

Mining and Development in Peru With Special Reference to The Rio Blanco Project, Piura



A Delegation Report
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Mining and Development in Peru

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Abbreviations

AMD	Acid Mine Drainage
ARD	Acid Rock Drainage
ASL	Above sea level
CEO	Chief Executive Officer
CEPAL	United Nations Economic Commission on Latin America and the Caribbean
CONACAMI	National Confederation of Communities Affected by Mining
CONFIEP	National Confederation of Private Business Institutions
CVR	Truth and Reconciliation Commission
DFID	UK Department for International Development
DFS	Detailed Feasibility Study
DINOES	Executive Divisions for Special Operations (of the Peruvian National Police)
ECLAC	United Nations Economic Commission on Latin America and the Caribbean
EIA	Environmental Impact Assessment
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IFC	International Finance Corporation
INAAC	National Institute for Mining Concessions and Cadastre
INRENA	National Institute for Natural Resources,
MEM	Ministry of Energy and Mines
NGO	Nongovernmental Organisation
ONPE	National Office for Electoral Processes
OSINERG	Supervisory Body for Investment in the Energy Sector
PSG	Peru Support Group
SER	Rural Educative Services
SNMPE	National Society for Mining, Petroleum and Energy
STD	Sexually Transmitted Disease
WWF	WorldWide Fund for Nature

Mining & Development in Peru

Executive Summary

This report addresses the relationships between mining and development in Peru, focusing on a particular experience in the Northern highlands of Piura - the Rio Blanco Project, executed by Minera Majaz, a wholly owned subsidiary of the British company Monterrico Metals. The report is the work of an independent delegation organized and coordinated by the Peru Support Group (PSG), a UK based membership organisation. The PSG's interest in mining led it to sponsor a meeting in the Houses of Parliament in March 2006, which showed significant disagreements between Minera Majaz and local citizens' organisations regarding the dynamics of environment and development around the company's exploration activities. With the agreement of Monterrico Metals, the delegation was organized to form a third party view on these differences of opinion, and on the broader development effects of the investments and activities of this UK based company - both the effects to date, and those in the future. The case is also emblematic of broader issues in the relationships between mining, society and development that are relevant to the operations of other British mining companies in Peru.

While Peru has a long history of mineral extraction, investment in the mining sector has increased rapidly since the early 1990s, a direct effect of policy reforms of the Alberto Fujimori government. Between 1990 and 1997 investment in exploration increased 90 per cent worldwide, four fold in Latin America, and 20 fold in Peru. By 2003 mining accounted for 57% of all exports in Peru, and 37% of foreign direct investment between 2001 and 2003. The 1990s saw the area affected by mining concessions increase from 4 million to 16 million hectares, such that by decade's end around 55% of Peru's six thousand or so campesino (peasant) communities were in zones influenced by mining.

Given the large profits being made from mining at a time of significant mineral price increases, and in the light of the very limited evidence that mining

has contributed to sustainable local development in Peru, this territorial expansion has generated increasing social conflict. Among those protesting current mineral development there exists a range of views: from those who are against mining at all costs, to those in favour of mining but demanding what they deem to be a fairer distribution of the benefits, to those who insist that mineral expansion be managed in such a way that prioritizes the defence of human, economic, social and cultural rights and of the environment. These conflicts have been visible in the national press and in the electoral campaigns of presidential candidates.

These mobilisations have thrust into public debate a basic principle of economics - that development and social life involve trade-offs. Many argue that the potential trade-offs at stake require far more careful thought and analysis than is currently the case in Peru. This is particularly so for Piura, as the mine proposed by Minera Majaz would constitute the region's first large metal mine. Given that the company estimates it will be among Peru's top two copper mines, and possibly one of the very largest in South America, the social and economic transformations that it would induce are likely to be great. Furthermore, the company suggests that the currently proposed mine would likely be the beginning of a much larger 'mining district'. This means that the potential environment and development effects of Rio Blanco cannot be discussed independently of the impacts of this wider district. These issues are particularly important for Piura for three main reasons. First, public investment needs far surpass regional government revenue, a spending gap that could potentially be reduced by tax and royalty income from mining. Second, much of Piura is desert or semi-desert and its agriculture is acutely dependent on the quantity and quality of water draining from the region's eastern highlands, where the Rio Blanco Project is located. This sector has begun to grow rapidly, with both large enterprises and small and medium farmer organisations supplying internal and

external markets. This growth would likely be affected by diminutions in the quantity and quality of water. Even among interviewees not opposed to mineral development the delegation encountered the view that mining needs to be planned jointly with water resource management and development, and that this requires strategic thinking and planning of a sort that the current process for approving mining projects does not allow. Third, Piura has already been the site of a high profile conflict that ultimately led to the departure of the Canadian junior company, Manhattan, from its exploration site in Tambogrande.

The copper deposit at the Rio Blanco site was identified in the early 1990s, and rights to its exploration have passed among diverse companies until being fully acquired by Monterrico Metals in 2003. In subsequent years, Monterrico has established that this is a very large deposit centred on a site named Henry's Hill. The same period has also been one of considerable unrest in the region which to date has led to the loss of two campesinos' lives, as well as several maimings, injuries, arrests and lawsuits. Up until late 2006 the company explained this violence as a consequence of disinformation, agitation and political manipulation of the local population, while activists explained it as a consequence of company behaviour and legitimate local concerns about the potential environmental and social effects of the mine. The conflict between these various actors assumed visibility in the national press and television, as well as international visibility, including the exchanges among various participants at the meeting in the Houses of Parliament in March 2006. It also gained the attention of the Peruvian Ombudsperson's office (the Defensoría del Pueblo), which opened an investigation into the status of human and citizenship rights in the zone.

This report reconstructs events in the Rio Blanco area since 2003 and on that basis assesses: (i) the relative accuracy of the statements made in March 2006 by Monterrico Metals/Minera Majaz and the representative of local activist groups; (ii) the effects of the exploration phase and any future mine project on the economic opportunities, human security, empowerment and overall freedoms enjoyed by the local population; and (iii) the effects of the exploration phase and any future mine project on the environment. It also explores (iv) the wider issues embodied in this conflict.

