens of Cajamarca came to active resistance against MYSRL after the mercury spills incidents of Choropampa. The extensive reporting in the national media might have played a role in such development. Suddenly, not only the Choropampa case was exposed, but also the environmental incidents attributed to MYSRL between the years 1993 and 1999. The reaction pulled together students, neighbours and political movements, and the Defence Fronts (*Frentes de Defensa*,) which represent most of the civic organisations of the region of Cajamarca in its claims *vis-à-vis* the central government.

³⁸² A story that illustrates *rondero* power was referred by members of INCAAP (November 2001). *Ronderos* celebrate every year an annual meeting that most of them regard as a pilgrimage and a demonstration of their power. The location rotates every year. It is always mentioned that when the meeting takes place, the police and the military of the place close up in their barracks because of the fear, respect and impression that thousands of *ronderos* make together. It is a most impressive sight, all coming together walking or on the back of their horses after hours of marching in the high Andes. See also, Knecht (2004.)

The regional strike of 15 September 2004 was the proof that an articulation of interests of the rural and urban citizens of Cajamarca had taken place. After the main demonstration at the *Plaza de Armas* of the city of Cajamarca, the participants marched to the access highway to the mine compound that had been taken by a group of 2 thousand campesinos since 01 September. This was a show of solidarity of the urbanites towards the rural citizens, and it positively impacted in the character of the citizens' movement towards the company, galvanising it to the point that MYSRL had to step back temporarily in its intentions to start exploration in Cerro Quilish.

7.3.3. The Executive Branch

In a previous chapter, the conflicts emerging at inter- and intra-sector levels have been described and analysed. In the case of the environmental conflicts in Cajamarca, most patterns repeat. The position of the Executive branch and the Mining sector on the Yanacocha project is absolutely in favour, without taking into account the growing opposition of the citizens at the local level. Executive branch officials in Lima fully facilitate and cooperate with MYSRL operations, e.g. giving permits, speeding procedures, and keeping information out of the public eye, among others.

A. Mining Sector

The mining sector has representation offices in the provinces (*direcciones regionales*,) which depend directly of the main office in Lima. These province offices usually have as objective to carry on the controls and implementation tasks ordered by the law and regulations of the Sector. At the local level, the officials of those offices have influence and prestige as representatives of a powerful Sector. However, in practice, officers from Lima have precedence in relation to those from the provinces, reproducing the traditional capital city-provinces pattern that is widespread in the country.

Executive branch officials at the regional and local levels are who in practice face conflicts at first. Usually, they have a very good knowledge of the facts and in some cases may form part of the local network of power that MYSRL cultivates. If they would use their administrative powers, they could provoke serious problems to the parts involved in a conflict (depending of the stance taken). At the regional and local levels, the crossing of interests observed at the central level does not necessarily repeat in that strong manner, because also, local friendships and acquaintances are important and there is a sense of identification with the

region that can level up the situation. It can occur that an officer at the local level decides to take action against MYSRL, even if later the officers in Lima decide against him. Another element to be taken into account is that the mining sector interacts directly with MYSRL project officials via formal and informal channels. Good relationships are taken care of through lobby, information exchange, and training.

It is doubtful that the mining sector will change its supporting attitude because the success of MYSRL pays off also to MEM. Per law, it was established that the Ministry receives a fixed percentage of the incomes of the Sector. Such income ensures that the civil servants of the Sector are the best paid and trained of the public administration in Peru. Likewise, the technical equipment at its disposal is state-of-the art. This situation means that the most projects are running, the more income is assured for the Ministry.

The mining sector reacted in the case of the Yanacocha conflicts with mainly administrative procedures and sanctions. The most important action taken was to fine MYSRL US\$ 500 thousand in the case of the events of Choropampa.³⁸³ This was a result of an administrative process of control. The company contested the decision of the Ministry of Energy and Mines and appealed before the Counsel of Mining (second and last administrative instance in the mining sector). The Counsel confirmed the decision of the Ministry.³⁸⁴ Other actions taken have included monitoring the fulfilment of the EIAs by the company. The information collected is kept confidential. For such reason, it is not possible for the citizens to exert full control. In the case of alleged water resources pollution, the MEM has not taken specific action against MYSRL.

In the conflicts of Cerro Quilish, the mining sector reduced its position to an administrative body that was only part of a procedure and was detached of the social and political implications of its decisions. Officers of MEM informed the citizens that MYSRL had presented all the documentation necessary to obtain approval for the exploration phase at the Cerro. Thus, the mining sector could not deny the authorisation.³⁸⁵ This blatant attitude only contributed to escalation.³⁸⁶ However, after the Cerro Quilish incidents, MEM has pursued to show a less pro-company position, at least before the public opinion. It released communiqués

³⁸³ *Resolucion Directoral* N° 103-2000-EM/DGM of 17 June 2000.

³⁸⁴ *Resolucion* N° 301-200-EM/CM of 14 August 2000.

³⁸⁵ Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003. Email communications with FEDEPAZ and GRUFIDES, 2004.

³⁸⁶ It has to be said that before the violent incidents of September 2004, Mr Bonelli, Director of DGAA-MEM and Mr Quea, Advisor on Social Affairs of MEM, travelled to the region with the aim of convince MYSRL to join a dialogue roundtable, which they could not achieve (www.minem.gob.pe, and email communications with FEDEPAZ, 2004) The failure in the formation of that roundtable led the citizens to the decision of active resistance through demonstrations and strikes. This incident also shows the level of actual power of the environmental officers of MEM in relation to mining companies, albeit the fact MEM being the authority on the issue in Peru.

asking the companies to pay attention to social and cultural considerations in the places where mining operations took place, and it requested an improvement in the information and public relations policies towards the local population.³⁸⁷ At the same time, the Minister of Energy and Mines himself travelled to the city of Cajamarca to present the resolution that approved the retirement of authorisation to explore in the Quilish, at request of MYSRL.

B. Sector Health

Apart from doing monitoring and control, and producing reports on their findings, no administrative procedure has been taking in the Health sector against MYSRL for the environmental incidents in Cajamarca. Some of the reports presented serious contradictions and gaps (Leyva and Jahncke 2002.)

In the case of the mercury spills incidents of Choropampa, DIGESA reacted lately to the events, and only after pressure of the local authorities to take action. Specifically, DIGESA produced reports, which were presented to the Peruvian Ombudsman, but not taken into account by the mining sector. DIGESA could confirm the pollution by mercury in some of the areas of the spills, but the conclusions of its reports are relatively tame. However, it was the actions of other officials of the Health sector, which complicated its reputation in Cajamarca. Doctors and nurses, who work part-time for public hospitals and part-time for MYSRL, collaborated with the company in the illegal detention of patients poisoned with mercury in the aftermath of the incidents. The same people misinformed the patients and their families over the actual causes of the serious illnesses they were suffering, and did not inform them about the medicines received (in one case one used in the USA and not allowed in Peru to treat arsenic poisoning) (Leyva and Jahncke 2002.) This finished eroding the stance of the sector in future environmental incidents in the area, as the citizens identified all workers of the Health sector in the region as a collegiate body. In practice, this was demonstrated later when doubts emerged on the quality of water for human consumption in Cajamarca (alleged water resources pollution.) SEDACAJ hired DIGESA for some of the technical studies but with advisory of experts of PAHO to back the findings. The report and monitoring carried on is being used by SEDACAJ to request MYSRL to negotiate on the pollution and costs related to it.

³⁸⁷

See, MEM website, www.minem.gob.pe.

In the case of the incidents of Cerro Quilish, the role of the Health sector reduced to give medical attention to the injured and certify the death of peasants. The citizens used this information later to sue the police forces for abuse of authority and manslaughter.

C. Sector Agriculture

Being that Cajamarca is a department with a strong rural component, the Ministry of Agriculture is active through the DGAS, which has competences related to the use of water resources for agricultural purposes. The issue of use of water and irrigation canals is also under its competences. Since 1994, DGAS took stance in several resolutions against the practice of MYSRL to close the irrigation canals that fed the fields of the peasants in the areas around the mining compound. Some of these canals fall inside the concession area of the company. MYSRL closed those without rights because, according to law, the concession of the area does not give rights to the water, which is a public good.³⁸⁸ In fact, the failure of the company to open one of the irrigations canals in 2004 added to the escalation of conflicts related to Cerro Quilish. The DGAS has not changed its position in this issue.

In the case of the conflicts of Cerro Quilish, INRENA recognised the power and competences of the Municipalities to declare municipal protected reserves zones through the incorporation of the declared area in the Registry of Municipal Conservation Areas. INRENA followed, accordingly, its own regulations.³⁸⁹

Thus, the Sector Agriculture has been consequent following its regulations, but its lack of enforcement capacities *vis-à-vis* the company are explicit when it cannot achieve that those are obeyed, as in the case of the irrigations canals.

7.3.4. The Parliament

The Parliament of Peru has taken a low profile stance in the Yanacocha conflicts. Specifically, it backs fully the decisions of the Executive branch to support mining activities in the country to attract foreign investment. In this, there is no difference between Mr Fujimori and Mr Toledo parliaments.

³⁸⁸ This is one the reasons why the new Law for Water Resources is such a controversial issue. Mining companies have taken the stance that the water resources that fall in the area of their concessions should be reserved for mining purposes. Thus, the companies should have exclusive rights to the use of water, without taking into account agricultural or other uses (Interviews with Mr Andaluz, Proterra, Lima, December 2001, and April 2003.)

³⁸⁹ *Reglamento de la Ley de Areas Naturales Protegidas*, Art. 41°, inc. 2°.

In the case of the Committees of the Parliament, their attitude has been of exercise their control powers through the request of reports to the mining sector. This was the case of the Committee of Environment, which in the case of the Choropampa spills asked the Ministry of Energy and Mines for information in year 2000. The Ministry responded with a Report (*Informe* N° 221-2000-EM-DGM/OTN). Similar requests came from the Committee of Indigenous Affairs. No visits to the field or inquiries were undertaken. Action upon the reports was not undertaken as well.

The Committees of the Parliament are also a target of the public relations strategy of MYSRL. Every year, the Committee of Environment in full is invited to visit the mining compound with full expenses covered by the company.³⁹⁰ Although, such visits are not forbidden, this has eroded the image and the stance of the Committee in the region of Cajamarca.

However, two representatives of Cajamarca have taken on a more active role in the conflicts. These are Hon. Luis Guerrero and Hon. Manuel Bustamante.³⁹¹ Mr Guerrero was Mayor of the provincial municipality of Cajamarca and was linked with urban movements, NGO circles and the Catholic Church. In Congress, he belongs to President Toledo's movement but actually as a member of his own regional movement. In 2001, he was appointed Chair of the Committee of Decentralisation, which managed to approve the new Law of Decentralisation that is the basis of the regionalisation process in the country. He travelled to the area when the conflicts were at its peak and in collaboration with his local allies tried to reach a solution to avoid escalation. He did not take a stand against mining activities but his prestige among the citizens is still strong to help broker agreements. However, some groups do not forget that Mr Guerrero was Mayor of the city of Cajamarca when the concession of MYSRL was given, and that he and other provincial mayors accepted the invitation of the company to visit mining sites in Chile and USA to convince them to embrace the project.³⁹²

Mr Bustamante is a medical doctor with a high stance in the city of Cajamarca. He has been active helping citizens to present their grievances in the capital city, using its resources as parliamentarian for that purpose. He is the only member of Congress who has publicly released communiqués condemning the actions of MYSRL and speaks with a clear language on the environmental incidents and damages produced by the company.

