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## **Community mining consultations in Latin America (2002-2012):**

### **The contested emergence of a hybrid institution for participation**

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#### **Abstract**

From 2002 to 2012, 68 community consultations/referenda on large-scale mining activities have been conducted in Latin America challenging centralized decision-making procedures. These community consultations are not fostered by national governments or mining companies. Around 700.000 people have participated, expressing a massive rejection of mining activities in Peru, Guatemala, Argentina, Colombia and Ecuador. Community consultations have contributed to ease local tensions temporarily, slowing down or stopping mining projects in some cases. This paper analyses the process of emergence and spread of such consultations exploring how they challenge the governance of mining activities.

We claim that community consultations are being institutionalised in the context of mining conflicts in Latin America. Consultations are not isolated experiences but constitute a strategy diffused and transformed through anti-mining networks with the support, in most cases, of local governments. Consultations diffuse in the midst of multi-scalar social learning processes where social movements exchange strategies and discourses and a hybridising process occurs in relation to political and cultural local features. We sustain that community consultations are a hybrid institution, the product of a dynamic multi-scalar process where non-State and State actors, formal and informal institutions are mobilized to challenge the centralized governance of

extractive industries. Consultations are a strategic tool of social movements and an emergent participation institution that reclaims the right of affected populations and indigenous peoples to participate, in empowering forms, in high stake decisions that affect their territories, livelihoods and future.

**Key Words:** mining consultation, environmental governance, hybrid institutions, social movements, diffusion, Latin America.

## **1. Introduction**

On the first Sunday of June 2002, 75% of the eligible voters of the Peruvian district of Tambogrande rejected the exploitation of a large-scale open-pit gold mine. From 2002 to 2012, 68 consultations/referenda have been conducted in 5 Latin American (LA) countries, with a large opposition to mining projects. This process is occurring in a context of growing pressures to extract mineral ores in LA and an increasing number of related socio-environmental conflicts (Muradian et al, 2012). These community consultations are not commissioned by national governments or mining companies as part of official procedures but instead are promoted by social movements and usually supported by local governments.

The emergence and spread of consultations in LA remains poorly studied as a whole. Studies addressing mining consultations/referenda have focused on the first four cases (Tambogrande, Esquel, Sipakapa and Majaz/Río Blanco) along with the wave of consultations in Guatemala. Nevertheless, the cases that followed, and the connections among consultations have received poor scholarly attention.

This paper is the result of a macro-analysis of the 68 mining consultations identified in Latin America between 2002 and 2012. It examines a salient issue in current Latin American politics, by comparing and exploring the connections between consultation experiences. We analyse the contested institutionalisation of consultations in the context of mining conflicts

in Latin America. Moreover we point to the association of local governments and civil society actors and the hybridation of formal and informal mechanisms in these processes.

The authors of this paper were among the researchers that analysed the initial cases of consultation and have since then seen how year after year the number of communities participating in almost identical experiences increased. This research is born from the curiosity of understanding how and why these consultations have emerged and spread and how community consultations are challenging the governance of mining activities.

## **2. Community consultations and the contested governance of mining activities in Latin America**

Researches on cases where community consultations were conducted focused on the contexts, actors, grievances, narratives, scalar dynamics and outcomes of the conflicts (Rash, 2012; Yagenova and Garcia, 2009, Haarstad and Floysand, 2007; Urkidi and Walter, 2011, Urkidi, 2011, Walter and Martinez-Alier, 2010, Dougherty and Olsen, 2014; Muradian et al, 2003, Van de Sandt, 2009; Bebbington, 2012a, Holden and Jacobson 2008; Bebbington, 2012a) rather than the consulting process itself, that is, in general, blurred.

Studies conducted, mainly, on the experiences of Guatemala and Peru, have also addressed consultations mechanisms and rights, analysing the impact of mining projects on human rights and the legitimacy of corporate responsibility (Coumans, 2012, Laplante and Nolin, 2014); the legal grounds and implications of consultations regarding the right to free, prior, and informed consent (Loarca, 2008, Fulmer, 2011, Fulmer et al, 2008, Ward, 2011, McGee, 2009); the judicialization of protests in cases of consultations (Sieder, 2011); and the relevance of consultations for indigenous mobilizations and identity reconstruction (Fulmer, 2011, Rash, 2012). There is also a relevant literature that systematizes the consultation

experiences in Huehuetenango, Guatemala (e.g. Merida and Krenmayr, 2009, Trentavici and Cahuec, 2012).

We highlight two key contributions of this paper to the literature. Firstly, researches on community mining consultations have, with few exceptions (e.g. Fulmer, 2011) focused on single case or single country level analysis. While such approaches have provided an in-depth understanding of the studied cases, there has been no study tackling the phenomenon from a regional perspective. This paper adopts a multi-case regional approach that aims to explore the connections and compare the features of consultation experiences. In this vein, we aim to tackle the spatial and scalar dynamics at stake, pointing to the complexity of the institutionalization process of consultations in Latin America.

Secondly, previous research refer to community consultations as “informal” events organized by civil society actors or examine consultations from a legalistic approach analysing how consultations followed legal requirements. These approaches have overlooked the role that local governments are playing in the organization and formal support of these mechanisms, as well as the on-going process of institutionalization addressed in this paper. These features of consultations trigger relevant questions regarding the association of local governments and civil society actors, as well as the combination of formal and informal institutional elements in consultations.

### **2.1. The regulatory context in the governance of extractive activities**

The key features of the institutions that regulate mining activities are shared by most LA countries. LA mining laws were developed under similar guidelines (Bridge, 2004, Chaparro, 2002). The approval of mining projects is usually centralized in the national government, and is based on the assessment of an environmental impact report. Participation arenas are set in relation to this technical document. Civil society actors can usually present

non-binding allegations and, sometimes, can express their views in a public audience where the technical document is presented and discussed.

In 2007, in the midst of Majaz conflict, the Ombudsman of Peru issued a special report identifying key reasons behind the increased number of extractive environmental conflicts in the country. For instance, the poor performance of the Peruvian State regarding participation mechanisms (e.g. shortening the time frame of civil society actors to present allegations to EIAs or the lack of responses to the allegations presented). A situation that “feeds the perception of citizens that the possibility to participate in the environmental assessment of projects (...) is irrelevant (...) a mere formalism within an administrative procedure” (own translation) (Defensoría del Pueblo de Perú, 2007: 31). A report published by the Latin American Observatory of Mining Conflicts in 2010 on participation and consultation rights claimed that participation in mining decisions is mainly “informative” and insufficient, when not secretive (Jahncke and Meza, 2010).

Large scale projects affecting indigenous communities are under specific regulations. Most LA countries – all countries studied in this paper – have subscribed to the International Labour Organization Convention 169 (ILO 169), which requires governments to ensure prior and informed consent of communities before decisions that could affect them are made; a process that should follow customary procedures. Social movements claim that this right is usually ignored or miss-applied (Jahncke and Meza, 2010). However, even if put in practice, the way ILO 169 and other international documents (e.g. UN declaration on the Rights of Indigenous People) frame “consent” is ambiguous and does not necessarily imply a binding power to community views (McGee, 2009, Jahncke and Meza, 2010, Rodriguez Garavito et al, 2010). States usually refer to “consulta previa” as a process of consultation that does not acknowledge the need to gain consent of affected populations (Rodriguez

Garavito et al, 2010). How consent is defined and to which extent it is included in national legislations is currently under debate in many Latin American countries.

Decentralization policies adopted by Latin American countries since the end of 1980s have also opened new spaces for local participation and municipal empowerment and are shaping the contested terrain of mining governance. National and local rights (e.g. information access, local participation mechanisms) and mechanisms of semi-direct democracy (e.g. citizen referendum, citizens initiative law) were introduced. Most Latin American countries fostered decentralization measures granting greater autonomy to the municipalities. For instance, Latin American Municipalities could, in countries like Guatemala, Peru and Argentina call for a local consultation on specific administrative decisions affecting their inhabitants (e.g. Guatemala Municipal Code, 2002:20). Despite the possible asymmetric negotiations between local governments and companies fostered by decentralisation policies (Rull, 2007), these regulations have also created new political opportunities as civil society demand the local level as a legitimate arena for participation and decision-making.

In the midst of these different institutional frameworks, community consultations are being fostered by social movements and organizations that ask for a greater inclusion of affected populations in the governance of mining activities.

## **2.2 Environmental governance and social movements: *hybrid institutions and diffusion***

There is an ongoing shift in views that frame resource regulation from those that are led by State-based institutions of resource management (government) to a wider environmental governance perspective (Bakker and Bridge, 2008). The governance approach addresses the myriad of actors and institutions that guide the ways in which environmental issues are addressed across different scales (Bulkeley, 2005). Hybrid forms of governance challenge

the conventionally recognized social roles of markets, States and, more recently, communities, as new dynamics and alliances are formed. This framework offers a relevant approach to examine how civil society actors and local governments are shaping consultations as an emerging governance mechanism.

We refer to hybrid governance as a process of institutional bricolage where different (non-State and State) actors shape institutions that combine formal and informal components in a multi-scalar dynamic. Cleaver (2001, 2002, 2013) developed the concept of “institutional bricolage” as a process by which people consciously and unconsciously draw on existing social and cultural arrangements (rules, traditions, norms, roles and relationships) to patch together institutions in response to changing situations (Cleaver et al, 2013). In this dynamic, the resulting institution is a mix of modern and traditional, of formal and informal practices that make sense in each particular place. A similar process is identified in the case of community-led consultations, where formal and informal institutions, local and international rights and regulations and locally legitimized procedures come together.