First, the Delegation concludes that as currently designed the mine's actual and potential environmental impacts will not be as great as citizens' organisations suggest. Conversely, citizen organisations' claims of inappropriate company behaviour were to a considerable degree justified and company state-

ments on this issue in the UK and Peru have significantly understated the level of conflict between them and communities. There is evidence that the company did not enjoy legally adequate permission from the communities of Yanta and Segunda y Cajas to be operating on their land. There is also evidence of communities retracting in writing permission that may have been inappropriately given by their leaders. The Ombudsperson's office concluded that the presence of Minera Majaz on these community lands is not grounded in law.

In the second domain, the presence of the company has had marginal effects on economic opportunity, and has been accompanied by increased real and perceived human vulnerability and declines in overall levels of social empowerment. The capacity of regional society as a whole to act collectively has weakened, and the scope for reasoned public debate has been significantly curtailed. More significant, perhaps, are the changes that would ensue should a mine exist in the zone. Three main causal chains are invoked to argue that mining is the means to local economic development. The first chain operates through the mine's multiplier effects via labour and product markets. Experience in Peru suggests that this chain is relatively ineffective in promoting local development. The second chain operates explicitly through Minera Majaz's social development programme. Here the argument is that this programme, by supporting local enterprise and production systems, will increase local incomes and employment. Currently the programme does not seem significantly different from other community and rural development programmes that, it is now widely accepted, have had disappointing effects on economic dimensions of poverty in the Andes. The third chain is the least direct, but the most talked of, and operates via the canon minero. Here the assumption is that mines will pay tax and royalties that local authorities will use to invest in development. However, these authorities are currently subject to severe capacity constraints, and legislation hinders the translation of these resources into development. Royalty rates also appear low by international standards.

On balance, the development effects of Minera Majaz's presence have not been positive, and looking to the future there is no guarantee that they will become substantially better except for the injection of canon and royalty payments.

In the third, environmental domain, the impacts of the mine as currently designed may be manageable, though to ensure this will require an EIA conducted to the highest of standards and independent monitoring. Our greatest environmental concerns relate to

the project's likely knock-on effects. Presentations by the company package the project as part of a far larger mining district; and other concessions are already held in areas adjacent to the project. If this is so, environmental impacts will be far greater and will in all likelihood affect water quality and quantity draining west into Piura. We therefore conclude that assessment of the project's environmental impact must include these wider effects. Whether the Rio Blanco Project goes ahead or not will have significant influence on how far and how rapidly the mining sector can open a new frontier of expansion in the North of Peru. One of the most important lessons of this Delegation is that the significance of the Rio Blanco Project is much more than the mine that the company hopes to develop on Henry's Hill, and which will be the subject of the Environmental Impact Assessment (EIA) to be submitted in early 2007.

The conflicts around Rio Blanco have far wider importance in other ways, raising questions about the mining sector as a whole, and about how the relationships between state, citizen and business might be managed so as to strengthen Peru's still unconsolidated democracy. The Ombudsperson's report on Rio Blanco, released in November, concludes that the case demonstrates chronic deficiencies in the governance and regulation of mineral exploration in Peru. It argues that these deficiencies undermine legally and constitutionally mandated human and citizenship rights in Peru, particularly for rural poor whose rights are already vulnerable. The Ombudsperson concludes that the implementation of the Rio Blanco Project has violated community members' rights to property, to determine the ways in which their property will be used, and to informed participation in decisions about development. They conclude that these violations of rights derive from lack of clarity in the regulations and practices of Ministry of Energy and Mines (MEM), and that with the information that MEM was given by Minera Majaz at the time of giving it the green light to begin large scale exploration, the Ministry would have known that it was violating these rights. The case has become emblematic of profound deficiencies in the Ministry, and of the inability of local populations to do anything about these deficiencies. The Delegation also concludes that the case shows - dramatically - how non-violent protest and the democratic process have completely failed local populations. This is dangerous in Peru, and helps explain why local groups opt for direct action and how violence emerges around mining conflicts.

The Delegation therefore concludes that, unless managed in a way which takes all these sources of grievance into account, and that is determined above all else, to prove that the democratic process works as much for ordinary, poor and indigenous people as it does for a foreign owned mining company, the Rio Blanco project could elicit further violence and/or the deepening of authoritarian political practices. There is certainly a desire for each of these (violence and authoritarianism) among some of the important stakeholders in this conflict, and the Delegation is not alone in concluding that many of these stakeholders (in state, civil society and the company) are not interested in genuine dialogue. In this setting, if Rio Blanco fails to be sociologically intelligent, though it may generate economic opportunities, it will fail on all our other criteria for development: empowerment will be compromised, freedoms will be compromised, human security will be compromised.

Given the lack of trust and the limited scope for rational public debate in Rio Blanco, it is important to conduct a far more thorough and completely independent assessment of the likely effects of the project, and of the mining district which it would initiate. This is critical for informed regional development planning and also for citizens to form their views on mining, be this through some form of referendum (which the Delegation tends to prefer) or other mechanisms. Should the mine go ahead, and given the very uncertain causal links between mining and local sustainable development, it will be important that these linkages are governed in as legitimate and competent a way as possible. At present, it is not clear which public or private institutions actually have this legitimacy - and in neither Lima nor Piura, did the delegation hear enthusiastic support for a mineral development project led by Minera Majaz, largely because of its history of community relations and behaviour in the zone. Much creative thinking is required to imagine these possible governance arrangements. For Rio Blanco to be socially viable it has to be the very best mining project in Peru, one that ensures that mining fosters development, and challenging the mining sector as a whole to perform far more competently than it has to date in Peru.

Monterrico Metals

Responding to this report

The Peru Support Group invited Monterrico Metals to comment on this report in advance of its publication, with the intention of incorporating their comments in the report. However, at this time, Monterrico Metals are in an offer period, due to a recent approach by a Chinese conglomerate to buy Monterrico Metals. Consequently, although Monterrico Metals would have liked to comment on the report, to put their side of the story, and to respond to what they consider certain misapprehensions and factual inaccuracies, they were unable to do so due to the constraints imposed by United Kingdom rules governing take-overs.

The report includes information on several of Peru Support Group's contacts with Monterrico Metals prior to and during the delegation's visit to Peru. The PSG is grateful to Monterrico Metals for facilitating the delegation's visit to the Rio Blanco mine.