Nonetheless, the attitude of most parliamentarians to the conflict is showed by the declarations of Hon. Carlos Ferrero, at that time Speaker (President) of the Peruvian Congress, later Prime Minister, in the aftermath of the Cerro Quilish struggles. He declared that violent

³⁹⁰ See *Dore*, magazine of internal information of MYSRL (several issues).

³⁹¹ For the personal websites and full list of activities of both parliamentarians, see www.congreso.gob.pe.

³⁹² Interview with Mr Benites, INCAAP, Cajamarca, November 2001.

leaders, interests of NGOs and “red” priests were manipulating the peasants.³⁹³ Those words are only a confirmation of the traditional stance of the capital city in relation to the provinces, and the urban versus rural population gap.

7.3.5. Local and Regional Governments

Local governments (provincial and district levels) have a limited role in the decision making process of conceding rights to a mining company, even if that means that land in their geographical scope will be affected. Usually, the level of conflict that emerges surpasses them. They are the last ones to be informed of the decisions taken by the Executive branch (even if they belong to the same political party). Because of that, they may take sides with the population affected (their constituency). However, they still expect to be benefited from the mining activities as well, and thrive for infrastructure works at the local level: road construction, health posts, or sport facilities.

In the case of the Provincial Municipality of Cajamarca, there was a clear strategy of the Yanacocha investors to pave the way for a smooth process of acceptance by the population, using the mayors as champions of the project. In 1990 and 1991, the provincial mayors of the areas affected were invited to inspect *in loco* gold exploration projects in Chile and in the USA to show the “peaceful coexistence” of mining and agricultural activities, side-by-side. The assumption was that a similar approach would be used in Cajamarca. That would mean that traditional cattle and agricultural activities in the region would not be dramatically affected by MYSRL activities as it occurred in the past in other parts of the country where former agricultural valleys were taken over for copper exploitation. The visits were paid by the company, and in coming back to Cajamarca, the mayors reported and assured the citizens that MYSRL would only bring positive inputs to the region, at all levels.³⁹⁴ The mayors of the districts affected did not have a say in this process. The company invited some to the lobby activities carried on; others were not, the decision depending of their stance and political influence in the region.

After environmental pollution cases by the company emerged, the municipalities at the district level started to show resistance to the company activities. The provincial municipality has developed to a “neutral” observer, giving tame declarations and not taking any concrete

³⁹³ The words were reproduced in most newspapers of Lima and were broadcasted in TV news bulletins (Email communications with FEDEPAZ, 2004.)

³⁹⁴ Interviews with Mr Benites, INCAAP, Cajamarca, November 2001; and Interview with the leader of the *ronderos* of Bambamarca, Bambamarca, November 2001.

action against the actions of MYSRL (as in the case of Cerro Quilish).³⁹⁵ Overall, public declarations of mayors in favour of MYSRL have diminished in the last years, due to the bad reputation of the company among the citizens.

In the case of the mercury spills of Choropampa, district mayors were active resisting the attempts of the company to reach extra-judicial solutions and compensations. Some of them were denounced before the state prosecutor, accused of vandalism, and attack to private property, among others. This only galvanised these groups further, making them a strong component of the citizens' movement that emerged later, which reached its peak with the Cerro Quilish conflicts (Leyva and Jahncke 2002.)

In the case of the alleged pollution of water for human consumption, the provincial municipality requested SEDACAJ to carry on studies and monitoring. The provincial municipality is the main shareholder of the water supply company of Cajamarca. The results have prompted the call for negotiation between SEDACAJ and MYSRL to find a solution about who might pay the cost of further studies and cleaning measures.

In the case of Quilish, the Provincial Municipality of Cajamarca took stance through the declaration of the area as a municipal natural protected area. Because the declaration was made through an "Ordenanza," the company had to sue the Municipality before the Constitutional Tribunal of Peru. In April 2003, the Tribunal decided in favour of the Municipality, ordering MYSRL to carry on further EIAs and studies to make sure that water supplies and water resources would not be affected. However, in the aftermath of the conflicts of Cerro Quilish, the provincial mayor of Cajamarca, Mr Emilio Horna Pereira, has assumed a very low profile and not intervened in any negotiation directed to reduce tension in the area.³⁹⁶

The regional government of the department of Cajamarca area is a new political entity. It was elected in November 2002 and it took office in January 2003. Because there is no experience about decentralisation processes in the country, it is very difficult to predict how they will align in the conflicts in the region. In our opinion, a trend similar to the attitude and behaviour of the municipal governments is foreseeable. This was confirmed initially by the fact that the Regional Government decided through a Regional Resolution to confirm the content of the municipal Ordenanza on the creation of a reserve in Cerro Quilish.³⁹⁷ In addition, the regional government confirmed the decisions of the DGAS that ordered the reopening of the irrigation canal of La Ramada.³⁹⁸ The president of the regional government, Mr Felipe Pita

³⁹⁵ Email communications with FEDEPAZ, 2004.

³⁹⁶ In fact, it has emerged that MYSRL has paid personal expenses of the mayor towards master studies at a Spanish university (email communications with GRUFIDES, 2004.)

³⁹⁷ Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

³⁹⁸ *Resolucion Gerencial Regional* N°006-2004-GR.CAJ/GRDE of 29 October 2004.

Gastelumendi, has taken a similar stance as the provincial mayor of Cajamarca, while the vice-president, Mr Alejandro Rebaza Martell, has a similar stance as Representative Bustamante.³⁹⁹

7.3.6. The Peruvian Ombudsman

The Peruvian Ombudsman has been active during the evolution of events in Cajamarca. It considers its role to promote dialogue processes with the attendance of all possible parties involved and under independent sponsoring and observations. In the case of the Choropampa spills, it organised and facilitated the negotiation table sponsored by the IFC-CAO, and it produced a report. It published its findings, systematising the most important facts, analysing the legal framework applicable and the responsibility of the State authorities, establishing conclusions and posing recommendations (Defensoria del Pueblo 2001.)⁴⁰⁰ In the case of the Cerro Quilish incidents, the officials of the Ombudsman office in Cajamarca also pursued to broker agreements between the peasants and the MYSRL as part of the array of authorities involved in the case on the peak of conflict. Overall, most of the work of the *Defensor* concentrates in obtaining information from all stakeholders involved in conflicts. At present, the Peruvian Ombudsman office does not have a section dedicated to environmental conflicts and there is no indication that such would be implemented in the near future.

7.3.7. The Catholic Church

The role of the Catholic Church in the region of Cajamarca has been important in the articulation of social movements since Bishop Dammert took over pastoral work in the area.⁴⁰¹ The bishop supported local organisations, *rondas*, and NGOs, and the church carried on development and human rights work.⁴⁰² His successor carries on the activities of his predecessor.

During the oligarchic rule, the Catholic Church acted, in many cases, as an appeasing force using religion as a form of social control to calm down the “*campesinos*” claim for better social conditions. After the Agrarian Reform in the seventies, and Bishop Dammert taking

³⁹⁹ Email communications with GRUFIDES, 2004.

⁴⁰⁰ *Informe Defensorial* N° 62. See also Peruvian Ombudsman website, www.ombudsman.gob.pe.

⁴⁰¹ For a full account of the influence and impact of Bishop Dammert in Cajamarca, see the doctoral thesis of Willi Knecht (2004), which recalls the history of his bishopric and work since the sixties.

⁴⁰² The development and human rights activities of the Bishopric are supported financially by MISEREOR, among others. Interview with Mr Waschl, MISEREOR, Aachen, May 2003.

over the pastoral work in the area, the Catholic Church changed their role evolving to a socially committed party to the poorest in the countryside regions. Such stance makes of Catholic authorities very powerful stakeholders.

The most important organisation belonging to the Catholic Church with a key role in the Yanacocha conflicts is the “*Vicaria de la Solidaridad del Obispado de Cajamarca*” (Solidarity Vicarage of the Bishopric of Cajamarca.) The “Vicaria” acted as a broker in the conflicts emerged among peasants and MYSRL, provoked by land issues. It carried on social studies to demonstrate the state of destitution of the population affected by the company’s massive land purchases, which, consequently, became one of the very first serious attempts to qualify and quantify the social and economic consequences of mining activities for the poor of the region. The results of those screenings were the contrary of what is was supposed to be occurring.⁴⁰³ The poor of the region were becoming even more destitute.

At first, the Church acted as a mediator between the company and the citizens to exact compensation and better prices for the land. Allegedly, MYSRL paid much less than the actual market value. This successful mediation concluded with the re-calculation of the value of the land in favour of those affected (Leyva and Jahncke 2002.) It also managed to correct some of the harsh treatment used by officials of the company towards the peasants, sending complaints to Newmont Mining Corporation in Denver (Knecht 2004.) In addition, the Church, through its development office, manages a revolving fund granted by MYSRL to help those citizens who, after selling their lands, fell into poverty and extreme poverty.

In the last years, some problems with the stance of the Catholic Church as an institution in Cajamarca occurred, as it emerged that MYSRL is paying scholarships for students joining the priesthood (Knecht 2004.)⁴⁰⁴ This is seen by observers as an attempt to keep the Church quiet on issues related to the Yanacocha conflicts through handouts. Church authorities have not answered to those accusations.

The Catholic Church has pursued to act as a broker and neutral third in the conflicts, encouraging the parties to sit together and promoting a dialogue process. Both the government and MYSRL will recur to its mediation capacity and influence to promote their objectives.

The work of individual priests who do pastoral work in the communities affected by MYSRL activities should be remarked. They have been very active and, because of the high stance they enjoy in the rural communities, are forces to be reckoned. Specifically, in the case of the social conflicts for loss of land in the years 1993-1998, it was a priest, Mr Marco Arana, who was in charge of the parish of Porcon, who took the initiative to contact the com-

⁴⁰³ See the Report of the Solidarity Vicarage of the Bishopric of Cajamarca, August 1998.

⁴⁰⁴ Email communications with GRUFIDES, 2004.

pany and involve Church authorities in the mediation of the conflicts. Mr Arana is now Director of GRUFIDES and was awarded in December 2004, the National Prize of Human Rights for his role in the conflicts of Cerro Quilish.⁴⁰⁵ Other priests at the rural communities' level have followed Mr Arana's stance.