Studies on the role of social movements in institutional change offer relevant insights. In their review of the synergies between social movement theory and neo-institutionalism, Schneiberg and Lounsbury (2008) identify two key areas of research: social movements studied as outsiders and challengers of institutions, and social movements performing within institutions. In many cases, social movements instigate shocks or motivations or oppose directly existing schemes, generating legitimacy crises or otherwise disrupting institutions. However, they sometimes promote path creation and change by engaging in institutional processes and combining new projects or practices with prevailing models and arrangements (Schneiberg and Lounsbury, 2008:653).

In the case of consultations, anti-mining movements are challenging centralized decision-making governing mining activities pushing institutional change. However, they are also partially basing their strategy in formal institution resources, such as laws and rights from different scales and promoting new institutional arrangements with local governments.

According to the two stage model of institutionalization summarised by Schneiberg and Lounsbury (2008:651) the emergence of new paths is a 'bottom up' phenomenon where organizations or States adopt structures or policies in response to local problems, which then spark processes of mimesis, theorization and diffusion and become taken-for-granted as an accepted norm. We sustain that the emergence and spread of consultations can be seen as following this process of institutionalization in the context of mining conflicts. However, we acknowledge that this institutionalization process is contested as different areas of the State support or reject the validity of consultations.

Indeed, social movements might use the material and cultural resources of an institution as a base from which to challenge other institutions (Armstrong and Bernstein, 2008:86-87). The multi-level or federated character of institutions creates, sometimes, opportunities for movements (Schneiberg and Lounsbury, 2008). In this sense, it is important to analyse the scalar and spatial dynamics in processes of institutionalization.

In the context of political transfer, Peck (2011) points out that policies or political strategies are not merely transferred over space; their form and their effects are transformed by these journeys. More than policy or political transfers, he identifies context-dependent mobility-and-mutation processes (Peck, 2011).

Similarly, scholars and participants of contentious politics have examined how social movements (or some element thereof, such a tactic, symbol, frame, outcome, issue) spread or diffuse from one place to another (Givan et al, 2010). Chabot and Duyvendak (2002)



argue that diffusion processes have been usually understood as “deterritorialized” flows of information, while diffusion involves much creative reinvention and pragmatist agency (Chabot and Duyvendak, 2002:707). Indeed, diffusion is often a highly social or relational process (Tarrow and McAdam, 2005:129), where repertoires or frames are transmitted through interpersonal contacts, organisational linkages or associational networks, and involves the interaction between formal and informal institutions (Givan et al, 2010:2). Diffusion, then, does not simply mean that tactics or frames are transplanted from one site to other as a matter of political contagion or imitation; creative borrowing, adaptation, and political learning are often vital to its success (Givan et al , 2010:2). As we analyse in this paper, these are key insights to understand the emergence and spread of consultation in Latin American mining conflicts.

### **3. Methods and sources**

In order to study the process of emergence and spread of LA mining consultations, the authors of this paper identified and analysed all cases of metal-mining consultations/referenda from 2002 to 2012 in LA. We considered those consultation/referenda that were not fostered by the central government or private companies as part of an official consultation process, and aimed at consulting the local citizens at large whether or not a community/municipality/district was in favour of large-scale metal mining activities in their territory.

We analysed for each case the context in which consultations were conducted, the characteristics, claims and scalar features of the actors that promoted or impeded consultations, the regulations used to support consultations/referenda, the consultation main characteristics, outcomes and reactions, and the connections between cases.

The research was conducted reviewing and triangulating primary and secondary, activist and academic sources. Our methodology is based on Gerber (2011) multiple case analysis of conflicts over plantations. We conducted a review of the main newspapers for each LA country. International and LA activist networks and websites on mining conflicts were a key source of information as these networks reach a wide range of social movements in the region that don't always get media (or scholarly) attention (e.g. [www.conflictosmineros.net](http://www.conflictosmineros.net), [www.noalamina.org](http://www.noalamina.org), [www.minesandcommunities.org](http://www.minesandcommunities.org)). These networks have been increasingly recognized as relevant for research, not only as a source of activist knowledge (Rocheleau et al, 1996, Escobar, 2008, Gerber 2011, Martinez-Alier et al, 2011), but also for the development of extractive industries research in LA (Bebbington, 2012b). We also reviewed activist' and scholar' analyses of mining conflicts, as well as documentaries addressing our case studies.

Primary sources were also used. The authors of this paper had previously carried out extensive field work in two main consultation cases (Esquel and Sipakapa) and in other mining conflicts in Argentina, Chile, Ecuador and Bolivia. When required to fill blanks or contrast the quality of information, activists and scholars were interviewed. Sources were compiled and compared, identifying and choosing the best quality information available and developing a series of hypotheses that made us revisit and expand our sources in an iterative research process.

#### **4. The rise and spread of mining consultations in Latin America**

We identified 68 metal mining consultations in 5 LA countries for the period 2002-2012: Peru (2002, 2007, 2008, 2009, 2012), Argentina (2003, 2012), Ecuador (2011), Colombia (2009) and Guatemala (57 municipal consultations from Sipakapa in 2005 to

Mataquescuintla in 2012). We grouped cases in three main paths according to their connections, not their chronological order. In this vein, we aim to identify how consultations experiences have been shared from conflict to conflict as a useful participation institution. For each path, we highlight the key elements of the leading case(s), identify how consultations emerged, their institutional features and the actors involved, and the multiple processes at play in the spread of consultation cases.

Table 1 presents the cases of consultations conducted in the context of active mining conflicts in Latin America from 2002 to 2012. Table 2 refers to the wave of consultations conducted in Guatemala.

**Table 1. Mining consultations in the context of active mining conflicts from 2002 to 2012**

	Consultation case	conflict duration	date of consulta	Mining project and mining company	Consultation						
					Secret/no n secret	Uses official voters list (Y/N)	Type of consultation (legal framework) M.O: municipal ordinance	Participation (%eligible voters)	%against mining	%in favour of mining	%whites/n ull
PERU	<b>Tambogrande case.</b> District of Tambogrande (Piura)	1990-2003	01-06-2002	Tambogrande project. Manhattan Minerals (Junior Canada). Gold and silver	S	Y	Local consultation (M.O.)	27015 (69%)	93.85%	1.98	4.17
	<b>Majaz/Río Blanco case.</b> Ayabaca and Pacaipampa district (Ayabaca Mun.) & Carmen de la Frontera district (Huancabamba Mun.), Piura.	2002-today	16/09/07	Majaz project. Monterrico Metals (UK, junior). Sold in 2007 to Zijin Mining (China). Copper, molybdenum	S	Y	Pacaipampa (local consultation, M.O.)	6091 (71.47%)	17'033 (94.54)	285 (1.58%)	699
							Ayabaca (local consultation, M.O.)	8873 (50.09%)			
							Carmen de la frontera (local consultation, M.O.)	3053(59.26%)			
	<b>Candarave case.</b> Districts of Candarave, San Pedro, Cairani, Calacala; Talaca, Yucamani, Calientes and Pallata (Tacna, Atacama)	1990s-today	17/02/08	Toquepala project. Souther Copper Corp. (U.S.- Mexico) copper, molybdenum	S	Y	Local consultation (M.O.)	3478 (67%)	3215 (92%)	n.i.	n.i.
	<b>Islay/Tía María case.</b> Districts of Cocachacra, Punta de Bombón, Dean Valdivia, Mejía, islay-Matarani and Mollendo. (Arequipa, Islay Province)	2008-2011	27/09/09	Tía María project. Souther Copper Corp. copper.	S	Y	Cocachacra* (local consultation ,M.O.)	3131 (49%)	2916 (93%)	139 (4.4%)	76 (2.4%)
							Punta Bombón*(local consultation, M.O.)	2004 (43%)	1883 (94%)	71 (3.5%)	50 (2.5%)
Dean Valdivia (local consultation, M.O.)							2304 (53%)	2211 (96%)	52(2.3%)	41(1.8%)	
Mollendo (popular consultation)							3643 (n.i.)	3573 (98%)	9 (0.3%)	61 (1.7%)	
Mejía (local consultation)							272 (n.i.)	245 (90%)	26 (9.8%)	1 (0.4%)	
<b>Kañaris case.</b> 3 districts (San Juan Bautista de Cañaris, Huacapampa, Congona) Lambayeque	2004-today	30/09/12	Cañariaco project. Candente Copper (Canada, junior) copper, gold, silver	S	Y	Communitarian consultation (ILO169)	1896(47.4%)	1719(95%)	106 (6%)	71 (4%)	
Argentina	<b>Esquel case</b> (Chubut Province)	2001-today	23/03/03	Esquel project. Meridian Gold (U.S., junior)- Sold in 2007 toYamana Gold (Canda, Junior) gold, silver	S	Y	Compulsory popular consultation (M.O.)	13845(75%)	11046(81%)	2561 (17%)	277 (2%)
	<b>Loncopue case</b> (Neuquén Province)	2007-today	02/06/12	Lonco project. Corporación Minera de Neuquén (provincial Argentina) and Metallurgical Construction Corp (China). copper, Molybdenum	S	Y	Compulsory and Binding Referendum (to approve M.O.)	2588 (72%)	2125 (82.08%)	388	75(2.9%)
Ecuador	<b>Quimsacocha project.</b> (Vitoria del Portete and Tarqui) Azuay	2004-today	02/10/11	Project Quimsacocha. Iam Gold (Canada). Sold in 2012 to INV Metals (Canada, junior) gold, silver, copper	S	N	Communitarian consultation conducted by Juntas de Agua to its members.	1037 (66,6%)	958(92.38%)	47(4.53)	18(1.73%)
Colombia	<b>Mandé Norte Project.</b> 2 Municipalities (Carmen del Darién, Murindó) Chocó	2007-today	28/02/09	Mandé Norte Project. Muriel Mining (U.S., Junior) copper, gold, molybdenum.	NS	N	Inter-ethnic consultation. ILO 169.	1251	798	0	
Guatemala	<b>Sipakapa</b>	2003-today	08/06/2005	Marlin project. Montana Exploradora (Goldcorp-Canada, senior). Gold, silver, open-pit	both (depeding on communities)	Y	Communitaran consultation (M.O.)	2564 (45%)	95.50%	1.40%	1.60%