Part I Rio Blanco in Context

Chapter 1

Introduction

1.1 This report addresses the relationships between mining and development in Peru.¹ It does so by focusing on a particular experience in the Northern highlands of Piura - the Rio Blanco Project, executed by Minera Majaz, a wholly owned subsidiary of the British company Monterrico Metals. The case was selected for various reasons: this was a British company, operating in a particularly difficult and conflictive context and was therefore of interest to British citizens and government concerned about the behaviour of UK firms overseas. The case is also emblematic of broader issues in the relationships between mining, society and development - issues that are also relevant to the operations of other British mining companies in Peru.² The report therefore attempts to speak to both the general and the specific in its analysis.

1.2 An analysis of the relationship between mining and development is immediately complicated because the notion of 'development' is itself a slippery one, and while we might all be able to agree on what we mean by the word 'mining', this is far less likely to be so for the word 'development'. Indeed, one theme in the report is that many of the conflicts that have occurred and continue to occur around Rio Blanco reflect deeply felt disagreements about *what* 'development' should mean for this region, *who* should define this development, and *who* should be entrusted with the responsibility of ensuring that it occurs according to this definition.

1.3 This means that we ourselves must be clear on what we take 'development' to be in this report. We have opted for a relatively mainstream meaning, one grounded in ideas of the World Bank and of Nobel Laureate, Amartya Sen. In this approach we understand development as a process that involves poverty reduction and the expansion of human freedoms. A focus on poverty is particularly appropriate because many argue that mining is one of the very few viable strategies to reduce poverty in large parts of the Peruvian highlands (and some in the industry would argue the only strategy). One of the tasks of this report is to reflect on this claim, and assess its validity for the case of Rio Blanco. In order to do so we need a working definition of poverty reduction, and in this we use the approach of the World Bank's flagship World Development Report of

2000/2001, *Attacking Poverty* (World Bank, 2000). That report argues that poverty has to be understood along three dimensions: economic opportunity (essentially income), human security (economic, social and environmental vulnerability) and empowerment (self-confidence, public participation and ability to express opinions freely and without risk of repression). These three pillars not only help define what poverty is (lack of opportunity, security and power), they also give a working model regarding how it might be reduced (namely through enhanced opportunity, enhanced security and enhanced empowerment).

vigorous and open public debate on development and on the actions of state, business and civil society actors is important in ensuring the protection and enhancement of freedoms

1.4 Our second definitional base comes from Amartya Sen's notion of *Development as Freedom* (Sen, 1999). In this reading, development involves the promotion of greater freedoms for ordinary people: freedoms *from* afflictions (such as hunger, violence, lack of shelter, insecurity) and freedoms *to* enjoy fulfilments (such as those that come from voice, expression, creativity and unencumbered participation in social and political life). Once again these freedoms are understood as both *measures* and *sources* of development. Thus, for instance, while voice is a measure of development, it is also a cause of it: famine has never occurred in areas with a free press and citizenry says Sen, suggesting that voice and democracy themselves help foster food security and poverty reduction. How? because the possibility of free, vigorous and open public debate on development and on the actions of state, business and civil society actors is important in ensuring the protection and enhancement of freedoms. The World Development Report (2000) argued much the same. It emphasized that poverty reduction would be enhanced to the extent that citizens had access to local state and government institutions, could expect fair and impartial treatment from those institutions, and could do so in the knowledge that these local institutions were gaining progressively greater capacities to incorporate and respond to citizen concerns. In a similar vein, the UK Department for

International Development emphasises that poverty will only be eliminated with a commitment to good governance (DfID, 2006).

1.5 These two relatively mainstream sources - the World Bank and Amartya Sen - thus give us general metrics for assessing the relationships between mining and development in Peru. What, to date, have been the effects of mineral development on economic opportunity, human security and empowerment for ordinary people in Peru, and in highland Piura? What have been the effects of mineral development, in Peru and in highland Piura, on citizens' freedoms *from* and freedoms *to*?³ What have been the effects of mineral development on the quality and freedom of public debate, and on the responsiveness, impartiality and capacities of state institutions, especially at a local level?

1.6 The report is divided into two Parts. The first of these contextualizes the Rio Blanco Project, the conflicts surrounding it, and the work of this delegation. In this first Part of the report, and following these brief but important definitional observations, Chapters 2 and 3 lay out some of the wider context of the Rio Blanco project. This context is treated at two levels. Chapter 2 reflects on the relationships between mining, development, democracy and the environment in Peru as a whole, while Chapter 3 takes a similar reflection down to the level of the region of Piura. Chapter 4 then presents the specific context of the Rio Blanco Project. It briefly describes the company, the mine site and the social conditions in the immediate area of the site. It recounts elements of the social conflict that surrounded the project almost from the moment Minera Majaz became involved in it, and explains how this conflict was taken back to the UK. This latter point helps explain the origins of this Delegation, which are also discussed. Chapter 5 then explains briefly how the Delegation worked while Chapter 6 recounts events surrounding the project and that have occurred since the idea of sending a Delegation was initially proposed. That section also discusses recent changes in the company Monterrico Metals. At the time of putting this report to bed, Monterrico Metals became the subject of a takeover bid from a Chinese conglomerate. Given the very recent and still unresolved nature of this bid, the report has not commented at all on it, even though it may prove very significant to the future of the project.

1.7 Part II constitutes what are probably the most important discussions in this document, and explores core issues in the relationship between mining, development, environment and democracy in the Rio Blanco area. It does so in four ways. First, in Chapter 7 it responds to the Delegation's most specific charge which was to assess the validity of statements that both the company and civil society actors have made about the conflict. In Chapter 8 it then analyses the relationships, to date and in the future, between the presence of

Minera Majaz and development in the region. The following chapter discusses the environmental impacts and implications of the Rio Blanco Project, and then Chapter 10 explores wider institutional issues that will bear very specifically on the possibility that mining in Rio Blanco might translate into development, environmental security and the consolidation of democracy.

1.8 The final chapter is also important. It draws our overall conclusions about the significance of what has happened in the Rio Blanco Project, and about what might happen in the future. Our main argument is that Rio Blanco cannot be considered in isolation, as a single one thousand hectare project on a place called Henry's Hill. For the purposes of development thinking, it is more usefully considered both in terms of the issues it has raised for the governance of the mining sector in general in Peru, and of the implications it has for what is likely to be a significant transformation of landscape, society and environment that will ripple out from this project - a scale of change not broached in the discussions of the merits and demerits of individual projects. The report closes with an extended reflection on possible ways forward in the Rio Blanco area.