7.3.8. Non-Governmental Organisations

There is an evolution of the role of NGOs involved in the Yanacocha conflicts. There are differences between the NGOs of Cajamarca, with those of Lima. In addition, human rights NGOs have taken a clearer stance in defence of the rights to environment of the citizens than the environmental NGOs of Lima. Again, this is a reflection of the differences between the capital and the provinces, and poses the question of which interests are served by those organisations and who they represent.⁴⁰⁶ Environmental NGOs of Lima have not been closely involved with the conflicts in Cajamarca with few exceptions, a reason being the role most of them play in environmental policy making in the country and their close ties and work with government bodies (Executive branch and Parliament,) which does not make them neutral to the conflicts. To intervene in the Yanacocha issue would mean to take sides and this is something that environmental NGOs too near to the centre of power have tried to avoid.⁴⁰⁷

NGOs in the Cajamarca region are small-sized and have been very active in the Yanacocha conflicts in the last five years. Specifically, these are development and environment NGOs that have a strong component of community development, gender and children, training, and education. In the past, these NGOs would seek collaboration from NGOs of Lima to achieve an echo to the grievances of the citizens of Cajamarca. At present, this is not the case anymore, because they have achieved legitimacy before the population, through their engagement.⁴⁰⁸ These NGOs receive financial support from sources abroad, which come mainly from the development and not from the environmental sector.⁴⁰⁹

⁴⁰⁵ Mr Arana's speech in receiving the Human Rights Prize can be found at www.grufides.org.

⁴⁰⁶ This is an element that confirms why is so difficult to consider environmental NGOs in the Peruvian context as part of civil society, because when conflicts are at stake this low profile stance has repeated invariably. This statement has as source the observations of the author working at an environmental NGO and with other NGOs in Lima and the provinces.

⁴⁰⁷ This observation applies to the most important Lima NGOs, which usually also present themselves as the most important in the country, SPDA and FPCN. This also applies to the environmental networks controlled by them as the SNA and RAP.

⁴⁰⁸ This statement is based on observations on the differences in the role of NGOs in the conflicts between 2001 and 2004, through permanent communication via email and revision of the national media.

⁴⁰⁹ For comparison, the main environmental NGOs of Lima receive funding from US environmental foundations, which have different aims as European development foundations.

During the period 1998-1999, a human rights' NGO close to the Catholic Church of Cajamarca had a role in the issue of loss of land by the peasants. CEDAS was chosen by MYSRL to manage the revolving fund in favour of the peasants in destitution affected by the company's land purchases. CEDAS elaborated a document where priorities for the allocation of credits to the beneficiaries were set (CEDAS 1999.) After six months administrating the programme, due to internal problems, CEDAS closed down offices. Subsequently, the Solidarity Vicarage of the Bishopric of Cajamarca assumed directly the administration of the fund. The latter was put later into question because of the lack of access and information on the grounds for allocating credits. At present, the support has been reduced to indirect help to the affected families through activities (Leyva and Jahncke 2002.)

From 1999 onwards, the development and environment NGOs of the city of Cajamarca have been extremely active and have taken in a crucial role as mediators in the conflicts, for which a ruthless campaign in the press and by politicians against them has been waged. These NGOs are ECOVIDA and GRUFIDES. ECOVIDA⁴¹⁰ emerged as a citizens' movement in the urban areas concerned with the environmental incidents of MYSRL that seemed to multiply around 1999 and 2000. They have worked in documenting and collecting information on the actual environmental incidents that occurred based on the testimonies of the peasants and rural communities. They are strong in communications and education activities.

GRUFIDES⁴¹¹ has a special role in the conflicts because of the personal stance of his executive director, Father Marco Arana, who was in charge of the parish of Porcon when the social conflicts for loss of land started in 1995. GRUFIDES has been successful in obtaining financial support for his activities from several European development sources, which has allowed them to carry on projects focusing in development and environment issues. GRUFIDES is based on Cajamarca, but because Mr Arana strong links with rural communities, it has a very good rapport with the peasants. This NGO publishes periodical reports (Arana 2002) and articles and maintain a strong email network to inform up to the minute on the evolution of the conflicts in the region. Mr Arana was instrumental in avoiding bloodshed in the peak of the conflict of Cerro Quilish, when the police was planning to evict the peasants by the use of force. He could broker an agreement for which state prosecutors and the police forces would be able to retire without attack by the peasants (peasants in the Cerro were attacked by the

⁴¹⁰ See ECOVIDA website, www.ecovida.org.

⁴¹¹ See GRUFIDES website, www.grufides.org.

police with helicopters and tear gas a day before) at a moment when the tension was at its highest.⁴¹²

A NGO, which is very active in issues of capacity building, training, and women and children, is INCAAP.⁴¹³ This NGO entered the environmental field through agricultural development projects. Thus, they have strong links with *ronderos* and rural communities. In the case of the conflicts of Yanacocha, its role has been indirect but important. It is a reliable source of information of what is going in the rural areas because of their several province offices.

An important supporting role has been played by some NGOs in Lima as well. It is important to point out that the Lima NGOs involved in the environmental conflicts of Cajamarca are mainly human rights, or development/environment, but not environmental NGOs. CNDH was one of the first to be asked for opinion and support by both the population affected and the Catholic Church (Vicaria) when the issues of loss of land came out. CNDH is based on Lima and it coordinates the activities of most human rights NGOs in the country. Therefore, it does a great deal of networking and information diffusion work.

Other human rights' NGO strongly involved is FEDEPAZ, which also has links with the Catholic Church of Lima.⁴¹⁴ This is a legal NGO involved in taking up trials for human rights abuses in the country. The lawyers are mostly graduates from PUCP. This NGO was asked for opinion and support after the issues of selling of land emerged. Later, they were asked to follow up and take cases involving the affected by the mercury spills in Choropampa. They monitored the legality of the extra-judicial agreements reached between MYSRL and some of the victims, and followed up the cases of most serious poisoning. In the case of Cerro Quilish, they monitored the decisions taken by the Executive branch, Parliament, and Judiciary in Lima. In fact, they supported the legal team of the Provincial Municipality of Cajamarca in the writ of constitutionality before the Constitutional Tribunal. At present, they are giving legal advice to the community of Bambamarca, suing MYSRL for environmental damages. Therefore, this NGO plays the role of legal support for the citizens and other NGOs involved in the conflicts.

FEDEPAZ put the reasons for their involvement in the following terms.⁴¹⁵ It is an attempt to put into discussion, in the public arena, the importance of mining activities in the development of the country. The main question, in their view, is what is most relevant: the

⁴¹² Email communications with FEDEPAZ, 2004, and APRODEH website, www.aprodeh.org.pe.

⁴¹³ Interview with Mr Benites, INCAAP, Cajamarca, November 2001.

⁴¹⁴ See FEDEPAZ website, www.fedepaz.org.pe. Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

⁴¹⁵ Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

right to life, to health and to a healthy environment (as fundamental human rights) or a development imposed from the outside.

There are two development/environment NGOs from Lima, which have played an important role as advisors to the local NGOs and citizens in the conflicts. These are CooperAccion and Asociacion Civil Labor Ilo. CooperAccion⁴¹⁶ is an NGO which focuses in the following up of the consequences of fisheries and mining activities for the country, among them, the environmental ones. Staff members are mainly economists and sociologists, mostly graduates from PUCP and UP. This NGO, through its Programme of Mining and Communities, has established a solid reputation in the following up and reporting of environmental incidents caused by mining in the Central Andes. Because of that previous expertise, they were involved in the cases of Cajamarca. CooperAccion is also close to CONACAMI. It arranged for CONACAMI to receive external funding and training. They also have published several reports on the issue of mining and communities. CooperAccion pursues to evaluate the economic consequences of the Yanacocha conflicts and to follow up the issues of community development in the affected areas. The issue of mining canon is also important in its work.

Labor Ilo is a development/environment NGO based on Ilo and Lima. They focus on issues of development and decentralisation and the environmental aspects attached to those. This NGO has been very active in the struggles of the communities of Moquegua against SPCC, the biggest mining company in the country. They managed to win a case against the company before the International Water Tribunal, and for years now, they have been trying to sue SPCC for environmental damages in the USA. For this reason, it got involved in the Yanacocha conflict. They have been sharing their expertise with the Cajamarca NGOs. Labor publishes reports and follows up on mining, environment, and decentralisation issues. The topic of mining canon has been championed by this organisation as well.

Likewise, Asociacion Cultural Guarango, based in Lima, involved itself producing a documentary on the consequences of the Choropampa mercury spills. This NGO focuses on communication and education issues, produces reports and documentaries over social and cultural topics in the poorest rural and urban areas.⁴¹⁷ The documentary of Choropampa has won several prizes (in Peru and abroad) and it was broadcasted in national television. This widened the scope of people aware of the problems of MYSRL in Cajamarca (Cabellos and Boyd 2002.)

⁴¹⁶ See CooperAccion website, www.cooperaccion.com. Interviews with Mr Sueiro, CooperAccion, Lima, November 2001; and Interview with Mr Consiglieri, CooperAccion, Lima, December 2001.

⁴¹⁷ See Guarango website, www.guarango.org.

Finally yet importantly, a source of funds and pressure against mining activities in Peru, and not only in the case of Yanacocha, has been the Peru office of OXFAM America.⁴¹⁸ Through their Advocacy Programme, it participates actively in the discussion on mining and development in the country, financing Peruvian NGOs, bringing experts into the country for exchange of ideas and experiences, financing local initiatives, disseminating information through its home page, etc. The focus of OXFAM America in Peru is the strengthening of grassroots organisations to level up the negotiation capacities of the population affected by mining and environment conflicts (CONACAMI has been supported through this programme line). OXFAM America officers in Peru pointed out that empowering the communities was one of their main objectives. It also pursues that the NGOs involved in the issue act in a coordinated manner to reach better results. It was also pointed out the fact that the NGOs involved in the environmental conflicts in the mining sector in Peru were organisations formerly involved with trade unions and peasant organisations, which have taken over now these new topics affecting their partners. Again, the lack of involvement of Peruvian environmental NGOs was remarked in their analysis. Finally, another important element was underlined; the communities do not want patronising attitudes. They only want fair solutions to their problems.⁴¹⁹

7.4. Responses to the Conflicts

The differences in the responses in favour or against environmental concerns depends very much on the share of power of the group affected and the degree of social forces they can mobilise in the long-term. At present, the situation in Cajamarca has stalled, albeit new conflicts seem to emerge again.⁴²⁰ Because of the distrust among the actors, it is difficult to establish commonalities that could help to find solutions based on consensus.

7.4.1. Standing to Sue for Environmental Damages

Because of the escalation in the Yanacocha conflicts, some of the most serious incidents have finished before Peruvian courts. Standing to sue has become an instrument used by the citizens affected by the company's activities. MYSRL has also resorted to legal instru-

⁴¹⁸ See OXFAM America website, www.oxfamamerica.org.

⁴¹⁹ Interview with Mr Aroca, OXFAM America, Lima, April 2003.

⁴²⁰ The community of San Cirilo in Cajamarca is being put under pressure by MYSRL to sell its land. This area is the next exploration plot of the company (email communications with FEDEPAZ, June 2005.)

ments to stop decisions they considered attacked their rights. Both, the administrative and the judiciary channels have been used. The Mining sector, up to the present, has not made use of the legal instruments available, with the exception of administrative sanctions against the company. The Agriculture sector has decided against some of the actions of MYSRL but it does not have enforcement capacities, in practice, to obtain fulfilment. The Health sector has carried on controls and monitoring but has not acted upon the findings of those with fines or sanctions.

Legal procedures started are supported by mainly human rights NGOs, which have acted as a catalyser and resource sources for CBOs and rural communities. Financial support to the procedures has been provided by international development and poverty private funding agencies, from both USA and Europe.⁴²¹ The purpose of most trials against MYSRL is, either to stop some of its activities, or to obtain compensation for damages to the environment and human health. Extra-judicial negotiations and agreements took place to level up payments to the peasants who sold their lands to the company at unfavourable conditions. In those agreements, the Catholic Church acted as guarantor party overseeing the rights of the peasants.