	<b>Minera San Rafael</b> (Santa Rosa) and Mataquescuintla (Jalapa)	2010-today	29/05/2011 11/06/2011 10/07/2011 11/11/2012	Escobal project Oasis (Minera San Rafael: Tahoe Resources Canada - 40% of Goldcorp Canada). Silver, gold, others	S	Y	Mataquescuintla (Communitarian consultation, M.O.)	10,375(53%)	97%	1.6%	1.8%
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Notes: \* In these consultations two questions were made. We only present in this table the answer regarding acceptance or rejection to mining activities. \*\* there is divergent information among sources regarding the role of the local government in this consultation

**Table 2. Guatemala wave of preventive consultations against mining activities (2005 to 2012).**

Department / Region	Projects/licences	Nº of Consultations	Municipalities / Dates	Participation	% saying no to mining	Type of Consultation	Consequences / Results
San Marcos	Exploitation in San Miguel Ixtahuacan and Sipakapa (Goldcorp-Canada: gold, silver, others). Exploration licences in every municipality with consultation (Goldcorp's subsidiaries-Canada: gold, silver, nickel, cobalt, polymetallics, rare earths, others)	11	Sipakapa 18/05/2005, Comitancillo 18/06/2005, Concepción Tutuapa 13/02/2007, Ixchiguan 13/06/2007, Sibinal 18/04/2008, Comitancillo 14/05/2008, Tacaná 16/05/2008, Tajumulco 13/06/2008, San José Ojetenam 11/07/2008, Tejutla 30/09/2008, San Cristobal Cucho 27/06/2009	more than 60.000 people	98%	Communitarian Consultation. ILO 169 and Municipal Code. Non-secret vote. In Sipakapa just registered people (Tribunal Supremo Electoral), in the others all the community.	In almost every consultation support from communitarian and municipal governments. Non-binding consultations for national government. National government tried to regulate consultations in 2011, against consulted communities wishes. Consultations empowered communities. Creation of networks against mining. Despite many exploration licences, only those very advanced projects have prospered after consultations (Sipakapa and San Rafael)
Huehuetenango	Exploration licences in almost every municipality with consultation (Goldcorp's subsidiaries -Canada- and Tenango S.A.-Canada: gold, silver, others; Guatemala Copper: copper/cobalt; Minas de Guatemala: polymetallics; other companies). Little lead/zinc mines.	28	Concepción Huista, Todos Santos Cuchumatán, San Juan Atitán, Colotenango, Santiago Chimaltenango 25-27/07/2006, Santa Eulalia 30/08/2006, San Pedro Necta 30/03/2007, San Antonio Huista 12/05/2007, Santa Cruz Barillas 23/06/2007, San Ildefonso Ixtahuacán 03/08/2007, Nentón 11/08/2007, San Sebastián Huehuet. 26/10/2007, San Miguel Acatán 01/12/2007, San Juan Ixcoy 13/05/2008, Tectitán 27/06/2008, Chiantla 13/07/2008, Jacaltenango 26/07/2008, Santa Ana Huista 06/08/2008, Aguacatán 03/10/2008, San Pedro Soloma 17/10/2008, Cuilco 25/10/2008, Santa Bárbara 28/11/2008, San Rafael Petzal 10/01/2009, San Rafael La Indep. 28/04/2009, San Mateo Ixtatán 21/05/2009, San Gaspar Ixchil 23/07/2009, San Sebastián Coatlán 24/09/2009, Unión Cantinil 18/01/2010	377.615 people (without Tectitan: no data of participation)	99%	Communitarian Consultations. ILO 169 and Municipal Code. Non-secret vote. In 6 of them just registered people could participate, in the other 22 cases all the community could vote.	
Quiche	Some exploration licences (Nichromet Guatemala-Canada: nickel, cobalt, others).	5	Cunén 27/10/2009, Santa Cruz del Quiché 22/10/2010, Uspantán 29/10/2010, Sacapulas 20/05/2011, Chinique 14/03/2012	104.015 people	Almost 100%	Communitarian consultations. ILO 169 and Municipal Code. Non-secret vote (all the community).	
Quetzaltenango	Some exploration licences (Goldcorp's subsidiary -Canada: gold, silver, zinc; other companies).	8	Cajola 01/07/2011, San Miguel Sigüilá 15/05/2011, Concepción Chiquirichapa 20/04/2011, San Martín Chile Verde 16/03/2011, Olinstepeque 20/02/2011, San Juan Ostuncalco 18/02/2011, Huitan 22/11/2010	104.037 people (without Cajolá: no data)	99%	Municipal Consultations. ILO 169 and Municipal Code. Secret vote (just registered people).	
Santa Rosa	Exploration licences (Tahoe Resources -Canada/USA: silver, gold, others - Escobal project)	3	Nueva Santa Rosa 29/05/2011, Santa Rosa de Lima 10/07/2011, Casillas 10/07/2011	18.110 people	98%	Municipal Consultations. Secret vote (Tribunal Supremo Electoral). Under Municipal Code. Just registered people.	
Retalhuleu	Exploration licences (Mayan Iron Corp's subsidiary - Australia: iron sands, nickel, cobalt, rare earths, others). Recognition licence (G4G Resources -Canada: iron sands)	1	Champerico 12/02/2012	16.699 people	99%	Municipal Consultation. Secret vote. Under Municipal Code.	
Jalapa	Exploration licences (Tahoe Resources Canada-USA: silver, gold, others: Escobal project; Goldcorp: gold, silver, others)	1	Mataquesuintla 11/11/2012	10.375 people	97%	Municipal Consultation. Secret vote. Under Municipal Code.	

## 4.1 Emergence and spread in Peru and Ecuador

### 4.1.1 Tambogrande conflict (Piura)

Tambogrande is located in one of the poorest departments of Peru (Piura), with an arid climate that requires dams and irrigation canals (built with World Bank support) to sustain its agricultural export-oriented activities. The conflict was triggered by the Manhattan Minerals project, whose main deposit was located under the town of Tambogrande. Critical voices pointing to the environmental and social impacts of this activity, led by a local farmer and agrarian engineer who had emigrated from Lima, fostered the formation of the *Frente de Defensa de Tambogrande y el Valle de San Lorenzo* in 1999. This organization became the main local opposition to the project in collaboration with the local Church and CONACAMI, the National Coordinating Confederation of Communities Affected by Mining (Portugal Mendoza, 2005). Activists from the *Frente* framed themselves as “agriculturalists”, considering agriculture more than an economic activity, a feature constituting their identity (Haarstad and Floysand, 2007:298-9).

As the *Frente* was unable to engage in an exchange of views and concerns with the national government, local unrest rose (Portugal Mendoza, 2005). In March 2001, after a period of strikes, massive mobilisations and violent events in Tambogrande, the local leader Godofredo García Baca was shot dead by a hooded gunman (Muradian et al, 2003). These events made the mining conflict nationally and internationally known (The Economist, 23 June 2001), thereby engaging new national and international technical and social supports (Bebbington et al, 2011).

Local tension was growing and social movements became concerned with a possible escalation of violence (Portugal Mendoza, 2005, McGee, 2008, Cabellos and Boyd, 2007). In this context, the *Frente*, its allies and Tambogrande’s mayor – who was not clearly



positioned before – agreed on the need to conduct a *consulta vecinal* (neighbours' consultation) (Portugal Mendoza, 2005, Bebbington et al, 2011, Subies et al, 2005).

The Municipality of Tambogrande issued the Municipal Ordinance N° 012-2001-MDT-C, which created the *consulta vecinal* as a mechanism for citizenship participation at the district level. The ordinance was based on international treaties, national and municipal laws, constitutional articles regarding citizen participation and the Environment Code, setting the basic legal structure that would later be used in all following consultations in Peru. While ILO 169 was not referenced in the Tambogrande consultation ordinance – it was added in the following Majaz/Río Blanco municipal ordinances – it was used in activist discourses (Fulmer, 2011).

The National Office of Electoral Processes initially recognised the consultation and agreed to provide support. However, a formal complain of unconstitutionality and illegality by the Ministry of Energy and Mines reduced the final involvement of the Office to advising and lending election materials (National Electoral Office, 2002). The technical advice of national and transnational groups, the financial collaboration of organization such as Oxfam and the observance of transnational groups (Mineral Policy Center, the Environmental Mining Council of British Columbia, Oxfam, Friends of the Earth from Costa Rica and Ecuador) were key to conducting the consultation, disseminating the experience and building the legitimacy of the consultation (Portugal Mendoza, 2005, Bebbington et al, 2011, (Muradian et al, 2003).