¹ In this way, it builds on an earlier PSG publication (PSG, 2005).

² Britain is a significant source of investment in the Peruvian mining sector and a number of important and junior UK companies have offices in Peru.

³ Though relatively mainstream in their substantiation, these metrics broaden the conversation about mining and development. At least in the Peruvian context, much of this discussion has focused on the potential contributions that mineral extraction might make to income (through jobs and multiplier effects), social services and infrastructure, primarily through that proportion of taxes that mining companies pay and that are returned to the regions in which mining occurs.

Chapter 2

Mining, development, democracy and the environment in Peru

2.1 Peru has a long history of mineral extraction, not all of it felicitous. Mining has given Peruvians an importance in a world they might otherwise not have enjoyed. In the time of the Inca Empire in the 16th century - and indeed for three millennia before - precious metals were mined, smelted and worked locally. When the first Spaniards arrived in 1532 gold and silver were lending grandeur to the Inca emperors, their religion of sun-worship and their courts, notably that at Cusco. Once the Spaniards realised the riches of the country which they had invaded, there followed an influx of European fortune hunters who sought and found precious metals throughout the Andes and effectively enslaved those who lived there - with consequences which still vitally affect Peruvian society and nurture deeply rooted resentments (in the words of World Bank, 2005). Pizarro, the leading conquistador, set a milestone when he captured the Inca emperor Atahualpa at Cajamarca and announced that he would regain his freedom if he had a chamber filled with of gold for the Spaniards. Once Atahualpa had arranged that, Pizarro murdered him. The wealth the Europeans won for themselves and for the kings of Spain meant that Lima became a glittering city, seat of a vice-royalty from which much of the rest of Spanish-speaking South America was governed.

2.2 The conquest was, in some sense, a struggle over precious metals, a struggle in which some were far more able to repress and kill than others. In the Republican and modern periods, minerals and mining continued to occupy a complex position in Peruvian society and economy: a source of wealth, foreign exchange, employment and subsistence, but also of conflict over labour relations and the environmental effects of mining and smelting on the lands, crops, water and animals of peasant communities (Long and Roberts, 1978; 1984).

2.3 When Spanish power was broken and South America achieved its independence from the European colonial powers at the beginning of the 19th century, Peru began to lose its primacy in the region though the memories of the prosperity mining had brought continued to mould Peruvian thinking. In 1879 war broke out and the once ill-regarded Chileans to the South, who had been making new fortunes from mining, conquered

Peru and Bolivia. They took land from both of them and occupied Lima for years. Since then Chilean success in becoming the world's largest producer of copper, digging it out of deserts which once belonged to Peru or Bolivia and then transforming it into modernizing and poverty reducing development, has been something of a point of reference. Writing in late 2005, Alan García (García 2005) lamented the fact that while Chile exported \$2,131 per head of population the corresponding figure in Peru was a mere \$457. His publication made it clear that he wanted to close the gap with Peru's southern neighbour. In this effort Peru, he said, would emphasize export orientation, in particular from the highlands. Consistent with this position, once in power the government has developed good working relationships with mining companies, retracted on campaign commitments to revise upwards their tax and royalty commitments, and sought to mediate in and resolve disputes between some of the largest mining companies and mine affected communities (El Comercio/del Castillo, 2007).

it is hard - arguably impossible - for the mining sector to point to any locality in Peru where the expansion of mining has led to significant human development for the local population

2.4 Indeed, in an already conflictive country in which everyday and organised forms of violence along racial, class, gender and regional lines have a long history, mining (like land)⁴ has often served as a lightning rod, channelling, expressing and sometimes amplifying these deeper conflicts.⁵ In some celebrated cases - for instance, the decades' long tussle between Southern Peru Copper Corporation and the town of Ilo - these conflicts are not only between communities and mines, or between class and ethnic groups, but have also pitched town against mine.

2.5 There can be no doubt that mining has made important contributions to Peru's economy, and is one of the activities feeding contemporary growth processes. One of its contemporary heritages, then, is a relatively stable macroeconomy. Another heritage, however, is what are today commonly referred to as the 'pasivos' that the contemporary mining sector has to deal with. 'Pasivo' is perhaps best translated as liability. These lia-

Box 1

Mining, acid mine drainage and pasivos ambientales

The general definition of 'ore' is a naturally occurring material from which minerals of economic value can be extracted at a profit. Ore minerals are the specific minerals containing the commodity of interest. 'Gangue minerals' refer to material so intimately associated with ore that it has to be mined with it, and later removed by various crushing, grinding and separation processes. The 'host rock' is the rock surrounding the ore and gangue, which, like the gangue, has no value. To illustrate these relationships, consider the following example for a gold ore:

A gold-bearing quartz vein 1 foot thick occurs in a granite intrusion. The quartz vein contains arsenopyrite and pyrite in addition to native gold. The 'ore' in this example is the quartz vein material where it contains sufficient concentrations of gold. The ore mineral is native gold. Gangue are minerals in the vein associated with the gold, like quartz, arsenopyrite and pyrite. The granite is the host rock.

During the extraction process, host rock is removed to access the ore. This 'waste rock' is stored in large piles on site. The waste rock can and often does have some toxic metal content. The ore is then crushed and

separated from the host rock. Tailings (also known as tailings piles or slickens) are the materials left over after removing the ore. Large-scale operations often leave huge piles of this material on site. Tailings piles are large sources of pollution because: (a) non-economic gangue minerals are concentrated in the tailings piles; and (b) the large rocks have been mechanically and/or chemically transformed into very small particles with high surface areas that result in very high rates of weathering that release the toxic metals in the gangue. Particles of toxic metals blown by the wind or leached by rainfall can contaminate surface water and groundwater.