The type of procedures used is constitutional procedures, in most cases, having as argument human rights defence (right to a healthy environment, right to health, right to work, right to property, etc.); criminal procedures addressed against the company management, or against the grassroots leaders or against the local authorities. Likewise, criminal procedures have been used for environmental crimes. Moreover, civil procedures have been called to obtain monetary reparations for damages to the human health and the environment. Some of them have finished with an extra-judicial agreement. In addition, administrative procedures before the environmental authorities of the Mining and Health sectors are used.

A. Trials related to the Mercury Spills Case: Civil, Criminal, and Liability

A myriad of trials emerged from the Choropampa events, including, among the most important, civil liability cases, criminal cases, and administrative procedures (Leyva and Jahncke 2002.)

The *Ad Hoc* Provincial Prosecutor of the First Provincial Mixed Affairs State Prosecution Office of Cajamarca pledged for indictment against the chauffer of the company RANSA. The criminal counts mentioned as argument for the case were “crimes against the

⁴²¹ The most notable case is OXFAM America, through its Advocacy Programme. Likewise, Belgian, Dutch (CEBEMO, NOVIB,) and German (MISEREOR) organisations have been keen in providing resources to be channelled through like-minded NGOs to grassroots organisations.

body and health” in the figure of “unintentional lesions against a number of citizens” of Choropampa.⁴²² In addition, the management of MYSRL and RANSA were mentioned in the procedures as third party, responsible for civil liability and compensation. Moreover, the Prosecutor also pledged for indictment against the management of MYSRL and RANSA for crime against the public safety (situation of danger) unintentionally produced against the society (the towns and village affected) and the persons individually affected (the victims).⁴²³ Furthermore, the Prosecutor pledged for indictment for environmental crimes due to the poisoning of the victims. The Judge of the First Instance opened process against the management of MYSRL and RANSA following the pledge of the Prosecutor. In 2001, the new Provincial Prosecutor of Cajamarca decided to discontinue all procedures retiring the pledge for indictment in all counts and asking for the end of the criminal prosecution against the management of the companies. Following this, the corresponding Judge declared the end of the procedures. At present, one of the victims have contested the procedures and asked for a re-trial in all counts.

A further criminal procedure started against the chauffer of RANSA for the lesions caused to a victim in coma and her daughter, the most serious victims of the Choropampa spills.⁴²⁴ In this case, the criminal counts were for crimes against life, body, and health in an unintentional manner. The driver was found guilty in all counts and he received a sentence of two years of jail on bail. Joint civil liability was declared upon MYSRL and RANSA. The civil compensation was fixed in 350,000,00 soles. Later, the legal representatives of the victim reached an extra-judicial agreement with MYSRL and RANSA, whereas the company committed itself to pay the civil liability compensation and to cover the medical expenses of both mother and daughter affected, plus some additional payments.⁴²⁵ As a counter obligation, the legal representatives of the victims committed themselves to renounce to their right of suing against them and to renounce to any judicial action of any kind before national and international tribunals.

Finally, the legal representative of two victims started a civil process against MYSRL and RANSA. Those persons underwent further medical exams in Lima and they were found to have arsenic in their bodies. It is from the findings of those medical exams that the suspi-

⁴²² Criminal Code of Peru, Art. 124°.

⁴²³ Criminal Code of Peru, Art. 278°.

⁴²⁴ Process N° 2000-0012-06-0101-JX-01-P before the Mixed Affairs Court of Santa Apolonia of Cajamarca.

⁴²⁵ The transaction was signed on 06 April 2001. A copy of the document can be found at www.ombudsman.gob.pe.

cion and hypothesis of the presence of arsenic in the spills of Choropampa started to take shape.

To avoid damage to its public image, MYSRL started a process of obtaining extra-judicial transactions arrangements with the victims of the mercury spills. Those agreements were twofold, on the one hand, direct negotiations with the victims to pay compensations in cash or through working contracts. On the other side, agreements with the communities to provide minor public services were reached (e.g. streets, water and sewage installations, health posts improvement and equipment, schools renovation, life and medical insurances, transport facilities for the relatives of the victims, and employment in the mine complex.)

The validity of the extra-judicial transactions has been put into question due to the strong clauses accepted by the victims.⁴²⁶ Some of the renunciations, in opinion of civil law experts, would go further than what is allowed in the legislation. Some of the agreements were also impracticable. For instance, in the case of the health insurance for the victims, it implied that they had to demonstrate the causal nexus between their sickness and the mercury spill. The citizens did not count with enough financial means to pay the necessary medical exams. Therefore, most of them could not access the insurance pool.

Finally, a further process was opened against the Mayor of Choropampa. After the mercury spills events, the population reacted with violence to the tame answer of the authorities. Strikes and demonstrations were organised. The routes were closed to MYSRL vehicles. A truck (presumably belonging to the company) was attacked in the village. Police officers were also subject to physical aggression. For those actions, the Mayor, two of the Village Council representatives and a citizen were indicted and they are being processed by the Second Criminal Affairs Court of Cajamarca.⁴²⁷ The counts of the indictment are crimes against transport, communication, and public services, crimes of disturbing the public peace affecting the State and the Society, and for crimes of lesions against the driver of the truck. In the First Judiciary Instance, the Provincial Prosecutor pledged for a four-year jail sentence. The process continues.

In 2001, Peruvian citizens sued Newmont Mining Corporation in Denver. 1,100 persons signed the plaintiff. Engstrom Lipscomb & Lack, a Los Angeles-based law firm specialised on civil plaintiffs, represents the citizens. The company asked the court to dismiss the case because Peru was the proper venue. In May 2002, a Denver district judge agreed with Newmont, but the decision was thrown out on appeal and it returned to the Denver District

⁴²⁶ Interviews with Mr Andaluz, Proterra, Lima, December 2001 and April 2003; and Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

⁴²⁷ *Expediente* N° 170-2001.

Court. Attorneys for the villagers argue that Peru's judicial system is too corrupt to allow a fair trial, and that Newmont has a history of influencing court cases in the country.⁴²⁸ On 20 September 2004, the Denver District Court approved a motion by Newmont Mining Corporation that would allow the case to proceed in the USA instead of Peru.

B. Trials related to the Defence of Cerro Quilish: Constitutional

The Cerro Quilish issue became a source of conflict when the Municipality of Cajamarca decided to take action, declaring the area a "municipal protected reserved zone."⁴²⁹ The reason behind the decision was the value of the area as a source of water to the region.

In January 2001, the companies Conga S.R.L., Sociedad Minera Chaupiloma II S.R.L., and Minera Yanacocha S.R.L. sued before the Second Civil Court of Cajamarca through four writs of constitutionality.⁴³⁰ The companies argued that the *Ordenanza* violated their rights to freedom of private initiative, the right to freedom of work, and the right to private property of soils and the mineral products existing in the underground. In addition, the companies manifested that the Provincial Municipality does not have the power to declare natural protected areas, a right that only corresponds to the Ministers Cabinet. Furthermore, they expressed that such *Ordenanza* set a wrong precedence to other Municipalities.⁴³¹

On 26 September 2001, the Judge of the First Civil Court of Cajamarca declared sentence, rejecting the constitutional writs in all its considerations. The Judge presented the following arguments:

- i. The obligation to promote the conservation of the biological diversity and natural protected areas is not an exclusive attribution of the central government and such an interpretation does not correspond to the Constitution of Peru.
- ii. The Municipal *Ordenanza* does not affect the property titles of the mining companies because the right to property is not unlimited and it should be exerted in harmony with the social welfare. The right to a quality of life, the right of third generation, which does not belong to a person or a group but to every citizen as a whole, has precedence over the right to property.

⁴²⁸ Former Newmont vice president, Larry Kurlander, was caught on a 1998 recording soliciting the help of Vladimiro Montesinos in swaying a final Supreme Court vote. The decision gave Newmont (and its Peruvian partners) the right to purchase an additional 24,7 percent interest in the Yanacocha mine from the French BNRM. It gave Newmont a controlling interest that helped the company to become one of the largest gold companies in the world (Denver Post, Thursday 30 September 2004, www.denverpost.com).

⁴²⁹ *Ordenanza Municipal* N° 012-2000 of 05 October 2000.

⁴³⁰ *Expedientes* N° 2001-0013, N° 2001-0012, N° 2001-0011 and N° 2001-010.

⁴³¹ This last argument was weak because other municipalities have made use of those competences as the Provincial Municipality of Lima in the case of Pantanos de Villa.

iii. The rights to freedom of work, to private initiative, trade, and industry were not violated because those shall not affect morals, health, or public safety. All rights have to be exerted in harmony with the society well-being.

iv. The species of flora and fauna possibly affected are mentioned in the decision. The possible modification of the landscape by open-pit exploration is mentioned as well. In addition, the possible consequences of the changes are measured by disappearance of grass fields, trees and cultivation areas, and climate change.

On 12 December 2001, the Civil Chamber of the High Court of Cajamarca confirmed the decision of the First Instance.

In addition, MYSRL presented an extraordinary writ of constitutionality (*Recurso Extraordinario*) before the Civil Chamber of the High Court of Cajamarca. On 17 January 2002, the High Court accepted the constitutional writ and elevated it to the Constitutional Tribunal of Peru. In April 2003, the Constitutional Tribunal of Peru decided upon the case rejecting the demand of MYSRL and ordering a comprehensive EIA of the operation before taking any further step. An independent body should do the EIA, which should be credible to all stakeholders having interests in the topic.

At present, the decision is in phase of execution. In July 2004, the MEM approved the EIA presented by the company and MYSRL prepared to re-start operations in Cerro Quilish. This finished with the violent incidents of September 2004, and the temporal decision of the company to withdraw from the area.

C. Other Possible Trials

FEDEPAZ attempts to bring some of the MYSRL environmental incidents before the Inter-American Court of Human Rights.⁴³² In 2001, the IACHR opened the possibility to hear cases of violation of human rights where the right to a healthy environment is at stake. Before, environmental cases were not considered within the scope of the Court competences. This is, therefore, a further advance in the standing of environmental conflicts in Latin America. Specifically, the citizens of the province of Bambamarca are the suing party in this process. They claim poisoning of the rivers and fisheries in their communities has occurred constantly in the last four years. In case justice is not obtained at Peruvian tribunals (the case is not yet in last instance), it has been foreseen to elevate the matter to the IACHR to test procedures.

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Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003.

7.4.2. Institutional Arrangements

Institutional arrangements to the environmental conflicts in Cajamarca emerged as a response to escalation. Prevention strategies to avoid the emergence of conflicts were not considered by the competent authorities in the first place. Likewise, from the outset, answers to the crisis were not coordinated, occurring that every Sector applied its respective regulation creating different scenarios. This situation created more distrust among the citizens, as they could not identify to which government office they should recur. Executive branch authorities saw their prestige very much undermined by their management of the conflicts.

The most important attempt to make the system work and properly answer to the conflict was the efforts to establish permanent dialogue instances (through roundtables and forums) to discuss the problems of the region, putting environmental issues within the framework of development and poverty policies of the country. An aspect to regret is that both the Executive branch and the Mining sector have restrained to provide a platform for such dialogue process. This has been a disappointment to their constituencies in the region, as they expected that the authorities would take position in favour of their communities, which has not been the case.