On June 2, 2002, the *consulta* calling all district inhabitants was held and resulted in a massive rejection of the mining project (Portugal Mendoza, 2005). The participation mechanism followed the same procedures of a regular election (secret vote, registered voters, ballot boxes, etc). The consultation was neither recognised by the mining company

nor by the national government, which claimed that the EIA formal assessment was the legally binding decision-making process. The following month, the *Frente* prevented three public audiences by organizing protests. Finally, the public company revoked the Manhattan mining licence based on administrative grounds, thereby suspending the project. In November, 2002, the President of the *Frente*, Francisco Ojeda, won the Municipal elections (Portugal Mendoza, 2005).

#### 4.1.2 Majaz/Río Blanco conflict (Piura, Peru).

As the Tambogrande struggle was coming to an end, a new and relevant mining conflict was emerging nearby, in the Provinces of Ayabaca and Huancabamba (Piura Highlands), concerning the exploration of a copper-molybdenum mining deposit by a subsidiary of Monterrico Metals. The conflict of Tambogrande not only contributed to introducing mining scepticism in the region, but was also a source of experience and support for local groups and authorities in this new struggle (Diez Hurtado, 2007, Bebbington, 2012a). For instance, the group of organizations and individuals supporting the *Frente* in Tambogrande – then formalized as Red Muqui – fostered, later in the conflict, the formation of the Majaz Support Group (Bebbington, 2012a).

The Majaz mining project was located in the peasant communities of Segunda y Cajas and Yanta (*comunidades campesinas*); lands that are administered under particular institutional arrangements legally recognised by the State (Bebbington, 2012a). The company did not comply with the required approval of the community assembly, triggering the rejection and formal complains of the community (Bebbington et al, 2007).

In 2004, two “massive” mobilizations were conducted involving thousands of peasants concerned by the environmental (water), economic (agriculture, tourism) and social (land

access) impacts of the mining project and its lack of recognition of local institutions. These protests resulted in police clashes, injuries and the death of two peasants Remberto Herrero (April 2004) and Melanio García Gonzalez (July 2005) (Bebbington, 2012a). From 2004 to 2007, local activists denounced cases of activist kidnapping, tortures and persistent criminalization (discredit campaigns, unjustified imprisonment, legal prosecution) that even reached the UK justice courts (OXFAM, 2007, 2009, Cobain, 2009).

In 2005, mayors, local leaders and social organizations fostered the formation of the *Frente por el Desarrollo Sostenible de la Frontera Norte del Perú* (FDSFNP). The organization, critical of the mining project and the role of the national government, was composed by provincial and district government representatives, peasant communities, *rondas campesinas*, Defense Fronts from Huancabamba, Ayabaca, Tambogrande and other anti-mining groups from the region.

Tension and distrust rose as negotiation attempts by the regional and national governments were failing and the government issued measures to limit public participation rights (Bebbington, 2012a, Diez Hurtado, 2007, Red Muqui, 2009). In this context, a consultation was promoted. As in Tambogrande, the consultation was seen as a peaceful channel of participation that would ease local tensions. The Municipalities of Ayabaca and Huancabamba approved Municipal Ordinances calling for a “*consulta vecinal*” (Bebbington 2012a). The consultations resulted in a 94,5% rejection to mining activities in the district.

While in Tambogrande the national government minimised the weight of the consultation, in this instance it actively tried to prevent it. A vociferous campaign criminalized the consultation and its proponents, stating that the referendum was illegal, communist and politically manipulated by international NGOs that intended to delay the country's development (Oxfam, 2007, McGee, 2008). However, the Peruvian Ombudsman and the

Human Rights National Council of the Minister of Justice Ministry declared that, even if this mechanism was non-binding, it was legal under constitutional law (Oxfam, 2009, Red Muqui, 2009, CISDE-ALAI, 2009). Moreover, the Majaz consultation led the National Ombudsman of Peru to initiate a process of regulation of indigenous consultation rights. What is more, both in Majaz and Tambogrande (and in Esquel, Argentina), mining activities were halted and therefore became examples of successful cases.

#### 4.1.3 Toquepala expansion project (Candarave), Tía María project (Islay, Arequipa) Kañariaco project (Lambayeque) in Peru

After these two consultations in Piura (North of Peru), there were three other consultations in the south and central coast of Peru, where national organizations and networks played a key role in spreading the experience and providing support. The following consultation in Candarave (2008, Tacna region, Atacama Desert) is different from previous cases as it took place in an area with ongoing large-scale mining activities. The conflict that led to the consultation emerged when the mining company started negotiations to expand its water use permits. Local and provincial governments, the irrigation users (*Junta de usuarios de riego*), and the Local Fronts of Defence opposed new permits. They pointed to the need to decrease mining water use due to a regional water scarcity crisis that was affecting agricultural production and forcing peasant out-migration, and to the need to compensate for these impacts. In January 2008, the mayor of Candarave called for a *consulta vecinal* (Municipal Ordinance N°001-2008-MPC/A) with the support of the Provincial Governor, local defence fronts and the *Junta de Aguas*. The consultation had observers from national and international NGOs who also provided technical support (Radio Uno, 2008). Consultation participants (67% of eligible voters) answered two questions, 92% rejected new mining

activities and 94% opposed to the use of underground and superficial waters for mining activities.

The fourth mining consultation in Peru occurred in 2009 in the Province of Islay (Arequipa Department). Islay is a dry region inhabited by peasants and indigenous groups. The conflict emerged in 2008, with the Southern Copper Peru Corporation Tía María large-scale copper mine project (Gutiérrez Zeballos, 2011). Concerns regarding impacts on water availability and local livelihoods fostered the formation of the *Frente Amplio de Defensa del Medio Ambiente y Recursos Naturales*. This movement led to the organization of a Regional Front with the support of local groups, the Mayor of Valdivia and national organizations such as the CONACAMI, Cooperación, Red Muqui and the Coordinadora Andina de Organizaciones Indígenas (Gutiérrez Zeballos, 2011, Red Muqui, 2011).

On September 27<sup>th</sup>, 2009, the six districts of Islay conducted a *consulta vecinal*. The provincial mayor refused to call for a provincial referendum. In some districts, consultations were called by local mayors who issued ordinances. In other districts, consultations were led by social movements following the same procedures (Gutiérrez Zeballos, 2011, CAOI, 2009, Peru 21, 2009). The process was observed by a National Congressman, members of the Flemish NGO Broererlijk Delen, and the Peruvian NGOs Transparencia Civil and CONACAMI (El Búho, 2009, Márquez, 2009). With an average turnout of 48.5% (considering the districts where voters lists were available), 93 to 98% opposed the Tía María project.

The national government did not recognize the referendum and some months later called for a public audience to present the project's EIA. With the assistance of national and trans-national organizations, around 3000 technical comments on the project's EIA were submitted. Moreover, a series of regional strikes were organized as dialogue spaces were

perceived as sterile. These strikes were marked by hard police repression, activist criminalization, three deaths and more than 400 injuries (Gutiérrez Zeballos, 2011). In the midst of this violence, a report by the UN Office for Project Services, requested by the government and communities as an “independent” review, concluded that the EIA had serious deficiencies (UNOPS/PNUMA, 2011). These events forced the MEM to suspend the project.

The fifth consultation of Perú took place in 2012 in the northern district of Kañaris (Region of Lambayeque). The Kañariaco mining project was a large-scale copper mine, in exploration stages, owned by the junior Canadian company Candente Copper Peru SA. The project was located in a cloud forest area inhabited and cultivated by two Quechua speaking communities (Municipality of Kañaris, 2012). In an assembly in 2012, the community of San Juan de Kañaris decided to conduct a *consulta comunal* (community consultation) (Fedepaz, 2013). The Mining Company and the MEM claimed that a consultation had already been conducted following the official procedures (Candente Copper, 2012).

The community consultation followed the procedures of regular communal elections (secret, registered voters) without the support of local governments. The result was a 91% mining rejection (1,896 votes, 47.4% turn-out). The process was supported by Conacami, Red Muqui and leaders of local organizations and observed by the Regional Governor, the Ministry of Agriculture, and representatives of regional offices of Development and Production, and Energy and Mines (Servindi, 2012).

When this consultation occurred, the national government was promoting a law to regulate indigenous consultation rights. The question on whether the Kañaris are peasant or indigenous, hence entitled to FPIC according to ILO 169, triggered a wide debate (Greenspan, 2013). While the National Ombudsman and trans-national indigenous groups

recognise the FPIC for Kañaris, the government denies this right and claims that the government consultation is the valid one. In 2013, the Candente mining company stopped mining exploration pointing to low copper prices as the reason (No a la mina, 2013).

#### 4.1.4 Ecuador. Kimsakocha Project (Azuay)

In October 2011, the first mining community consultation of Ecuador took place. The conflict arose from an open-pit project owned by a junior Canadian company. Concerns rose regarding the impact on water resources among indigenous and peasant groups located downstream from the project area (Pérez Guartambel, 2012). The idea to conduct a consultation emerged in the context of growing pressures from the national government to promote mining activities in the country, in the midst of verbal and legal de-legitimation and criminalization campaigns against Ecuadorian indigenous and anti-mining activists (interview with local activist, 2012). Moreover, local indigenous and peasant leaders were in contact with LA indigenous, anti-mining and Human Rights movements, in particular from Ecuador and Peru (interview with national anti-mining movement leader, 2012). In June 2011, local indigenous leaders led the organization of a continental peoples meeting with strong emphasis on the impact of mining agendas on the environment and indigenous groups (Pérez Guartambel, 2012).