The release of these common metals can cause acid mine drainage and the export of toxic metals in surface and groundwater, a phenomenon that is perhaps one of the most serious and pervasive pasivos ambientales that Peru has inherited from its old and not so old mining history. Acid mine drainage (AMD) occurs because of the exposure of sulphide-bearing minerals (such as pyrite) to air and water, forming sulphuric acid. This acid dissolves metals such as lead, zinc, copper, arsenic, selenium, mercury, and cadmium, into ground and surface water. Acid mine drainage can poison ground and drinking water and destroy aquatic life and habitat. Commonly mined ore bodies that pose the risk of

acid rock drainage include gold, silver, copper, iron, zinc, and lead. Note that the primary mineral mined at Rio Blanco is copper in a pyrite matrix.

Acid rock drainage (ARD) is the natural release of metals in surface and ground waters that occurs when water contacts the mineral deposits before any human perturbations caused by mining activities. Many sites that have deposits of economic minerals have naturally-occurring ARD. In general, destruction of aquatic habitat by ARD is much less extensive than AMD.

Disseminated ores consist of small particles of valuable minerals spread more or less uniformly through the host rock, as distinct from ores in veins described above. Mining of disseminated ore produces much more waste rock and tailings piles because the valuable mineral is dispersed through a larger volume of rock compared to ore concentrated in veins. Large quantities of host rock must be excavated and processed to concentrate the ore of interest. Large open-pit mines are often used to extract disseminated ores. The Rio Blanco mine is composed of disseminated ore that Monterrico rate at 0.57% copper and 228 parts per million (ppm) molybdenum. Processing the disseminated copper and molybdenum will produce large quantities of waste rock and tailings piles.

bilities are talked of mostly in environmental terms ('pasivos ambientales') (World Bank, 2005). These include, among others, acid mine drainage (see Box 1), damage to water resources, untreated and unmanaged tailings heaps (World Bank, 2005) - liabilities for which few assume responsibility after companies have closed, gone bankrupt or been nationalized. Some of these liabilities are of international renown, in particular that of the La Oroya smelter and its surrounding area, recently identified as one of the world's ten most contaminated places (BBC, 2006). But more generally in Peru the names Pasco, Hualgayoc, La Oroya and Huancavelica conjure up the notion of environmental damage and absence of human development.⁶

2.6 Peru's contemporary mining sector - companies and government - often argue that the existence of these environmental liabilities is what makes it so difficult for mining companies to find open-armed local support for their activities. However, the liabilities that have been left behind by modern mining history are as much socio-economic as they are environmental. Indeed, it is hard - arguably impossible - for the mining sector to point to any locality in Peru where the expansion of mining has led to significant human development for the local population. While this does not necessarily imply that future mining will have the same effects, it makes the 'marketing' of new projects problematic. It also gives activists who are sceptical of mining a wide range of examples to choose from when

they want to suggest to others that mining may not be a panacea for local development.⁷ The fact that mining has a difficult sales pitch in this regard was recently acknowledged in an IFC organised event on extractive industries in Latin America - the focus of the event was on the poor relationship between extraction and local development, and the underlying message was that even if mining (and hydrocarbons) have made important contributions to national development, their local contributions have been far more limited, and sometimes negative. The decision in late 2006 that mining companies would make an additional (and significant) voluntary contribution to fund local development likewise constitutes an industry recognition that it has to be seen to be doing more for local development.⁸

MEM's functions are designed with a conflict of interest built into their very core. The Ministry's role is both to promote mineral investment, but also to rein it in if this investment causes environmental and social damage

2.7 These liabilities are what characterize, in the language of the mining sector, the 'old mining' of Peru, where 'old' refers as much to particular corporate values and technologies as to time. This is differentiated in sector parlance from the period of 'new mining' - a period that dates back to the early 1990s. It is argued that this period of 'new' mining is characterized by more modern, cleaner technological options and more responsible corporate behaviour. It is also characterized by rapid growth. Indeed, since the mid 1990s, and in response to a series of changes in mining and tax codes,⁹ the mining industry has expanded rapidly as both senior, and very many junior companies (among these Monterrico Metals) have become active in the country (Bridge, 2004). Between 1990 and 2000, mining investment increased five-fold, and by the year 2000 three departments¹⁰ of the country had between 30 and 50 percent of their terrain under mining claims, and a further seven had between 20 and 30 per cent (Bury, 2005). At a national level, the 1990s saw the area affected by mining concessions increase from 4 million to 16 million hectares, and by 1999, around fifty-five per cent of Peru's six thousand or so campesino (peasant) communities were in zones influenced in one way or another by mining (de Echave, 2006). The World Bank (2005) notes: "While between 1990 and 1997 worldwide investment in exploration increased 90 per cent, and increased four fold in Latin America, in Peru it increased 20 fold."

2.8 In this process of expansion, mining has become yet more central to the national economy, and in particular to macroeconomic management. Although the mining sector only accounts for approximately 6-7% of GDP,¹¹ 50% of Peru's foreign currency is generated by mineral exports - indeed, over the period 1990-2003, mineral exports passed from US\$ 1447 million to US \$ 4554 million (Cooperación, 2006). In 2003, mining accounted

for 57% of all exports in Peru (World Bank, 2005) and 55% in 2005 (Dorman, 2006). Mining has also become a pole of foreign direct investment, and between 2001 and 2003 accounted for 37% of FDI in Peru (World Bank, 2005). The macroeconomic importance of the sector has also meant that the Ministry of Energy and Mines (MEM) has become a particularly powerful ministry.¹² Mining legislation and regulations have been designed in such a way that they have enhanced this power. Thus it is that all decisions about mine project development and approval are taken within MEM. MEM grants concessions; it reviews and approves (or not) the Environmental Evaluations (Evaluaciones Ambientales) that allow concessionaires to proceed with exploration; and the MEM then reviews and approves the Environmental Impact Assessments that companies prepare in order to move to the exploitation phase. While there is consultation on these Environmental Impact Assessments and Environmental Evaluations, the process makes it difficult for many rural residents to participate actively, not least women and those who do not read or write well (Defensoría del Pueblo, 2006a). Just as importantly, the MEM intermediates this consultative process: it transmits public observations to the company, and then itself decides if the company has responded to them. Those making observations are not notified as to if or how the company has responded to them. Once approved, and the project moves to the exploitation phase, the MEM is responsible for monitoring the environmental and social performance of companies against the standards laid down in the Environmental Impact Assessment.