A. Creation of Dialogue Spaces

The creation of spaces for dialogue, as a meeting point for all stakeholders involved in the conflicts was promoted with some results. The main problem stemming from those initiatives is the lack of credibility and legitimacy of some of the actors involved in the eyes of the others.⁴³³ MYSRL has pursued a strategy of joining dialogue instances for later retiring arguing such problems. In year 2001, after the incidents of Choropampa, three dialogue roundtables were created, one in Choropampa, a second in Bambamarca, and a third in the city of Cajamarca. The tables of Choropampa and Bambamarca failed and declared closed among bitter accusations of their members. The table of the city of Cajamarca delivered as outcome a hydrological study by IFC-CAO that did not satisfied the expectations of all participants.

In addition, a fourth table was created also in 2001, sponsored by CTAR. This instance achieved the independent EIA of INGETEC on Cerro Quilish and pursued the implementation of an independent laboratory to start a system of citizen monitoring of the environment in the region. MYSRL did not agree to pay for the costs of the laboratory and retired of the table,

⁴³³ Interviews with Mr Benites, INCAAP, Cajamarca, November 2001; and Interview with Mr Jahncke, FEDEPAZ, Lima, April 2003. Email communications with FEDEPAZ and GRUFIDES, 2004.

arguing that as new regional governments had been elected in 2002, CTAR did not have political representation in the region.

In October 2002, in the framework of the discussions towards an Agreement for Governance and Regional Decentralisation, promoted by the Regional Roundtable to Fight against Poverty, all candidates to the regional government signed a document declaring the intangibility of Cerro Quilish.

In August 2004, citizens met representatives of MEM to discuss on the resolution that approved the start of exploration activities in Cerro Quilish. MEM committed itself to convince MYSRL to join a dialogue roundtable on the issue. MEM could not deliver on the promise and this provoked the popular reaction that escalated with demonstrations and strikes ending in the events of September 2004.

After the events of Cerro Quilish, MYSRL is proposing again the installation of a new dialogue roundtable. Citizens and organisations of Cajamarca are wary to join the new initiative because of the experiences of the previous instances created and later boycotted by the company.

In the last months, local leaders and authorities have established the Foro Cajamarca, as an instance where environmental problems will be discussed in the frame of the development and poverty problems of the region.

As observed, all initiatives have been frustrated by the strategy of MYSRL to avoid negotiating on the conflicts, and by the inertia of the Peruvian state to take position explicitly before the citizens on the environmental conflicts of the region. This situation equals to an unspoken alliance between the interests of the Peruvian state and MYSRL against the interests of the citizens of Cajamarca. Up to the present, the Peruvian government has not showed interest in responding to the crisis, defending its citizens, and requesting the fulfilment of the abiding environmental legislation.

7.4.4. Social Responsibility of MYSRL in Cajamarca

MYSRL states to have a social responsibility policy expressed in documents and public releases.⁴³⁴ The strategy is based roughly on Newmont Mining Corporation policies (Murphy 2003.) Newmont was one of the eight founder companies of the “Global Mining Initiative,” and it regards itself as a pioneer. Its strategy is based on the concept of “social license to operate.” In Newmont’s view, social license means “generating and maintaining the con-

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See MYSRL website, www.yanacocha.com

sent of the people in the areas where the company operates.” In such context, the implementation of the company’s activities depends heavily on its ability to gain and maintain the social license, as gold mining is an operation that relies on access to large plots of land. Murdy adds that companies that prosper must have stronger rates of return and be capable of carrying the true cost of the operation. By that, it is meant both the short- and long-term environmental and social costs. Newmont needs to demonstrate transparently the benefits and positive impact its presence provides. In fact, for Newmont, management must focus on anticipating changing expectations in terms of how the company relates to communities. Nothing less than excellence in safety and environmental performance, and in the interaction with communities, would be acceptable.

Further, the social responsibility policy of Newmont is built on the principles of sustainable development, acknowledging that our future is dependent on the company’s ability to develop, operate, and close mines consistent with Newmont’s commitment to sustainable development, protection of human life, health, the environment, and to add value to the communities in which the company operates. However, Mr Murdy added, corporations are not a substitute for government, but rather work in partnership with government.

Finally, to maintain successfully a social license requires a guiding set of principles, among them, acting with integrity, trust, and respect. This means transparently reporting on Newmont’s activities to the community in a regular and timely fashion. It also means being honest about the issues the company faces. Whether financial, environmental, or social, Newmont must be accountable for its actions and impacts. The company believes it can mitigate and rehabilitate the impacts of mining while creating greater, long-term positive benefits. Newmont must keep building alliances with its stakeholders, and listen actively and respond to the issues people care.

To corroborate its social responsibility policy, Newmont takes as example its experience in Australia, where effectively engaging and innovative programmes with indigenous communities are taking place in the fields of illiteracy, education, and training. A big question here is why those social policies are not pursued in Peru. Is it because in Australia, the government has a firmer stance in defence of its citizens? If MYSRL is capable to bring such engagement to the field in Cajamarca, through effective actions, programmes and policies, it is probable that it might recover some of its lost credibility.

In practice, what MYSRL calls social policy in the case of Cajamarca, is reduced to the delivery of handouts to the communities, consisting mainly of small infrastructure projects. In the case of the selling of land to unfair prices to the company, first, it put the peasants under pressure with the threat of starting judicial proceedings where the affected would lose

everything. The company was forced to stock up the payments after the involvement of the Catholic Church in the negotiation for compensations and revolving funds. In the case of the Choropampa mercury spills, effectively the company paid the medical costs of people taken to hospitals but putting the ill under duress, as they were not allowed to leave the medical facilities or inform their families about their condition. The sick were also not informed about the kind of medical treatment received. The promises of jobs, medical insurance and infrastructure projects were short-lived. MYSRL fulfilled its obligations to clean the sites of the spills, but after several kilos of mercury had evaporated and were probably suspended in the air (Leyva and Jahncke 2002.) In view of those facts, the company lost its social license to operate later Cerro Quilish in the eyes of most of the citizens.

After the Choropampa incidents, MYSRL established a Direction of Community Relations in its structure⁴³⁵. This office employs part-time anthropologists and sociologists, recruited with the objective of improving the communication and image of the company among the people in the rural areas. Nevertheless, the Direction has not proved successful, in the light of the mushrooming and escalation of conflicts. As long as MYSRL cannot prove its point on the need of balancing mining and economic issues with environmental ones, the issues of social responsibility and social license to operate in Cajamarca will remain a moot point.

In addition, MYSRL has founded recently the Asociacion Civil Los Andes de Cajamarca, a NGO that will concentrate in small-scale enterprises projects, revolving funds, and small business initiatives.⁴³⁶ Cultural and charity programmes are also part of the agenda.

7.5. Implications for Environmental, Mining, and Public Policies

The environmental conflicts in the Cajamarca region provoked by the activities of MYSRL show the array of problems and challenges that policy makers face when deciding that natural resources extraction activities are the direction to be followed to achieve development. The social and economic grievances of the population are not being solved by the mining activities in the region. On top, environmental grievances have been added to the picture. In such context, reaction of the affected has been steered by a sense of injustice and *déjà vu* that reflects in the mistrust that the citizens and their leaders show towards the state and the investor. The situation has reached a dead point where the company and the citizens will not back down on their claims and rights. The state is a passive observer that is not able to pull

⁴³⁵ See MYSRL website, www.yanacocha.com

⁴³⁶ See Los Andes website, www.losandes.org.pe

together its resources to offer a space for dialogue that can be trusted by all concerned. Its credibility is at the lowest.

The implications of this situation for environmental, mining, and public policies are foreseeable. A turning point is necessary to overcome the conflict that can be based only, first, on the recovery of the lost legitimacy, and second on policies that address citizens' concerns while at the same time allowing Peru to develop its potential in mining and other natural resources as well.

The conflicts of Yanacocha only show the irrationality of the system of sector environmental authorities, and the contradictions that it provokes among public officers, citizens, and investors alike. This situation not only has an impact in terms of costs, but also in terms of eroding the credibility of the Executive branch institutions involved.

It is in the conflict where the fact that environmental policy in Peru was enacted following state objectives that divert from government objectives is clear. If environmental policy would have the objective of effectively, including sustainable development issues in public policy, it would not provoke additional problems to private investors but on the contrary, it would facilitate its operations. In the light of the Cajamarca conflicts, the impression is that environmental policies have been patched to mining policies without concordance. Environmental policies and objectives are set on paper, but are not enforced in practice. The capacity of enforcing environmental policies is also at stake. The failure by Sector authorities in doing so only adds to the social grievances of the population. The investor finds itself in the middle and "benefits" of it. However, such temporal gain is only the background for more conflicts to come.

It is clear from the events of Cajamarca that the Peruvian state has taken a weak concept of sustainable development in its environmental policies. However, the approach has not been comprehensive and logical. This means that, if the government has chosen such approach, technological and scientific alternatives should be searched to compensate the non-renewable natural resources being lost by extraction. MYSRL will remain in the region for three generations according to its directors. The Peruvian state has not presented the citizens of Cajamarca with the scenario of what will be of the region after the company leaves. This is definitively the main gap of such environmental policy as implemented in Peru.

Mining policy in Peru is being tested to the limits with the emergence of conflicts like Choropampa and Cerro Quilish. The inclusion of environmental concerns in the Mining sector agenda does not manifest in the fulfilling of their aims and objectives when activities dangerous *per se* are carried on. The approval of environmental legislation and procedures does not translate into the existence of a political will to avoid environmental damage and to leave

aside the “environment-as-a-cost” rationale of civil servants. In particular, the adoption of a strategy by the latter to consider itself a mere administrative instance in charge of environmental issues and not the actual authority in charge of control and monitoring is a reflection of that. To this, the system of privatised controls of the environmental strategies of the companies only helps to skip responsibilities further. At the same time, the Mining sector pursues to be the sole authority in relation to environmental issues affecting mining activities, intention that has rebutted by its inefficiency in addressing and solving those environmental problems.

The strategy of the Sector of allowing public participation under a controlled setup, which would not provoke problems to private investors, has proved also inefficient. In the case of MYSRL, EIAs were approved by the Sector but that did not solve the problems of lack of transparency and credibility. Further, it piled them up, paving the way to escalation of conflicts. Inclusion of citizens in the procedures is urgent, and that means with full rights, timely, and with full available information, e.g. empowered. The communities and citizens should be taken as equal parties in the discussion of environmental problems in the Sector. The more this reality is denied, the more conflicts the Sector will face.

The case of Cajamarca shows that natural resources extraction cannot be the only way of solving the economic problems of Peru. Concentration in one such strategy will only make the country dependant on it. Repeated experiences in Peruvian history should have showed policy makers the dangers of those approaches. To put all efforts in the mining sector as a TINA situation only undermines other possibilities to achieve economic development. On the other side, the government is not interested in re-investing the wins of the operations in the regions where they take place, which makes the complaints of the citizens understandable. Policies of redistribution of the revenues obtained from mining exploration are only a step forward. The main issue is to ensure that such income is used adequately and is invested in long-term development projects for the region.