*A community consultation* was called by the *Junta de Aguas*, an indigenous and peasant organization that administers the access to household water. The consultation was grounded in ILO 169, the UN Declaration on indigenous rights and the Ecuadorian Constitution (Pérez Guartambel, 2012). The vote was carried out in the parishes of Victoria del Portete and Tarqui. The organization was led by local leaders of the Federation of Indigenous and Peasant Organizations of the Azuay with the support of national indigenous organizations

(ECUARUNARI, CONAIE) and Victoria del Portete's mayor. The consultation followed the Junta de Aguas election procedures: one vote per water right (a family can have more than one right). The vote was secret and for registered water right owners (head of family, not individuals). The consultation had national and international observers from organizations and the National Ombudsman office. Days before the consultation, newspaper pages and leaflets calling people not to vote were distributed. There was a 67% turnout with a 92.3% opposition to mining activities. Provincial and national governments did not recognize the vote and led a strong, discrediting campaign.

## **4.2 Argentina**

### **4.2.1 Esquel project (Chubut)**

The second consultation conducted in LA took place in Esquel, in March 2003. The city of Esquel (28,089 inhabitants) is a main settlement of the Argentinean Patagonia, an arid region also inhabited by Mapuche indigenous communities. The arrival of Meridian Gold, a US junior mining company, with the intention to extract a gold and silver deposit located 6.5 kilometres away from the city triggered the first mining conflict in the country.

The use of cyanide leaching techniques and the risks of water pollution in a water-scarce environment stirred initial concerns. The perception that the urgency to approve the project was undermining the quality of the technical assessment and was excluding local concerns, led to the formation of a neighbours' assembly (AVA – Asamblea de Vecinos Autoconvocados) opposed to the mine. The AVA brought together neighbours and organizations with different backgrounds, specialists in law, chemistry, medicine, geography, journalism and education, Mapuche groups and inhabitants of Esquel's poorer areas who became key information channels to marginal areas of the city. The movement



deployed a wide range of strategies, from legal and administrative queries, to mobilizations, technical arguments and advocacy networking. As the AVA jumped scales, contacting and obtaining the support of regional, national and international activists, organizations and networks, the Esquel conflict started to be understood as part of an environmentally unjust process affecting many communities in LA (Urkidi and Walter, 2011, Zuoza, 2005).

“The rejection to the mining project does not only include environmental issues (...): the alarm also rises from the certain release of dangerous heavy metals (cadmium, arsenic, mercury, etc.) to the water sources of the city and the negative and unacceptable impacts in health, education, safety, tourism, and we denounce that the insufficient labor generated by the mine requires a bachelor or an university degree (AVA Press release, January 2, 2003)

Members of the AVA got acquainted with Tambogrande’s consultation via internet (Zuoza, 2005). The AVA also established contacts with the Mining Policy Center (now Earthworks), an NGO that supported the Tambogrande consultation (Colao and Claps, 2005).

Two representatives of the local Deliberative Council, close to the AVA, presented a Municipal Ordinance proposal to call for a *consulta popular* (popular consultation/referendum), using a legal mechanism present in the Provincial Constitution. While the proposal was initially rejected, the mounting tension in Esquel fostered its approval by most political parties, as a way to pacify local unrest.

Esquel’s Mayor, who was initially reluctant, supported the consultation call based on the repeated mismanagement of the Provincial and National government of the conflict and “*and a central element that has been the deep division that is growing in our community with very strong levels of intolerance that are undesired.*” (El Oeste newspaper, February 7, 2002).

A few days after the *consulta popular*, which resulted in a 81% rejection of the mining project (75% turn-out), mining activities were halted and the Chubut legislature approved a provincial ban on open-pit mining. The Esquel case became a national referent (Svampa and Antonelli, 2009, Walter and Martinez-Alier, 2010). The AVA created an online platform ([www.noalamina.org](http://www.noalamina.org)) that is still a key source of information for Argentinean and LA activists nowadays. In the years that followed, as mining investments were rising, more social movements tried to foster similar consultations. In particular, the Government of the Province of Catamarca, the poorest province of Argentina where the oldest and largest mine operates (La Alumbrera), managed to stop at least three attempts of consultation in Tinogasta and Andalgalá in court.

#### 4.2.2 Lonco project (Neuquén).

The second consultation in Argentina took place in the Municipality of Loncopue. After a series of legal setbacks and different intimidation campaigns aimed at social movements and Mapuche indigenous communities, exploration activities were advancing without permits or consultation procedures. A local priest got involved and brought the matter to the town, connecting the urban movements with rural indigenous groups. A lawyer and anti-mining activist from Esquel, who was living in Loncopue, transferred his professional and activist experience to the emerging movement, advising and supporting the legal strategy (Yappert, 2009).

The call for a binding referendum to approve/reject a Municipal Law forbidding large scale open-cast mining activities was fostered by Mapuche communities, neighbourhood assemblies, environmental groups and, as in Esquel, some politicians whose political parties were pro-mining at the provincial and national levels but who aligned themselves with anti-

mining groups locally. With a 72% participation turn-out, 82% voted in favour of a mining prohibition but the Provincial Government presented a legal claim of unconstitutionality to disable the referendum (Yappert, 2009, Aranda, 2012).

### **4.3 Guatemala and Colombia**

#### **4.3.1 Sipakapa in Guatemala**

The third Latin-American bottom-up mining consultation after Tambogrande and Esquel (Argentina) occurred in Sipakapa (Guatemalan highlands) in June 2005. In 2003, Montana (now owned by the Canadian GoldCorp) got the exploitation permit for the Marlin gold mine in the municipalities of Sipakapa and San Miguel Ixtahuacan. These municipalities are inhabited by peasants who identify themselves, mostly, as indigenous (Segeplan, 2002).

Researches and interviews underline that the first meetings held by the company with local groups and leaders were non-transparent, arbitrary and pro-mining (Van de Sandt, 2009, Urkidi, 2011). The opposition to mining in Sipakapa was born from the mistrust that arose in many community leaders in regard to information activities. Indigenous leaders met local priests and national groups (Movimiento de Trabajadores Campesinos, MadreSelva, CALAS) in order to get information about mining (Van de Sandt, 2009). These national organizations were already within LA networks (for instance MadreSelva within OilWatch) and distributed information on the environmental impacts of mining activities. Local leaders from Sipakapa visited other gold mining areas in Central America such as Valle de Siria in Honduras, and got in touch with regional networks against mining (e.g. Central American Anti-Mining Network).

“At first, environmentalists started this, since they were providing information. But the environmentalist view is not in the communities any more. Now there is the defence of life, which is more related to the Maya worldview (*cosmovisión*). (...) If we are going to have ill children and the whole population ill, what do we want a 10 per cent [of royalties] for? (...) And people have strongly appropriated this idea” (own interview to local activist, 2009)

In December 2004, a community that blocked the passage of a truck heading to the mine in a neighbouring province was strongly repressed by police and military forces, resulting in the death of the peasant Raul Castro Bocel (Prensa Libre, 18 January 2005, Castagnino, 2006). The public resonance of these events forced the mayor of Sipakapa (favourable to mining) to arrange a public meeting to discuss the mining issue. This meeting led to a Municipality agreement to conduct a consultation, based on the Municipal Code and ILO 169. The idea to conduct a consultation had been circulating since the beginning of 2004, born from an Italian priest who was acquainted with the Tambogrande experience (Van de Sandt, 2009).

The consultation was organized through the articulation of local, national and international organizations: the Municipal Development Council (COMUDE), the parish and its catechists, the Linguistic Community of Sipakapa, the local Justice of the Peace, MadreSelva, the National Association of Maya Lawyers, the Catholic Church of San Marcos, and the Indigenous Advocacy of Human Rights, among others. National and international observers and human right activists were called in to verify the process. The Guatemalan Constitutional Court rejected an appeal of Montana to ban the consultation.

Despite boycotting strategies, 45% of the registered electorate took part in the consultation and 98% voted against mining. The voting was carried out in each community, some voted by a show of hands, while others by secret ballot. In 2007, the Guatemalan Constitutional Court declared that the Sipakapa consultation was valid under ILO 169 and the Municipal

Code, but that it was non-binding since such conventions and laws were imprecise and not coherent with the Constitution and also because mining activities were of national public interest. Hence, the municipality of Sipakapa had no authority to decide on the matter (Xiloj and Porras, 2008).

The Marlin mine was in full operation from 2006 to 2014, despite the consultation and different legal demands in relation to environmental impacts and the violation of human rights<sup>1</sup>. However, the process of Sipakapa was a milestone in Guatemalan resistance against mining.

#### 4.3.2. The wave of consultations in West Guatemala and other cases

The consulting experience has been reproduced in 56 other consultations on metal mining in Guatemala from 2005 to 2012 and more than 600.000 people have take part on them, becoming one of the most relevant political processes of recent years in the country. A documentary on the Sipakapa consultation (Revenga, 2005) played a central role in spreading the experience throughout Guatemala and Latin America.