2.9 MEM's functions are designed with a conflict of interest built into their very core. The Ministry's role is both to promote mineral investment, but also to rein it in if this investment causes environmental and social damage. As MEM's power clearly comes from its contribution to economic growth and its cultivation of relationships with international and national companies (and not from the relations it cultivates with environmental and social justice organisations nor from its performance in protecting the environment), the conflict of interest leads it to privilege investment over environmental and social protection. This is suggested by the fact that to the best of our knowledge it has yet to reject a mining investment project from proceeding on the basis of its environmental impact assessment. A World Bank report on the social and environmental dimensions of mining concludes:

"This report comes to the conclusion that there is still only very weak political will to attend to mining's environmental problems and to resolve the contradiction that is perceived to exist between promoting and regulating mining activity" (World Bank, 2005, Executive Summary)

2.10 This conflict of interest has recently become a point of growing debate in Peru and on January 24th, 2007 *El Peruano*¹³ published the text of the new Law 28964 which passes post-project approval environmental

monitoring to another part of government, OSIN-ERGMIN.¹⁴ MEM however retains its judge and jury role in all other respects as it will retain control over the approval of Environmental Evaluations and Environmental Impact Assessments (EIA) and over the monitoring of social impacts (this going against World Bank recommendations in 2005).¹⁵

2.11 Accompanying this growth in investment in extractive industries - and not unrelated to the compromised position of MEM - there has been an equally remarkable surge in social mobilization and conflict against mining, or particular aspects of mining company behaviour. In 2005 a report to the Peruvian *Defensoría del Pueblo* (Ombudsperson's Office) recorded thirty three separate conflicts related to mining (Ormachea, 2005), and the World Bank noted that at least fifteen mining zones were affected by conflicts (World Bank, 2005). In 2006 the Defensoría reported that some seven of every ten conflicts in the country are related to mining (El Comercio, 2006). There are many explanations of this conflict. A World Bank (2005) report on mining in Peru, for instance, commented that: "expectations created by [mining] developments are damaged by the harm done to the environment, on the one hand, and the limits on the use and distribution of mining income, on the other." Other factors are also at play. Important among them is that the combination of new extraction technologies and rapid rises in global prices for minerals have meant that deposits that were previously unknown or uncommercial, have become not merely viable but in many cases of great potential profitability. As a consequence of these global changes, mining activity has grown not only in Peru's traditional mining districts but also, and perhaps more importantly, in areas with no significant mining tradition - one of which is Piura and the area in which the Rio Blanco project is located.

It ought not to be surprising, then, that rural people show some inclination to rebel in the face of the dramatic changes and palpable risks that mining is perceived to bring with it

2.12 Much of the worst conflict over mining in Peru has been precisely in these areas. The absence of any mining tradition, coupled with the damaging images of the *pasivos* just referred to, leaves many residents of such areas with a strong sense of uncertainty and hazard in the face of possible mining expansion (World Bank, 2005). This is a critical observation, especially if viewed through the optic of the long literature on peasant uprising in Peru and across the world. This literature teaches us that an important source of such uprising is the perceived risk that peasants feel when structural changes presage the unravelling of old 'moral economies' that ensured subsistence and livelihood to rural people. It ought not to be surprising, then, that rural people show some inclination to rebel in the face of the dramatic changes and palpable risks that mining is perceived to bring with it.

2.13 The spatial and economic growth of mining has itself brought into being a range of new social actors. The most nationally visible of these has been the National Confederation of Communities Affected by Mining (CONACAMI), which emerged in the late 90s and has more recently developed important roots in Piura. At the same time, the conflicts have induced changes in the mining sector itself. The National Society for Mining, Petroleum and Energy (SNMPE)¹⁷ has a social affairs commission that is, for instance, currently working on relationships between communities and mining companies; and individual companies have created and/or grown their own social development and community relations programmes in the areas of influence of their mine sites. Several specialist NGOs have also emerged to work on mining issues. Meanwhile, rights-based organisations - from human rights organisations to international development groups - have been drawn towards mining (and extractive industries more generally) because of the belief that the ways in which the sector has evolved have compromised both basic human rights as well as a series of social, cultural and economic rights (such as the rights to safety, voice, participation and secure livelihood). This has generated something of a backlash against rights based organisations in Peru reflected, for instance, in a wave of press stories and government declarations about their failings, and recent legislation increasing government influence over their operation.

2.14 Likewise a series of new actors have emerged at a local level. Defence Fronts have been created in various places as vehicles for bridging civil society and government actors concerned about mining development. In the north of Peru (both in Cajamarca and in Piura), the *rondas campesinas* (peasant vigilance organisations initially created to guard against cattle rustling but which have subsequently assumed a wider range of governance, anti-subversion and even judicial roles) have also assumed mining as an issue on which they work and over which they exercise vigilance.¹⁸

2.15 The emergence and reorientation of relatively consolidated actors - local, national and international - has not only been a result of these mining conflicts, but also bears on their subsequent dynamics. There is a strong current of opinion among parts of the industry, Congress and the governing party (APRA) that these organisations accentuate conflict (and therefore obstruct sector expansion). This view would appear to have informed the decision in 2005 to de-register CONACAMI from the list of NGOs held by the Peruvian Agency for International Cooperation.¹⁹ Conversely, many civil society organisations working on mining issues argue that they have emerged in order to protect rights and in many cases to foster dialogue and consultation. Many of them are also clear that they are not anti-mining in general - but do insist on forms of development (of any sort) that are inclusive, foster local development and above all respect poor people's rights.

2.16 Evidence exists to support all sides of the argument - some civil society groups have accentuated conflict, others have been dogged promoters of dialogue; and some mining companies have also accentuated conflict and ignored human rights, while others have sought more responsible ways forward. More important - analytically - however, is that these dynamics reflect the ever presence of latent, and not-so-latent, conflict in debates over mining in Peru. The print media (especially the newspapers *El Comercio* and *La República*) has played an important role in bridging these debates. Each has suggested that recent efforts to pass legislation allowing government to exercise greater control over nongovernmental organisations were partly motivated by annoyance at NGO criticism of mineral development. At the same time, these newspapers have played an important role in sustaining a discussion that desists from a language of villains and heroes, believing in the benefits of mining but arguing that mineral projects should only proceed if a series of human and socio-economic rights are respected.²⁰ They have also suggested (see especially the *El Comercio* supplement *El Día Uno*) that the mining sector ought to contribute far more to local and national development than is currently the case.