An important lesson in the Yanacocha case is that to offer an open economic system for private investors with all possible advantages does not assure that the citizens will not oppose the activities, if their own rights are at stake. The citizens of the region of Cajamarca are in the situation to choose between the loss of their life quality and environment for the sake of the whole country. Taking into account the issues of centralism in Peru, that such situation would not stand the test of time was foreseeable from the beginning. It is only surprising how many years took the citizens to react.

Public policy should be embedded in social and poverty policies. The promises of economic and social development to be brought by MYSRL activities to the region of Caja-

marca were doomed from the beginning because of the characteristics of gold mining *per se*, and because of the centralism prevalent in the Peruvian political system. To that situation, the prevalence of the Executive branch over other powers of the state only adds to the picture. Therefore, an opportunity to make of public policies based on economic development motored by extraction of natural resources and exports an alternative for the country can only be achieved on counts of including good governance, accountability, and transparency in the Peruvian political system. If the authorities at all levels effectively fulfil their duties, taking as mandate the concerns of the citizens, there is a chance that those policies are acceptable and possible to implement. If not, stalemates like the Cajamarca situation will repeat, which means all involved will loose.

The model of an export-oriented economy based on the extraction of natural resources has limitations that reflect in the social and economic standing of the citizens of Cajamarca. Indeed, from being the fourth poorest region of the country, it is now the second poorest. How, this could happen, in spite of the huge investments of MYSRL in their activities, is not the subject of this thesis. However, it leaves thought on how is it that the economic model that promised so much has failed so blatantly in bringing development and empowerment to the people.

7.6. Preliminary Conclusions

The conflicts provoked by MYSRL mining activities in Cajamarca are the logic consequence of the gaps in the environmental policies of the Mining sector. Ineffective action of the state added to an aggressive company stand has only provoked the alienation and rejection of the citizens of Cajamarca, effectively withdrawing the social license to operate.

The specific conflicts analysed in this chapter are only the peak of the iceberg of environmental incidents that were piling up since the beginning of MYSRL activities in Cajamarca. The incidents are not an exception. These only show in practice the failures in the environmental policies as implemented by the Mining sector. That, at present, similar conflicts are mushrooming in other parts of the country (Antamina and Espinar being the most recent cases) only calls for reform not only of the policies, but also, most importantly, of the role of the civil servants in charge of applying those.

Stakeholders at the local and regional levels have been important in the direction the conflicts in Cajamarca have taken. What is necessary to take into account is that the articulation between rural and urban actors brought a new dimension to the conflict. Because of the centralism and upper hand of the Executive branch in the Peruvian political system, the griev-

ances of the people of Cajamarca were not present in the national political agenda, until rural and urban citizens joined forces against the overwhelming power of MYSRL in the region.

In addition, stakeholders have been instrumental in putting environmental conflicts (and the social and economic issues associated to them) in the forefront to the point that the model of development adopted starts to be questioned. This serious evolution can lead to authoritarian strategies for controlling and maintaining the *status quo* from the part of the state, as experienced in past Peruvian history. It is clear from the answers of the political elite that this was not a desired outcome of the policy of attracting foreign capital to invest in natural resources in the country. The danger is that the incapacity of the state in tackling the issue can lead to repression and human rights violations, as seen in the case of the Cerro Quilish conflicts.

Various responses to the conflicts have been essayed and have been put into practice without clear commitment from the part of the actors involved. The legal path has been followed by many citizens in hopes of finding in the Judiciary the haven of protection of rights not offered by the state, e.g. the Executive branch. Judicial processes are long and tiring but until now, those have offered effectively an answer to the citizens, reaffirming their rights *vis-à-vis* the state and MYSRL. This can be considered mere lip service, but given the history of discrimination of rural communities in Peru, it is a very important symbolic gesture, that recognises their rights as citizens of the country, a fact slighted by the state and MYSRL in their dealings with the population. Institutional arrangements have proved ineffective to deal with the conflicts and towards peaceful resolution. They only served short-term objectives of appeasing the population, strategy that eventually failed, over rolled by the assertion of their rights before the authorities at the local, regional, and national levels. MYSRL tame attempts to incorporate issues of social responsibility in its agenda are only in the beginning. It took the company thirteen years, and grave conflicts with the citizens to move towards a kind of what a social responsibility policy in Cajamarca could be. Newmont, major shareholder of the company, has implemented those strategies in other countries with relative success. It would be reasonable that similar ones are carried out in Peru.

In the light of the conflicts of Cajamarca, environmental, mining and public policies need to be reassessed to attain a logical framework that can effectively serve to promote private investment, while, at the same time, does not leave the citizens unprotected before private investors. The inclusion of participation, transparency, empowerment, good governance, and accountability in the Peruvian political system is a duty to allow democracy to take root in the context of a society that still has very much to overcome and achieve to deliver effectively the promise of development to its citizens.

VIII. CONCLUSIONS AND RECOMMENDATIONS

1. In this dissertation, we have discussed about the theoretical framework that surrounds “environmental policy” as a concept. The argument shows that the content of environmental policy is influenced by the concepts of “development,” “public policy,” “public participation”, “good governance” and “sustainable development.” Environmental policy is the main tool available to implement in practice the objectives of sustainable development through public policy. Notwithstanding, it is important to bear in mind the consequences of explicit environmental policy *vis-à-vis* implicit environmental policy. At the same time, the differences between state environmental policy and government environmental policy are to be analysed against the background of their political and economic contents, e.g. market economy policies. Any attempt to leave aside those considerations would only bring a skewed picture of how environmental policy is implemented in a specific reality.
2. In the context of development, environmental policy is in the middle of the discussion between alternative or mainstream approaches. At present, both trends are coming together, and their contents mingle towards a new understanding of development. Either bottom-up or trickle-down, environmental policy cannot ignore issues of citizen participation, democracy, good governance and accountability to target the widely accepted objective of sustainable development.
3. The relation between environmental policy and public policy shall be regarded as of the specific to the general. In this context, environmental policy is a tool that is understood against the background of both stakeholders and institutions. In the analysis, it is necessary to take into account whether the system of representation of a country is pluralist or corporatist. In addition, a clear distinction is to be made of internal and external stakeholders, to grasp the dynamics at the inter-, and the intra-sector levels. Environmental policy, in relation to institutions, refers to the structures that form organisations and bodies, and to the environmental rules, norms, and strategies operating within or across organisations.
4. Public participation and good governance are conditions and consequences of successful environmental policy in all its facets (design, implementation, etc.) Their inclusion is inherent to the present concept of democracy. Participation in environmental policy can effectively contribute to accomplish development goals. The integration of the citizens in policy-making, specially the poor, can push governments to rethink and reshape their practices, broadening the range of choices and converting people in actors of their own development. At the same time, it is necessary to be aware of pseudo-participatory practices, non-legitimate processes, and civil society weaknesses, if the participation process is pursued in a non-fully

democratic or neutral arena. Good governance has as characteristics: to be participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.

5. The concept of sustainable development as one of the building blocks of environmental policy implies to decide on whether the approach to environmental issues will be strong or weak from an economic point of view. This means to stress on either ecologic or economic considerations. On the other side, to find a balance between those two poles requires fine negotiation capacities to satisfy all sectors involved in development efforts. It shall be remember that positive experiences in the developed world show that environmental conservation can be a motor for the economy, creating working places, and saving energy costs.

6. The evolution of environmental affairs in Latin America shows that the introduction of environment concerns and, eventually, of the sustainable development concept has led to a mainstreaming that has helped to modify the political and economic agendas in the region. At present, there is no possibility to avoid sustainable development as an element in the development discourse. During the years, the different approaches to the issue influenced the overall objectives of environmental policy: from protection, to conservation, to environmental management, to sustainable development.

7. The political and economic context in Peru determined the turn that environmental policy would take in the next years. At the international relations level, it can be established that governments in Peru would sign and honour the international obligations and advancements in the issue. At the economic level, the need to strive for private investment (foreign or national) has reduced the scope of handling for environmental policy within government policies. At the political level, the inheritance of autocracy and instability of the eighties and nineties has led to unstable and exchangeable environmental policy.

8. Environmental policy in Peru has to be analysed against the background of explicit and implicit environmental policy, and environmental policy instruments as well. In this sense, it has to be taken into account the differences between those set of policies, being that implicit environmental policy is embedded in economic policies and these are, from the most part, natural resources, and raw materials export-oriented. This situation creates pressure on environmental policy and policy makers from the start, as the goals of the extractive sectors do not necessarily coincide with those of the environmental realm.

9. The evolution of environmental policy in Peru has to be analysed taking into account the differences between state and government environmental policy. Both sets of policies do not coincide and those are influenced by the political needs of the stakeholders and their constituencies. The advances of environmental policy at state level have been constrained by the

pressures of environmental policy at the government level, giving an image of a steps-forward-and-backward-process, when in reality two sets that eventually may come together at some point are running parallel. This has occurred mainly, by introducing sustainable development measures at first, and in the following levelling down the rigour of those standards for economic and political reasons (which may have had a conflict as a source.) The general aim, as stated in policy documents, has been to find a balance among the different interests at stake (i.e. the ones of the state, citizens, and business community.) This has been achieved only partially.

10. State environmental policy in Peru follows the guidelines of international environmental policy that means it attaches itself to the sustainable development approach. Government environmental policy follows a command-and-control and a “weak” sustainability approach. The gap between policy documents and institutional and regulatory framework aims on the one side, and the government actions on the other is huge.

11. Stakeholders in environmental policy in Peru are varied and they represent different interests, striving against each other towards the achievement of their objectives. There is no consensus yet on a core of environmental policy acceptable to all parties, being that environmental policy as such is still taken as an attempt to interfere in the scope of competences of each Sector.

12. The overall problem of environmental policy in Peru is that the gap between state and government environmental policies tends to wide instead of closing, putting the policy into discredit before citizens. The institutional arrangements are not sufficient and strengthening is necessary to cope with the growing responsibility of the institutions in the environmental field. Human and financial resources should be available to achieve sustainable development goals. The lack of a united environmental authority, and the separation of environmental competences among sectors have led to a fragmented system, which cannot respond effectively to the challenges posed by environmental conflicts, even less when those are related to poverty issues. The compartment viewpoint does not help a better implementation or policy improvement. The fragmentation of the system only leads to contradictions and conflicts among the bodies of the administration. Both, double costs and overlapping are the peak of the iceberg of the problems at the institutional level.

13. Politics of environment as a partisan affair is still at a very early stage in Peru. As long as those issues are not included in the agendas of the political elite, there will not too be enough room for improved and successful environmental policy. No important political party or movement is interested in seriously including environmental issues as part of their platforms, programmes, or initiatives. Those are still seen as extravagant issues, far from the peo-

ple. However, that environmental conflicts are mushrooming and environmental concerns are championed by the citizens show a gap between politicians and their constituencies that may need eventually to be filled.

14. The financing of environmental policy in Peru has become an incomplete homework, as initiatives and projects are still in the hands of selected institutions or stakeholders, but not where they should be the central and sector authorities, and the regional and local authorities, namely the policy makers in the field. This weakness reflects also in the need of human resources, properly trained, able to take over responsibilities, especially in the provinces, as an effort to reach the conflict areas and the people affected. Too many valuable human resources are concentrated in the capital city, where their impact is limited. Additionally, the difficult geography of the country makes the maintenance of such an environmental system even more costly and poses permanent challenges, as strategies to tackle that diversity successfully.