Fifty-two of those 57 consultations occurred in western Guatemala and most of them in the highlands as part of a regional campaign to reject mining activities. A regional network called the Western People's Council (WPC) – where the Huehuetenango Natural Resources Assembly had a central role – lead this process. WPC's main objective is to develop a community-based strategy against mining, where indigenous territorial rights have a central role. There are also national and international networks and NGOs<sup>2</sup> supporting the development of the consultations. However, one key characteristic of the Guatemalan process is the synergies between anti-mining movements, the traditional and legally

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<sup>1</sup> In 2010, the Inter-American Commission on Human Rights ruled in favour of the precautionary closure of the project because of potentially harmful health and environmental impacts.

recognised sub-municipal authorities and the municipal governments in the organization of most consultations, and the active incorporation of local leaders in the regional network (Mérida and Krenmayr, 2008, 2010, Urkidi, 2011).

“The struggle against mining and in favor of water and life allowed us to advance more in the empowerment and consciousness of our communities” (own interview to WPC activist, 2008).

More recently, other cases of consultations that are not directly related to the WPC work are emerging in other areas of Guatemala, such as the consultation on the Escobal project in Santa Rosa, even if it was also influenced by the Sipakapa experience. The context of Santa Rosa differs from the highlands, as most of its population is non-indigenous. There are, however, some *Xinca* communities. The conflict arose in 2010 when Tahoe Resources and Goldcorp were to start a metal mine in the area that could affect a close lake and its related water resources. A local committee was organised and, between 2011 and 2012, four consultations were developed in nearby towns with the support of the regional diocese, a national environmental organisation (MadreSelva) and local governments. However, no consultation has been permitted in the town where the project is located, the mine is in operation, the local population is highly divided, and violent events and criminalisation processes have taken place over the last few years (OCMAL, 2011).

Apart from Sipakapa and Santa Rosa, the rest of Guatemalan consultations are not associated with imminent mining projects but to exploration or research licences, so they could be understood as preventative consultations. Indeed, from 2008 to 2013, with the exception of the Escobal project in 2013 no new metal extraction licences were granted in the country. The Guatemalan government has not accepted community referendums and has

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<sup>2</sup> Mainly environmental and human rights associations and NGOs from Europe and Canada (CATAPA, NISGUA or Rights

proposed to regulate them with a specific law (Prensa Libre 23/02/2011). However, in 2013, the Constitutional Court recognized, based on ILO 169 and “the unquestionable peoples’ right to be consulted”, the results of the Mataquescuintla consultation of 2012, considering it binding for the municipal government and within its competences (Expedient 4639-2012 and 4646-2012 of the Constitutional Court). The WPC defends that the current legal framework is sufficient to accept the consultations and their results, and that further regulations would just lead to more restrictive conditions for participation (Prensa Libre 23/02/2011, Nisgua, 2011).

“Those consultations are an ancestral mechanism of the Maya people for participation and decision making. (...) We believe that our fight goes beyond a rejection of mining, we are starting a political and organizational platform, also on development. (...) We have an opportunity to promote our self-determination as indigenous people” (own interview to WPC activist, 2008).

The Guatemalan anti-mining movement seeks to be inclusive in many senses, resulting in heterogeneous consulting processes. Mainly indigenous but also non-indigenous communities have been consulted (these last ones not appealing to ILO 169 but just to the Municipal Code), by secret ballot or by show of hands, in municipal or just communitarian *consultas*. In some cases, mainly in Huehuetenango, non-registered people have been able to take part in indigenous community meetings. This has led to a greater participation of women than in other voting processes since women are proportionally less registered than men in Guatemala (Mérida and Krenmayr, 2008, 2010). Consultations have also spread to other extractive projects in Guatemala, such as hydroelectricity.

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Action among many others).

“Our opposition is manifested via organization, mobilization, community consultations (...) to have our rights respected and guaranteed, aiming to overcome the structural roots of economic and social inequality” (Guatemalan Western People Manifest, 2012).

#### 4.3.2 Colombia. Mandé Norte Project (Carmen de Darién, Chocó).

Between the 24th and 28th of February, 2009, the first community consultation on mining in Colombia took place. The conflict started with the arrival of Muriel Mining (Río Tinto and other companies), and the initial consultation activities led by the government and company to obtain the communities’ approval to explore for copper, gold and molybdenum ores. Exploration sites were located in afro-descendant and indigenous people lands, including their homes and sacred areas, in the departments of Antioquia and Chocó. Indigenous and afro-descendant communities started to search for information and contacted a national church organization working in the area. A support group was created, bringing information, documentaries (e.g. the Sipakapa case) and activists from other countries and communities to Carmen de Darién (Jahncke and Meza, 2010). Communities claimed that the official consultation process was not adequately conducted, excluding affected communities and endangering their livelihoods. As a reaction to local unrest, the national government militarised mining areas, intimidating and limiting community access (Jahncke and Meza, 2010, Movice, 2012).

Communities, inspired by the Sipakapa experience, promoted the organization as an inter-ethnic consultation, following their own procedures (own language, registered, older than 14 years old). Human Rights, indigenous, church and anti-mining organization representatives from Colombia, Paraguay, Honduras, Guatemala, Germany and Canada observed the process (CENSAT, 2009).



The consultation was grounded on international and national indigenous consultation rights, including the Colombian Constitution's special consideration for indigenous consultation rights. The legality and legitimacy of the process was confirmed by an important verdict (T-769, 2009) of the Colombian Constitutional Court, which led to the suspension of the project. Nevertheless, the year that followed campaigns to delegitimize local communities and further intimidation actions were conducted by the government in the area. In January 2010, the Colombian army conducted air bombings in the area (Movice, 2012).

Consultation attempts have also been deployed by other non-indigenous communities in Colombia. During the 2011, social movements in the department of Santander tried to conduct a popular consultation framed around the protection of water to stop gold mining developments in up-stream *Paramo* areas. This initiative was politically blocked (Comité por la defensa del agua y el páramo de Santurbán, 2012). Recently, in July 2013, the Municipality of Las Piedras (Tolima Region) conducted a popular consultation on mining activities, resulting in a 60% participation and 99% rejection of a large-scale mining project to be carried out by Anglo Gold Ashanti (EJOLT, 2013).

## **5. Discussion**

### **5.1 Defending livelihoods, participation and cultural recognition in contexts of criminalization**

The mining conflicts that led to consultations involved high-stake struggles. The contexts, grievances and demands fostering the mining conflicts studied in this paper are multiple and complex. In a special report, the Peruvian Ombudsman signalled that the increased number of socio-environmental conflicts related to mining in Peru derived mainly from: the justified fear of local communities of contamination and the negative impacts of ongoing projects

regarding the environment, local livelihoods, identities and social structure; the perception of a continued injustice since mining activities expand in historically marginalised zones; the population's mistrust of the State given the longstanding lack of environmental management and efficient participation mechanisms; and the excessive economic expectations of population (Defensor del Pueblo de Peru, 2007:5-6). These issues characterise well key debates that transverse LA mining conflicts and the cases addressed in this paper.

As pointed by Bebbington et al (2008) and found in most of the cases studied in this research, the defence of livelihood is a central claim in LA mining conflicts. The studied communities in Peru, Guatemala, Colombia and Ecuador signal that mining activities jeopardize local (and supra-local) livelihoods, which are dependent on agriculture, cattle and forests. Indeed, in the Global South, environment-related demands tend to be associated with the defence of livelihoods (Muradian et al, 2003, Holden and Jacobson, 2008). This defence should not be understood only as the protection of a source of subsistence and income, but also as the protection of its embedded meanings, values and identities (Bebbington et al, 2008). In Latin American contentious politics, it is particularly relevant to draw attention to the inseparable relationship between the material and the cultural in livelihoods (Escobar, 2001). A struggle arising from material concerns or from the control of certain resources may lead to the mobilisation of meanings and cultural re-construction, and the other way round.

In this sense, the misrecognition of peasant institutions and the perceived risks of mining for the health and the livelihood of the residents were key grievances that led to local mobilization in the case of Majaz (Bebbington 2012: 17). In Sipakapa, mining was framed as a new colonialist strategy of dispossession and was related to the historical oppressions and injustices lived by peasant and indigenous communities (Yagenova and Garcia, 2009,

Urkidi, 2011). Indeed, the majority of consultations in Guatemala have taken place in indigenous areas and the ethnic dimension has been central. Communities have mobilised and re-constructed their ethnicity in complex ways but, mainly, in relation to the defence of life and territory (Yagenova and Garcia, 2009:166), and are demanding greater control over their ancestral lands and resources.

Moreover, as pointed out by Van de Sandt (2009), the mistrust of the consulting process carried out by the company and the escalating violence were the specific triggers of the consultation in Sipakapa. Similarly, case studies conducted in Tambogrande and Esquel conflicts, signalled that mistrust in official experts and institutions were key elements (Muradian et al, 2003, Walter and Martinez Alier, 2010). The study of Muradian et al (2003) on Tambogrande signalled that people mistrusted the company and the central government, not only because people's perception on environmental risks differed from experts, but also because of a long tradition of corruption in the Peruvian society.

A survey conducted by Muradian et al (2003) highlighted the notion of the "right" to decide local development strategies as another key issue of concern for the population of Tambogrande. Self-determination concerns seemed to overcome revenue increase considerations or low pollution scenarios. The project was seen as an "imposition" hindering local empowerment (Muradian et al, 2003). Similarly, in the consultations of Argentina, the right to participate in mining decisions became the center of the demands of the opposition. In Esquel, concerns regarding health, cyanide use and water quality and availability were among the main grievances that lead to the organisation of the local movement. However, as decision-making procedures were unable to address local communities' concerns, disputes formed around these procedures and their decisions (Walter and Martinez-Alier, 2010, Urkidi and Walter, 2011).