They [the print media] have also suggested that the mining sector ought to contribute far more to local and national development than is currently the case

2.17 But the print media can only contribute so much, and other print outlets have only fuelled conflict around mining. The risk presented by these conflicts is that, given the still recent history of armed strife that led to tens of thousands of Peruvians being killed by security forces and terrorist organisations,²¹ the language of terrorism and militarization is used by different parties to label each other in mining conflicts (as has happened in the case of Rio Blanco). Even more worrying is that this context is used to justify calls for a more authoritarian exercise of state power in order to give the mining sector the stability it needs to operate and invest. Indeed, such calls for authority and a strong hand have been expressed by mining executives (Financial Times, 2006): “ [t]here’s a lot of insecurity at the local level”, says one industry insider. ‘What we really need is a strong central government that imposes its will on remote areas.’ ” This desire for a more authoritarian state presence in mine affected localities was also expressed to us by the Chair of the Ordinary Congressional Committee on Mining, Santiago Fujimori. Such calls are, arguably, symptomatic of the fragility of Peruvian democracy, a fragility that allows that actors call for curtailment of citizenship, as well as of the autonomy of local government in order that investment might proceed.

2.18 The tension between citizenship rights and the promotion of investment is a real one. Thus at one extreme, the MEM has argued that communities do not

have the right to veto mining activities on their lands and territories.²² Citizenship does not extend, then, to being able to determine what happens on one’s property. Indeed, an expert interviewee at the *Defensoría del Pueblo* stated to the Delegation that if such a veto did exist, mining exploration would become unviable in most cases.²³ On the other hand, parts of Peruvian law related to *Comunidades Campesinas* suggest that external investors cannot be allowed onto property without two thirds of the community assembly giving permission (see later for a far fuller discussion). Rules seem unclear here, and it is possible that national legislation and government policy preferences do not perfectly coincide.

2.19 The tension between central government policy directives and decentralized rights is also apparent in the relation between different levels of government. In the Rio Blanco case, the two provincial governments in whose jurisdictions the concession is located have land use and development plans that, we were told on several occasions, do not contemplate mining. Yet these plans are not binding and there is no convincing evidence that Minera Majaz’s plans are an integral part of the development plans of local governments in the area. In allowing this approach to continue, the central government is essentially endorsing an argument that central policy and mineral investment are more important than local voice as channelled through locally elected authorities.

2.20 At issue, then, is the question of whose rights and which balance of powers will ultimately determine decisions over local and national development. To the extent that central forces continue determining development priorities, not only does this de facto reinforce existing inequalities of power and rights, it is likely to further reinforce other relationships of inequity and inequality. Yet as many international scholars and organisations note, such social and political inequities themselves aggravate inequalities in development processes - a position most recently and forcefully argued in the World Bank’s *World Development Report 2006, Equity and Development* (World Bank, 2006; also Sen, 1999).

At issue, then, is the question of whose rights and which balance of powers will ultimately determine decisions over local and national development

⁴ And of course, land and mining cannot be considered separately.

⁵ Deborah Poole notes how regional bosses (gamonales) emerged in the nineteenth century under the Republic of Peru, exercising their authority within an often race and gender-based ‘culture of violence’ (Poole 1994; also de la Cadena, 1995). This ‘culture of violence’ persists in contemporary Peru and has helped shape recent political and social violence (Poole 1994).

⁶ The lack of national environmental data prevents a full-scale assessment of the damaging environmental legacy left behind by past mining projects: for instance, a Television Trust for the Environment report notes “mines throughout Peru release 100 tons of mercury each year, 80 in liquid form and 20 in gas. According to the group CYTED most of the main rivers in the south of Peru are contaminated by mercury. As yet, there is no official record of contamination levels.”

<http://www.tve.org/earthreport/archive/doc.cfm?aid=1623>

⁷ The meeting, held on November 4th, 2006, in Lima, Peru. In the face of these challenges, the IFC has recently created a ‘Technical Assistance Fund’ whose goal is precisely to seek ways of enhancing mining’s contribution to local development.

⁸ However, the decision to allow the industries themselves to control the use of this additional contribution, rather than have the use managed by the state, seems mistaken - once again it weakens the state vis-à-vis the companies, and sends a mixed message: “we will give you more, as long as we can control how you use it.”

⁹ These changes were linked to the more general implementation of a neo-liberal model of economic management in Peru post 1990/1.

¹⁰ Cajamarca, Cusco and Huancavelica (Bury, 2005)

¹¹ The World Bank (2005) cites a figure of 6.6% of GDP in 2003.

¹² Powerful, but not very democratically accountable.

¹³ El Peruano is the formal public instrument for publishing legislation.

¹⁴ This is located within OSINERG, the Supervisory Body for Investment in the Energy Sector. This arrangement was not the most favoured by other organizations in Peru, who wanted to see these roles passed to a stronger independent environmental authority with multisectoral responsibilities.

¹⁵ The World Bank’s sector study noted seven areas in which the EIA process needed strengthening. “This study comes to the conclusion that the process of evaluating environmental impact assessments presents a series of limitations, and could be improved by: (i) demanding that the guide for elaborating EIA’s be legally binding; (ii) updating the contents of this guide so it meets internationally accepted standards; (iii) for projects that of a great complexity, demanding detailed terms of reference (that are currently not demanded by law) prior to the elaboration of the EIA; (iv) sharing responsibility for approving the EIA with other government agencies; (v) creating a panel (with representatives of other entities that have some environmental responsibility) with decisions making power over the approval of environmental licenses to operate (an approval that currently depends on a single entity inside the MEM); (vi) integrating a social impact assessment into the EIA; and (vii) modifying the public audiences that are required in the EIA process - and which currently present various deficiencies - converting them into audiences with an impartial moderator and a limited number of legitimate participants.

¹⁶ A very similar point was made to the Delegation by Dante Vera who works closely with the mining companies in Cajamarca (the Grupo Norte).

¹⁷ The Chamber of Commerce for mining in Peru.

¹⁸ See later for more detail on rondas campesinas in Piura.

¹⁹ El Comercio also ran a series of commentaries suggesting that this view influenced recent legislation to increase state regulation of NGOs.

²⁰ See also La Ventana Indiscreta, 2006.