15. The environmental institutional framework in Peru needs sharpening and restructuring, especially at the level of distribution of powers and, most important, implementation. In the Executive, major efforts have to be made for avoiding overlapping and including participation. The Parliament has to tackle the issuing of needed legislation and parliamentary control (checks and balances) should be prioritised. The Judiciary must do more to enforce its rulings and to evolve from a moral instance to a proactive institution. Efforts should be made to achieve effectively that the environmental regulatory framework already approved is implemented at all levels, and that it is understood by the citizens abided by the regulations. Only continuity and logic at the level of institutions and regulations can give sense to the overall system.

16. In the Mining sector in Peru, it can be differentiated between the policy at the explicit level and the one at the implicit level. Whereas, explicit environmental policy in the Mining sector concentrates in command and control instruments to enforce environmental obligations, the implicit environmental policy in the Mining sector focuses on attracting private investment through benefits and stability contracts that may include generous exemptions to environmental obligations. This duplicity only produces confusion and discredit at the level of environmental policy, as the one hand erases things done with the other. The environmental institutional and regulatory framework in the Mining sector has been designed to serve implicit environmental policy goals rather than the explicit environmental policy objectives.

17. Conflicts in the environmental institutional and regulatory framework emerge because of the uncoordinated design of the environmental authorities at the different Sectors. Those bodies are to be found in every Sector, and in each with a different conception and functions. Additionally, the powers given vary from one to the other, complicating the possibility of a

coordinated work, as each authority is equipped with a different set of tools. At the internal Sector level, the environmental authority usually is often in a weaker position in comparison to the other units of the administration in charge of extraction or production issues. This situation still reflects that environmental issues are seen as a burden rather than as an integrated part of the work of a Sector. The main consequence of the conflicts is the lack of a consensus on an environmental core acceptable to all sectors of the administration that would prevent competition among them.

18. The case of gold mining by MYSRL in the region of Cajamarca is important because it shows that the environmental frameworks in Peru are not complete and are not sufficient to deal with the problems occasioned by large-scale mining projects taking place in extreme poverty areas. Neither the population benefits, nor the environment stays pristine. To say otherwise is actually to present the facts and consequences of mining projects in an unrealistic light to the citizens, who in the long-term would only react against the project, endangering the stand of the country as a pole of investment. Not to mention, the discredit of government and civil servants involved in the conflict. The Yanacocha project shows that the social and economic consequences of large-scale projects do not necessarily reflect in the improving of the conditions of the poor in a given area. To the contrary, as the official statistics on poverty show, the region has impoverished itself since the project started: from fourth poorest to second poorest. No trickle-down effect took place in Cajamarca. At the level of stakeholders, escalation and hardening of positions has been the logic consequence of the lack of information and transparency. When trust is breached, it is difficult to build up a process to find solutions to the different environmental conflicts that continue emerging in the region of Cajamarca.

19. Recommendations to tackle the urgent problems of environmental policy making in Peru can only be successful when the political will of all actors involved is for a sound implementation of the institutional and regulatory framework at all levels. Without political will, any design, paper, and document would only be a dream and a nice show off with no effective value in the eyes of the constituencies. Moreover, this would only play in detriment of the high aims of sustainable development: to combat effectively poverty and to improve the living conditions of the poorest of society.

20. The regulatory framework should define clearly the powers of the different authorities (e.g. Mining sector, Health sector, Agriculture sector, CONAM) at the central level. Particularly, the Health sector should be strengthened as it deals with the consequences of environmental conflicts for the human health. A constitutional right of the first generation is at stake. On the other side, Local Governments powers should be strengthened and clearly defined (as

they are the authorities nearest to the citizens), and for the sake of decentralising political power.

21. The establishment of coordination mechanisms among the different authorities should be promoted. The CONAM solution has proved not sufficient, as the regulations foresee its intervention as the latest instance in case of conflict, when it would be desirable that CONAM coordination powers can help preventing the conflicts in the first place. A coordination instance taking as model the multi-sector commissions working at the Cabinet of Ministers level should be a better alternative, as it also takes environmental issues to the level of economic and poverty issues, at the core of public policies in Peru.

22. Participation should be taken as a main component of policy design at the government level. Especially, in the case of environmental conflicts, participation can prove to be an instrument for de-escalation and easement of the tensions. Civil society as an ally and not an enemy of government policies should be the aim of policy makers and other stakeholders alike.

23. Private initiatives, for the solution of environmental conflicts should not be underestimated. Public private partnerships schemes and corporate responsibility projects can only help to improve the relation among stakeholders and can prove to be an incentive for citizens to pledge to mining projects that take into account their concerns.

24. A modification of institutional administrative structures should be tested to deal with conflicts. The creation of a new environmental authority in charge of dealing only with environmental conflicts might be considered. Alternatives to such proposal are a specialised unit within the structure of the Peruvian Ombudsman, as implemented for the case of indigenous peoples and gender issues. The appointment of an Ombudsman specialised on environmental affairs would be an important first step, regardless of other institutional arrangements.

25. Alternative to the creation of a new environmental authority, the lack of authoritative powers of CONAM should be revised. A section within CONAM in charge of dealing with environmental conflicts would be a step forward. Main functions of such a body should be monitoring environmental conflicts, compiling information, and most important bringing up recommendations to be implemented by Sector and Central authorities.

26. Financial and human resources shall be increased to attend the demands of stakeholders in the areas where environmental conflicts take place. This means, decentralisation should be an instrument to address citizens' concerns, as the institutions should go to the people, and not the other way around. Expensive fees or costs for accessing information shall be cut, as this only hampers wider information dissemination and transparency.

27. Despite the limitations encountered in the implementation of environmental policy in Peru, the model can be improved to achieve better outcomes. To take into account citizens and their problems means to understand political processes and to look beyond day-to-day policymaking. Environmental conflicts have become a catalyser of citizens' grievances on social and economic issues thus finding a solution to those conflicts implies also to address such discontent. Environmental problems are not anymore at the outskirts of public policy. These are part of the social and poverty issues to be addressed by the governments of Peru. Failure in solving those would only mean failure in achieving what Peruvian citizens expect: good governance and full citizenship in a community.

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X. ANNEXES

ANNEX 1: List of Interviews 2001 and 2003

1. Ms M Böttger, Lawyer. 20 August 2001, 25 October 2001, 05 April 2003.
2. Dr A Hoekema, Professor of Anthropology and Sociology of Law, University of Amsterdam. 26 August 2001.
3. Mr W Valdez, Lawyer, Proterra, 05 September 2001, 04 April 2003.
4. Mr C Andaluz, Director of Proterra, 05 September 2001, 04 April 2003.
5. Mr J Alberto, former Advisor, Committee of Environment, Ecology and Amazonia, Congress of the Republic of Peru, 12 September 2001.
6. Mr P Foy, Professor, Faculty of Law PUCP, Member of IDEA-PUCP 10 October 2001, 28 November 2001, 09 April 2003.
7. Mr J Benites, Consultant, INCAAP, Cajamarca, 03 November 2001
8. Leader of the Ronderos of Bambamarca, 04 November 2001.
9. Ms C Garcia, Adviser, MEM, 21 November 2001.
10. Mr J Bonelli, Director DGAA-MEM, 21 November 2001, 26 November 2001.
11. Mr J C Sueiro, Head of Environment Programme, CooperAccion, 22 November 2001.
12. Ms M Aldana, Director, Instituto Vida, 23 November 2001.
13. Ms J Ortiz, Legal Adviser, DIGESA, 27 November 2001, 29 November 2001.
14. Mr M Palacin, President, CONACAMI, 06 December 2001.
15. Mr J Consiglieri, Officer at the Mining and Communities Programme, CooperAccion, 06 December 2001.
16. Mr A Chavarry, Legal Officer, WWF-Peru, 10 April 2003.
17. Mr J Jahncke, Lawyer, FEDEPAZ, 11 April 2003.
18. Ms D Balvin, Consultant, Asociacion Civil Labor Ilo, 14 April 2003.
19. Mr J Aroca, Coordinator Advocacy Programme, OXFAM America, 21 April 2003.
20. Mr M Waschl, Officer, Latin America Department, Misereor, 16 May 2003.

ANNEX 2: List of Visits 2001 and 2003

The visits had as objective to collect information and sources, to establish contacts, to network, and to introduce the nature of the research.

1. Colegio de Abogados de Lima, Lima, 14 August 2001, 24 November 2001.
2. Proterra, Lima, 16 August 2001, 20-23 August 2001, 31 August 2001, 18-28 September, 19 October 2001, 22 October 2001, 25 October 2001, 31 March 2003.
3. Ministerio de Energia y Minas, Lima, 21-23 August 2001, 31 August 2001.
4. Sociedad Nacional de Minería y Petróleo, Lima, 28 August 2001.
5. Congreso de la República, Lima, 29 August 2001.
6. GRADE, Lima, 04 September 2001, 04 October 2001, 09 October 2001.
7. PUCP, Lima, 04 September 2001, Conference on Environmental Law 21 November 2001.
8. SPDA, Lima, 07 September 2001, 10 September 2001.
9. CONAM, Lima, 11 September 2001, 14 September 2001.
10. UPC, Lima, Conference on Mining Law in Peru, October 2001.
11. IDEA-PUCP, Lima, 10 October 2001, 28 November 2001.
12. CONACAMI, Lima, 11 October 2001, 26 November 2001, 6 December 2001.
13. INCAAP, Cajamarca 03 November 2001.
14. Cajamarca, 03-11 November 2001. 4 November Bambamarca, 5-6 November Chota, 7-8 November Cutervo.
15. INEI, Lima, 20 November 2001, 21 November 2001.
16. DIGESA, Lima, 27 November 2001, 29 November 2001.
17. WWF-Peru, Lima, 10 April 2003.
18. FEDEPAZ, Lima, 11 April 2003.
19. Asociación Civil Labor Ilo, Lima, 14 April 2003.
20. OXFAM America, Lima, 21 April 2003.

ANNEX 3: Interview Guide

1. Overall environmental situation of Peru.
2. Environmental and regulatory framework. Most important changes, innovations, problems.
3. Environmental conflicts in Peru. Overall vision.
4. Communities and environmental conflicts. New developments.
5. Politicians and environmental issues. Parliament
6. Executive branch role.
7. Sector Mining role.
8. INRENA, DIGESA.
9. Other bodies involved in environmental policy.
10. Environmental conflicts and the mining sector.
11. Communities and the mining sector.
12. Role of mining companies.
13. Judiciary and environmental conflicts.
14. Role of NGOs, CBOs, and other stakeholders in mining conflicts.
15. Environmental issues and mining in the context of public policies in Peru.
16. Mining canon.
17. Yanacocha, case, stakeholders, incidents.
18. Wrap-up.

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Education

Post Grade:

Promovendin, (Rigorosum: 15 November 2005): Philosophische Fakultät, Rheinische Friedrich-Wilhelms-Universität Bonn, Germany. Dissertation: "Environmental Policy under Political Transition: The Peruvian Mining Sector and the Yanacocha Goldmine."