In this sense, it is becoming increasingly common for anti-mining movements and communities to prevent or boycott public audiences, as these are seen as an empty requisite for project approval (Jahncke and Meza, 2010). There were cases of boycotts of public audiences in Tambogrande, Toquepala, Tía María, Esquel and Loncopue. Indigenous communities rejected and misrecognized the alleged consultation processes led by mining companies and governments in cases of consultations in Peru, Colombia and Guatemala. In Ecuador (Quimsacocha) and Argentina (Loncopue), indigenous communities claimed that formal consultation never occurred (e.g. Pérez Guartambel, 2012). The disempowering nature of official participation institutions that elude to engage with issues of power and politics fosters unrest (Hickey and Mohan, 2005:141) and may become key grievances in mining conflicts.

Who has the right to decide on local development and how this affects local autonomy and self-determination are central matters that traverse most of the cases addressed in this paper. There is a clash of views regarding development and the role played by participation in this framework (Hickey and Mohan, 2005). Central governments sustain that mining activities are of national interest and that local communities shouldn't have binding power in these decisions. Mining activities are framed as able to improve the wellbeing at the local and national levels, as long as socio-environmental risks are minimised and public income improved. Indeed, mining and oil rents are pushing the economic growth of some Latin American countries. However, affected communities wonder about the costs of this growth.

In sum and according to our own field-work and research conducted by other authors on cases of consultations, we identify that concerns related to the defence of livelihood, cultural recognition, territorial control, participation or self-determination are central in most of the mining conflicts that led to consultations. Nevertheless, from our in-depth research in some of the cases studied, we signal that, even within a single case, there are different concerns

and motivations behind those actors that promote a consultation, those that support it, and those that vote for or against mining in the consultation<sup>3</sup>. While consultations' promoters may have developed a strong anti-mining position during the conflict, consultation supporters and local population may not necessarily be anti-mining. As signalled in Tambogrande, Majaz, Esquel or Sipakapa, for instance, feelings of distrust may play a central role in local rejection of mining activities. Local governments can also have distinct motivations for supporting consultations: concerns of losing local legitimacy, escalating local pressure and violence, a broader project of local empowerment and recognition, an anti-mining position, etc. However, new research should explore in further detail the divergent and perhaps contradictory motives of the different groups that support or reject community-led consultations.

Moreover, in some cases, we lack information on the micro-politics and there could be other processes and concerns that we are not identifying. For instance, it has been claimed that some (apparent) environmental mining conflicts are instead related to the effort of some actors to improve their political leverage and gain access to mining rents (Arellano Yanguas, 2011). While we don't discard that some of the involved actors could be defined in these terms, the information available for the cases addressed led us to think that, in general, these were not among the central collective concerns of the social movements and communities that led to consultations. Based on our research, we suggest that the risks of promoting a consultation by actors mainly interested in negotiating the terms of extraction could be too high. Studies conducted on Guatemalan cases show that consultations became a key event in the history of local communities and people perceive it as an irreversible decision, making it

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<sup>3</sup> Nevertheless, Muradian et al (2003:786) pointed out that the position of the anti-mining stakeholders was very close to that of the majority of the population, according to a survey they conducted in July-August 2001.

politically difficult to override (fieldwork interviews 2008-2009, Trentavizi and Cahuec, 2012). This is a hypothesis that needs to be further explored.

One of the findings of this research has been the role played by contexts of criminalization and violence in the emergence of consultations. This is particularly relevant in some of the first cases of consultations (i.e. Tambogrande, Sipakapa, Majaz). In this line, the authors of this paper signal that consultations emerged as an innovative form of protest that promotes a democratic setting that could protect its participants. For instance, in Tambogrande the consultation emerged as a strategy when social movements became concerned with a possible escalation of violence (Cabellos and Boyd, 2007, Subies et al, 2005: 104). In Sipakapa, consultations were organized shortly after repression by police and military forces (Van de Sandt, 2009). In later cases, such as in Quimsacocha (Ecuador), the consultation was organized in the midst of activist and protest criminalization events that were discouraging public demonstrations (interview to local activist).

Furthermore, consultations seem to have succeeded in pacifying local tensions, at least in the short term (i.e. in Esquel: Walter and Martinez Alier, 2010:296, in Majaz: Bebbington, 2012a:78). Afterwards and as shown by the case of Colombia –where the community was air-bombed by the army one year after the consultation- violence and criminalization may intensify. Although the criminalization and repression of activists is not new in mining conflicts, the particularity of these social movements has been their ability to transform a risky protest environment into a democratic participation process.

## **5.2 The diffusion of consultations through anti-mining movements' networks**

Analyzing consultations experiences in Latin America, we identify that this institution emerged and was diffused hand in hand with a diversity of spatial processes.

Mining consultations are promoted alongside a wide range of strategies (e.g. negotiations, mobilisations, legal and technical allegations, dissemination activities) by social movements composed of a myriad of groups, including indigenous and peasants' movements, farmers, (urban) professionals, local priests, the church, teachers, community leaders, national and international NGOs, transnational activist networks. As mining conflicts unfold, social movements engage with other networks and organizations (e.g. environmental, anti-mining, Human Rights, indigenous, Catholic) that move across multiple geographical scales. These networks circulate information, experiences and strategies, and promote the mobility of activists to learn and share experiences among communities, to LA and international forums, and to foreign and international tribunals.

Among the anti-mining movements and networks driving the spread of consultations, some were born from the first mining consultations experiences: Tambogrande, Esquel and Sipakapa. Red Muqui, born from the Tambogrande conflict was a key provider of information, experience and materials for the Majaz/Río Blanco case and following consultations. The 'Noalamina' platform, coordinated by the Esquel anti-mining movement, is a central provider of information and resources for LA communities. Moreover, the fact that Tambogrande and Esquel consultations were perceived as successful experiences by national and international anti-mining movements contributed to the diffusion of the consulting strategy. In Guatemala, the great multiplication of mining consultations is partially grounded in the national and international repercussion of Sipakapa's experience and in the regional networks created in Western Guatemala. This shows the relational character of diffusion (Tarrow and McAdam, 2005), since consultation experiences and mining related information have been shared through interpersonal contacts or associational networks in the interaction of social movements, local governments and other social actors (Red Muqui, 2009, Jahncke and Meza, 2010).

Organizations and networks have not only played a key role in spreading the experience of previous consultations, but have also provided logistical, technical and sometimes financial resources. A wide range of trans-national actors (Oxfam, Friends of the Earth, Greenpeace, the Mineral Policy Centre, Peace Brigades International, the Church, Nisgua, Catapa, Rights Action or Mining Watch among others) have supported consultations as observers, contributing to build the international legitimacy of these processes. When considering how consultations have travelled among LA communities, we point out that the Internet and documentaries are powerful transporters of testimonies and experiences amongst distant people and places. While the role of the Internet has been discussed in previous studies (Bickerstaff and Agyeman, 2009), we also found that documentaries are significantly contributing to social learning. The documentaries on the Choropampa mercury spill in Cajamarca (Peru) and on the Tambogrande and Sipakapa consultations have been widely distributed in the region (Choropampa: el precio del oro, 2002; Sipakapa no se vende, 2005; Tambogrande: mangos, muerte, minería, 2007). An indigenous leader that led the consultation of Ecuador underscored the relevance of videos and documentaries to explain the implications of large-scale mining activities<sup>4</sup>. Colombian activists highlight how Carmen de Darien's indigenous communities were inspired by the documentary on Sipakapa's consultation, as this visual document showed them other indigenous groups faced with similar struggles, telling similar histories (interview with Colombian activist, Jahncke and Meza, 2010). Documentaries have shown the trans-local and structural impacts of large-scale mining activities and the strategies of anti-mining groups, contributing to a regional learning process.

As consultation experiences multiplied in LA, national and trans-national networks have deployed efforts to systematize and strengthen the ongoing experience and its lessons, by

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<sup>4</sup> Interview conducted by Sara Latorre and Stalin Herrera with local leader, shared with the authors of this



organizing international events (e.g. Bi-national encounter Ecuador-Peru on Community Consultations, February 28, 2012) and elaborating reports (e.g. Jahncke and Meza, 2010, Duthie, 2012, CISDE-ALAI, 2009, Mérida and Krenmayr, 2010). National and transnational movements have also supported legal strategies – to defend the legality of consultations and condemn Human Rights abuses – at national (e.g. Constitutional Court case in Colombia), foreign (e.g. UK courts in the Majaz case) and international tribunals (e.g. Sipakapa to the Interamerican Commission on Human Rights). These processes reflect the two stage model of institutionalization (Schneiberg and Lounsbury, 2008:651), where organizations and local governments adopt consultations as “new” structures or strategies in response to a local problem, which then spark processes of diffusion, systematization and theorization that have contributed to establish consultations as an accepted mechanism in the context of mining conflicts in Latin America.

Moreover, the political power of consultations is also related to the ability of local and transnational actors to disseminate these events at multiple scales, creating new supports and sources of legitimacy. However, the emergence and spread of consultations should be seen as a contested process of institutionalization, where the contestation comes from some government bodies that reject their validity.