Master of Arts (MA) in Politics of Development (11 December 1998): Institute of Social Studies ISS, The Hague, The Netherlands. Research Paper: "Participatory Approaches for Sustainable Development: Environmental Policy Making in Peru."

Professional Title:

Abogado (Lawyer, J.D.) (8 January 1997): Facultad de Derecho, Pontificia Universidad Católica del Perú PUCP, Lima. Thesis: "El Problema de los Movimientos Transfronterizos de Desechos Peligrosos en la Convención de Basilea y su Aplicación en el Perú."

Pre Grade:

Bachiller en Derecho (Bachelor in Law, BA) (19 July 1994): Facultad de Derecho, Pontificia Universidad Católica del Perú PUCP, Lima.

Specialisation Course:

Diploma: II National Course on Conservation Sciences (4-16 January 1994). Universidad Peruana Cayetano Heredia UPCH, Wildlife Conservation Society WCS, Asociación Peruana para la Conservación de la Naturaleza APECO, Shougang-Hierro Perú. San Juan de Marcona, Ica, Perú. 100 academic hours.

Work Experience

October 2000-November 2005

Doctoral Candidate (*Doktorandin*). International Doctoral Studies Program, Centre for Development Research (Zentrum für Entwicklungsforschung ZEF-Bonn) Department of Political and Cultural Change, Rheinische Friedrich-Wilhelms-Universität Bonn, Germany. Research on legal and institutional issues related to environment law and policy, and the mining sector in Peru. The research work included two field trips to Peru for data collection, interviews, and case study monitoring.

The dissertation is an in-depth study of the institutional and regulatory framework relevant to environment and mining in Peru, including the conflicts arising from social and community issues in the regions where gold extraction takes place. Stakeholder analysis and the case study of Yanacocha give a picture of the situation and the consequences and challenges that mining faces in developing countries.

The study programme included a six-month (October 2000-March 2001) interdisciplinary module with course work, the presentation of an interdisciplinary group paper and a public examination. Additionally, doctoral students attend seminars, colloquia, and conferences organised by ZEF during the period of residence in Bonn and assist professors and senior research fellows in specific tasks related to the overall research targets and projects of the Department in which the dissertation is carried on.

The assigned responsibilities were carried on in English, German, and Spanish.

www.zef.de

November 2003-January 2004

Researcher. Centre for Development Research (Zentrum für Entwicklungsforschung ZEF-Bonn) Department of Political and Cultural Change, Rheinische Friedrich-Wilhelms-Universität Bonn, Germany.

Research project "The Constitutional State in Latin America" under the lead of a Senior Research Fellow. Legal research, reporting, and resources preparation. Networking and co-ordination with leading legal experts in South America.

September-October 2001

Consultant. Consultancy Team for the Dutch Organisation for Co-operation to Development NOVIB and Proterra, Lima, Peru.

External Evaluation on Institutional Strengthening of a Peruvian Partner of NOVIB. Programme and project assessment. Development of a SWOT matrix for the institution concerned and proposed recommendations for institutional strengthening and organisation.

February-March 2000

Consultant. Consultancy for Proterra, Lima, Peru.

Evaluation of institutional development issues. Research on possible funding agencies for the institution in Europe and development of an institutional profile for fundraising. Recommendations for fundraising strategies.

January-July 1999

Law Clerk (Intern) at the International Criminal Tribunal for the Former Yugoslavia and Rwanda ICTY-ICTR, Office of the Prosecutor, The Hague, Netherlands. Legal research and prosecution on war crimes.

Research on policy matters in areas of particular difficulty.

Attendance of sensitive diplomatic issues and legal matters, including research projects with respect to the OTP's prosecution policy, its overall strategy, and its diplomatic relations with governments and other international organisations.

Special research projects on: background material searches to legal analysis and research on issues dealing with the privilege and immunity of witnesses; changes to rules of procedure and evidence at the ICTY; state co-operation and the ICTY-OTP; international arrest warrants; and, the establishment of the International Criminal Court.

Research on legal issues related to the Tadic and Celebici appeals and the Blaskic case.

Monitoring of motions practice at the Courts of the ICTY.

Assistant to the Senior Legal Adviser of the Prosecutor, Mr Gavin Ruxton, including legal research and preparation of reports, speeches, and presentations.

The assigned responsibilities were carried on in English and French.

www.un.org/icty

August 1996-July 1997

Legal Adviser. Parliament of the Republic of Peru, Chairmanship of the Committee on Environment, Ecology, and Amazonia, Lima, Peru. Legal advisory and law drafting.

Drafting of bill proposals submitted to the Plenary of the Parliament of Peru (legal research and study) and political negotiations and co-ordination for the approval of those bills (with bodies within both the Parliament and the Executive branch). The following bills (among others) were drafted and subsequently approved: Organic Law for Natural Resources Use (*Ley Organica para el Aprovechamiento de los Recursos Naturales*), Law for the Conservation of Biological Diversity (*Ley para la Conservacion de la Diversidad Biologica*), Law for Natural Protected Areas (*Ley de Areas Naturales Protegidas*), among the most important. The aforementioned legislation was issued as mandated by the Constitution of Peru

(1993) to complete the regulatory and institutional framework for environmental policy making in Peru.

Travel in the country supporting the work of the members of the Committee.

Organisation and conception of public hearings, international seminars, and expert workshops attended by members of the Committee and the Parliament.

Preparation and edition of reports on the work of the Committee for the President (Speaker) of the Parliament.

Co-ordination of the edition of the Chairmanship publications (four books and the Legislative Period report) on the work results of the Committee.

www.congreso.gob.pe

June 1992-July 1996

Researcher, Proterra, Environmental Law and Policy Programme, Lima, Peru. Co-ordination, Research, Capacity-building, Advisory.

Environmental Defence of Public Interest, including representing citizens before tribunals.

Research on Environmental Law (Peruvian and international). Edition of reports, documents, and publications (bulletins and books). Organisation of expert meetings and conferences. Co-edition of *Boletín Jurídico Ambiental*, Proterra and NOVIB, Lima 1995-1996; *Proterra Informa Boletín*, Proterra and NOVIB, Lima 1992-1994; *Directorio Ambiental Peruano*, Proterra and GTZ, Lima, 1993.

Project and program co-ordination and implementation, including conceptual, technical, and administrative tasks. Legal counselling for citizens, preparation of legal reports, monitoring of cases, following-up of trials, collection of data, and standing to sue before tribunals. Administrative work included monitoring project implementation and reporting.

Member of advisory teams appointed by Proterra before bodies of the Executive Branch, Parliament and Local and Regional Governments (including consultancy on policymaking, elaboration of policy proposals, institutional representation, and follow-up of results.)

Networking activities and follow-up of UN processes related to sustainable development (including policy co-ordination with NGOs and public institutions and preparation of policy documents for UN meetings.) Dissemination of knowledge on environmental treaties and agreements to NGOs working at the local and regional level in Peru. Organisation of international conferences (i.e., *Conferencia de ONGs de Latinoamérica y el Caribe para la Implementación de la Convención de Naciones Unidas para Lucha contra la Desertificación y la Sequía*, Ica, Peru, 29 Nov-01 Dec, 1995).

Travel in the country and abroad as representative of Proterra attending conferences and seminars, and in support and investigation of environmental cases.

Attendance of debate, co-ordination, and networking groups.

From August 1992 to January 1994, support to co-ordination and networking for the Latin American Network of Environmental Lawyers, including co-edition of publications (bulletin "Bona Fide" Proterra and UICN-SUR, Lima 1992-1994, and *Directorio Latinoamericano de Derecho Ambiental*, Proterra, UICN and Fundación Polar, Lima 1993) and organisation of the Latin American Congress on Environmental Law, Santa Cruz de la Sierra, Bolivia, 8-10 September 1993.

The assigned responsibilities were carried on in Spanish and English.

www.proterra.org.pe

February-March 1996

Consultancy Team for the Project of Management of Sewage Water, Coastal Pollution and of the River Basins of the Rivers Chillón, Rímac and Lurín in Metropolitan Lima-International Bank for Reconstruction and Development PROMAR-BIRF, Lima, Peru.

Research on environmental law and policy related to water and sewage in Lima Metropolitana. Feasibility study and Report to the World Bank on the privatisation of SEDAPAL, the water and sewage state-owned company of Metropolitan Lima.

August-September 1995

Consultancy Team to the Institute of Metropolitan Planning of the Municipality of Metropolitan Lima on Environmental Legal Regulations and Status of the Lima and the Constitutional Province of Callao Coastal Stretch, Lima, Peru.

Research on environmental law and policy. Draft legislation and recommendations to the Municipality of Lima on the legal status of the Coastal Stretch.

January-May 1994

Junior Professional Intern. The World Conservation Union, Regional Office for South America IUCN-SUR, Quito, Ecuador.

Following-up, diffusion and networking on IUCN South American members activities.

Assistance to the Regional Representative for South America in his duties, and support of the Technical staff in legal issues.

Follow-up and dissemination of working results of the Regional Office on the Earth Summit agreements to IUCN South American members.

The assigned responsibilities were carried on in Spanish and English.

www.iucn.org

Fellowships/Scholarships**November 2003-January 2004**

Centre for Development Research ZEF, Department of Political and Cultural Change, Rheinische Friedrich-Wilhelms-Universität Bonn (Research project “The Constitutional State in Latin America”, Bonn, Germany).

March-April 2003 and July-December 2001

Centre for Development Research ZEF, International Doctoral Studies Program, Rheinische Friedrich-Wilhelms-Universität Bonn (funded by GTZ/BMZ) (Research field trip for doctoral dissertation, Peru and Germany.)

March-May 1999

Centre for Civil and Human Rights, University of Notre Dame, Indiana, USA (Internship, International Criminal Tribunal for the Former Yugoslavia, ICTY, The Hague, The Netherlands.)

August 1997-December 1998

Netherlands Fellowship Programme (Master of Arts, Institute of Social Studies, The Hague, The Netherlands.)

January-May 1994

The World Conservation Union IUCN, South American Members Internship Program (Internship, IUCN Regional Office for South America SUR, Quito, Ecuador.)

Languages

Spanish (native speaker). English (read, written, spoken, and understood.) German (spoken, read, understood.) French (read, understood.)

Publications

Forthcoming: Environmental Policy under Political Transition: The Peruvian Mining Sector and the Yanacocha Goldmine. ULB Bonn, Germany. Online Edition: http://hss.ulb.uni-bonn.de/diss_online

Forthcoming: “Participacion Ciudadana en la Gestion Ambiental en el Peru” in: Derecho y Ambiente, Volumen III, Pierre Foy (Editor.) Fondo Editorial de la Pontificia Universidad Catolica del Peru. Lima, Peru.

Vela, Talia (2001) “Participacion ciudadana en la legislacion ambiental en el Peru” in: *Derecho y Ambiente, Nuevas Aproximaciones y Estimativas,* Pierre Foy (Editor). Fondo Editorial de la Pontificia Universidad Catolica del Peru. Lima, Peru.

Vela Vargas, Talia (1998). "Public Participation in Environmental Decision-Making in Peru" in *IUCN Environmental Law Programme Newsletter*. Jan-Apr 98.