As signaled in this section, mining consultation has been diffused as a key strategy through social movements and anti-mining networks in Latin America. However, this does not imply that consultation features have been transplanted from one case to the other. Indeed and as we develop in the next section, different contexts, regulations, institutions, and local customs have shaped the heterogeneity of forms that community consultations, whether *vecinal*, *popular*, *comunitaria* or *inter-étnica*, have adopted in LA. As pointed by Peck (2011) in the policy transfer debate, the spread of consultations follow a mobility-and-

mutation – that we frame as mobility-and-hybridization – process. The key is the learning process, where a community sees and analyses the experience in other places, adapts, transforms and shapes the terms of its own consultation in a conscious and unconscious dynamic (Cleaver, 2003, Hickey and Mohan, 2005).

### **5.3 Community consultations: A hybrid mechanism of participation and a political tool**

Consultations are the product of a challenging spatial grammar (Bulkeley, 2005) that combines the capabilities of glocal anti-mining movements and local governments<sup>5</sup>. Consultations can be seen as a hybrid institution that combines the formal and informal competences (i.e. regulation, management, communication) and different forms of power (e.g. legitimacy, networks, resources, trust) of social movements and local governments. Moreover, as we examine in this section, consultations can be seen as an institutional bricolage of formal and informal mechanisms embedded in a multi-scalar learning process.

The alliance with local governments was key to build the political legitimacy of consultations (Red Muqui, 2009), framing them as a formal (and democratic) local participation institution, not a mere anti-mining social movement strategy. The fact that the first cases of consultations were conducted with the support of local ordinances contributed to establish the grounds to legitimate the following wave of consultations, conducted with or without this formal support (e.g. some municipalities in the Tía María consultation in Peru, the Kimsakocha case in Ecuador). Moreover, the involvement of social movements reduced,

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<sup>5</sup>Cases of consultations conducted without alliances with local governments are the exception. In some cases, local governments rapidly align with social movements or even play a central role in the formation of movements critical of mining activities (eg. Majaz, Toquepala, Guatemala's wave of consultations). In other cases, local governments change their position as conflicts unfold and finally allow or support consultations in order to preserve local governability or local power (eg. Esquel, Sipakapa), sometimes adopting a position that differs from their national political parties.

in some places, the distrust that many rural communities have in relation to government bodies, including municipalities, and increased the willingness to participate, such as in some Guatemalan consultations (Mérida and Krenmayr, 2008, 2010, interviews Guatemala 2009). We could say that the legitimacy of consultations is – in part – both a cause and consequence of the hybrid alliances formed between local governments and social movements.

The involvement of local governments in consultations reflect the heterogeneity of interests and values across different government bodies and the State. This singular feature of consultations points to the need to further problematize the role of governments in environmental governance frameworks. Consultations not always aim to “bypass governments” (Delmas and Young, 2009), but, on the contrary, to anchor part of its legitimacy in some of its bodies (e.g. local governments). Consultation processes show how the multi-scalar character of State bodies can create opportunities for initiatives born from the civil society (Schneiberg and Lounsbury, 2008:659).

In each context, consultations were legitimized by reference to local practices and/or to the social perception of what is the socially acceptable way of doing things (Cleaver et al, 2013). In most cases, communities put in place hybrid procedures that combined officially or locally recognized participation procedures, indigenous customary rights, and lessons from consultations conducted in other places. For instance, in most consultations, including in many indigenous communities in Guatemala, the consultation followed the same procedures than those of a regular election: formal call to vote, registered voters, secret vote and the quality of the process certified by external observers. In Sipakapa, each of the 13 communities chose its own procedure: some followed a traditional western election format, other voted by show of hands or other formats. However, the consultation was called by the Municipality and all inhabitants could vote, even non-indigenous. In Huehuetenango, non-

registered people have also been able to vote in indigenous community meetings. The consultation conducted by indigenous groups in Colombia followed the example of Sipakapa, merging procedures.

The right of affected communities to participate in high-impact decisions is recognized in a variety of indigenous and non-indigenous, international, national and municipal norms and rights (Jahncke and Meza, 2010, Fulmer, 2011). In each context, communities strive for local participation appealing to, combining and reshuffling available regulations, rights and local traditions. For instance, communities are expanding and re-signifying, in their discourse and practices, the way “consultation” is framed in ILO 169 – and the United Nations Declaration on the Rights of Indigenous people – forcing new debates on the convention’s reach (McGee, 2008, Fulmer, 2011). ILO 169 asserts that consultations should be conducted by States (Fulmer, 2011, Jahncke and Meza, 2010). The fact that communities and local governments led the process stretches the Convention’s reach. In a similar vein, the way in which consultations use laws that allow for local referenda in local governance matters (Peru, Argentina, Guatemala), challenges the national-government scale monopoly in mining decisions.

In contrast with other emerging forms of (hybrid) governance that continue to exclude disempowered groups (Ford, 2003, Swyngedouw et al, 2002, Swyngedouw, 2005), consultations are organized by and take into account marginalised groups such as indigenous peoples, peasants and women, as illustrated by the Guatemalan case (Mérida and Krenmayr, 2008, 2010). Consultations are a strategic tool of social movements and an emergent participation institution that aims to broaden the involvement and political weight of affected communities. The significance of community consultations is that communities are not only mobilizing and discursively struggling to contest mining governance, but are also

deploying innovative strategies to create and put in practice empowering and participatory institutions.

#### **5.4 Reactions, success and empowerment**

The legitimacy of consultations is in dispute by different actors, even within States and governments themselves. This is common in processes of institutionalization as States tend to intervene to ratify, redraw or reject emerging institutions (Schneiberg and Lounsbury, 2008:651). While national governments and mining departments reject, ignore or criminalize (define as illegal acts) these participatory events, some local and provincial governments, as well as national and regional departments, authorities and tribunals, recognize this participation institution (e.g. National Electoral Office, Constitutional Court, Ombudsman, Human Rights National Councils, Ministry of Environment). However, the strength of this legitimacy grounded in the “disputed legality” of community consultations is also becoming a weakness. While, some LA governments (e.g. Peru, Guatemala) are currently formalizing consultation rights and procedures, communities are alerting about the related risks of co-optation, exclusion and de-naturalization.

As cases of consultations multiplied in the region, there has been an increased effort by national governments and mining companies to downplay the legitimacy of this institution, deploying actions to discourage local participation. Nevertheless, in general terms, levels of participation are not low. In Sipakapa, for instance, the participation was of 45%, after flyers informing that the consultation was not going to occur were distributed, presumably by the company. However, in the national election of 2007, 60% of the registered population issued a vote in Guatemala, and in the Constitutional referendum of 1999, just 19%. Moreover, the

high percentages of votes rejecting mining in consultations reflect that a significant sector of society is critical to mining, giving legitimacy to this position.

It is not evident how to judge the level of “success” of consultations as it requires a deeper and long-term examination of the outcomes. In some of the cases, consultations helped to halt mining projects in the short term (e.g. Tambogrande, Esquel, Carmen de Darién, Majaz to some extent, Guatemala mining development<sup>6</sup>). However, in some cases this was reverted in the medium/long term or activists were harshly criminalized. Communities in Colombia stopped the project but were then bombed by the army. In other cases, mining developments were not stopped, but anti-mining movements were able to expand their legitimacy at local, national and regional levels, accessing the media, knowledge and networks. Perhaps, the key success of consultations has been the political learning processes that these have triggered, connecting social actors, scales, places, discourses and strategies, that have allowed to reclaim and put in practice participation rights and to envision alternative forms of development.

Activists and local leaders involved in consultations are now part of broader debates and networks questioning the hegemonic development views that could lead to deeper transformative processes (Hickey and Mohan, 2005). By challenging the governance of mining activities, communities are pointing out to alternative understandings of development and well-being and ‘good living’ (Gudynas, 2011).

## **6. Conclusions**

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<sup>6</sup> From 2008 to 2013, no new metal extraction licenses were approved in Guatemala (in 2013, the Escobal project and two nickel mines in Izabal were approved). Moreover, both Alvaro Colom during his presidency and Otto Perez Molina in 2013 declared moratoriums on the approval of mining licenses in order to establish a dialogue with civil society to reform the Mining Law because of conflicts and the process of consultations.

Analysing the cases of community consultations conducted in Latin America from 2002 to 2012, we claim that these consultations emerged in complex struggles over livelihoods, recognition and participation and in the context of criminalization of local protest. Community consultations represent an innovative governance experience that seeks to ensure inclusive participation in mining conflicts. We sustain that consultations are a hybrid institution, the product of a dynamic multi-scalar process where non-State and State actors and formal and informal institutions are mobilized to challenge the centralized governance of extractive activities. Consultations are a strategic tool of social movements and an emergent participation institution that reclaims and puts in practice the right of affected populations and indigenous peoples to participate, in empowering forms, in high-stakes decisions that affect their territories, livelihoods and future.

The analysis of a large number of cases allowed us to identify that consultations are not isolated experiences but constitute a strategy diffused and transformed through social movements and anti-mining networks. We signal a multi-scalar social learning process where social movements exchange experiences and discourses and a hybridising process occurs in relation to political and cultural local features. In this vein, we propose that there is an institutionalization process as consultations diffuse, hybridize and gain legitimacy in the context of mining conflicts. Community consultations are, however, a contested emergent institution, as central governments and mining companies reject these mechanisms, while local government and other State and government bodies support them.

Finally, the process of consultations opens up relevant arenas for enquiry, such as why consultations have been promoted in some countries and not others (like Bolivia or Chile), or what are the medium and long-term consequences of consultations for local movements and their struggles. Furthermore, recently consultations/referenda are also been proposed by

movements opposing large-scale dams projects in Latin America (e.g. Guatemala, Brazil, Argentina), offering room for explorations and comparisons.

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