²¹ The Peruvian Truth and Reconciliation estimates close to 70,000 were killed (CVR, 2004). Groups in government have argued it is less than this, while some in church related human

rights groups suspect it was more.

²² This observation on the non-right to veto was made to us in a meeting in the MEM, but also voiced by the Vice-Minister of Energy and Mines, Rosario Padilla, in a recent newspaper interview (El Comercio/Padilla, 2006).

²³ “Instalar derecho de veto sería hacer inviable la exploración minera en la mayoría de los casos.”

Chapter 3

Mining and Development in Piura

3.1 Though often thought of as an agricultural economy, extraction of non-renewable and renewable natural resources has featured prominently in Piura's modern economic history in the hydrocarbons and fisheries sectors. This prior experience has been less than encouraging, in the eyes of some,²⁴ who argue that Piura's is a history in which natural resource extraction has been controlled by external actors, and that the bulk of both resources and profits has been taken out of the region to be consumed and invested elsewhere. In comparison with these experiences, such commentators view (post-land reform) agriculture as producing forms of development that include a larger portion of the population, that allow resource use decisions to be made much closer to that population, and that generate income and products that are far more likely to be re-invested and consumed within Piura itself.

3.2 Some therefore see agricultural landscapes as more inclusive and democratic than those produced by extractive industry. However, the performance of the agricultural economy does not suggest that it alone can serve as the basis of Piura's development (at least not as currently constituted). Between 1970 and 2004, Piura's agricultural sector grew at 1.18% p.a., while departmental GDP grew by 1.51%,²⁵ and while agriculture employs some 37 percent of the economically active population, it accounts for only 11 per cent or so of GDP. Agricultural exports do not exceed US\$100 million a year. The implication (Correa, 2006) is that even if Piura's agriculture creates much employment, it continues to be low productivity, low production and primarily for the internal market.

3.3 One set of factors constraining agricultural growth in Piura relates to water management. The only two provinces with any significant rain-fed agriculture are the two in which Rio Blanco is located - agriculture in Piura's other six provinces is essentially impossible without irrigation, primarily with waters that descend from the department's highlands. Water could be managed more productively at a farm level, while at a departmental level it could be managed far more strategically. Thus, only 115,000 ha of the current 180,000 irrigable hectares are actually cultivated (Correa, 2006a). More importantly, if investment were to go ahead in several long planned irri-

gation projects, a further 150,000 hectares could be irrigated. This would allow for greater production for the internal market as well as increased exports - in the order of \$600 million to \$1,500 million p.a., estimates Correa. Different actors have distinct views on the relative merits of growth driven by the internal or external markets, though the regional and national governments appear particularly sympathetic to the latter. Either way, careful water resource management is vital: Correa (2006a) notes, "Achieving a vision of agroexport-led development depends on our ensuring water resources, and on developing levels of productivity and organisation among farmers".

land-use zoning and planning should guide development, serving as the basis for strategic planning of synergies between different sectors of the department's economy

3.4 Water is therefore central to any expansion, productivity growth and enhanced external or internal market orientation of Piura's agricultural sector. But water is also scarce, and an expansion of the irrigated frontier requires large-scale public investment - indeed this has been one of the longstanding hopes of regional government and population (Figure 1). Yet there are multiple demands for (and potential threats to) this water. One of these threats is badly managed urban growth and waste management; another is the fact that some 33 % of Piura's land surface is currently under concession, primarily for potential development of hydrocarbon, phosphate and copper extraction. This makes the strategic, planned management of water resources an essential part of Piura's future development (Dulanto et al., 2006). This has two implications. First, that land-use zoning and planning (ordenamiento territorial) should guide development, serving as the basis for strategic planning of synergies between different sectors of the department's economy; and second, that it makes no strategic sense for the government to follow a project-by-project approach when approving extractive industry projects (Dulanto et al., 2006) (see Box 2). Such an approach (which is currently what happens in Peru) allows no scope for strategic planning of resource (especially water) use and development.

Box 2

Land use planning and extractive industries in the UK

In the UK there are clearly laid out sets of duties and responsibilities regarding land use planning. These apply equally to all major industries including the extractive industries. Though on a smaller scale, open-cast coal mining proposals are common contentious applications, though I recall a proposal for an open-pit gold mine near to the village of Tyndrum in Stirling District in the 1980s which generated serious exploration if not a formal application.

The duty is given to a specific tier of local government in the UK to put together a Structure Plan which covers geographic zoning of their area for land use and the related infrastructure. This Structure Plan is put out to

public consultation. Objections to the proposed zoning of areas for particular land uses can be made by interested parties. These can be individuals, groups, communities or commercial companies or bodies. Where two or more tiers of elected local government exist it is often the lower tier which objects or lodges counter proposals.

Where agreement cannot be reached a Public Inquiry is organised by the National Government body where evidence is taken. The final Structure Plan whether amended or not is approved by the Department of the Environment in England and Northern Ireland and by the devolved parliaments in Scotland and Wales.

If an application is made for the use of an area for a purpose that has not been set down in the Structure Plan it requires the agreement of the appropriate

national Minister's department even if it is supported by the elected council locally. Local authorities are divided in their support or opposition to open-cast coal mining. In most cases where the local council policy is against open cast mining, the relevant government department will uphold the Structure Plan and refuse an appeal against a local council's decision to refuse a planning application.

In this way the national government in the UK and most EU countries retains final control over the mineral assets of the nation. It also creates a framework in which local opinions, preferences and democratic mandates can be empowered but at the same time be 'moderated' by the interests of the nation.

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it makes no strategic sense for the government to follow a project-by-project approach when approving extractive industry projects

3.5 Thus, adequate management of water in Piura requires careful planning of mining expansion. Yet - and herein lies what can at best be viewed as a 'tension' and possibly a 'contradiction' - the current budget of Piura's regional government falls well short of the department's investment needs. The main income for the regional government is the approximately US\$15 million p.a. petroleum canon - a transfer back to Piura of income generated from the hydrocarbons sector. Yet Correa (2006a) estimates that Piura's public investment needs total some US\$2.7 billion over the next 10 years. For the regional government, then, the temptation would be to accelerate mineral development as a means of generating greater income for public investment. Put another way, in order to generate the income for public investment in water resources, the temptation is to pursue a form of growth that might put those same resources in jeopardy. This is a sort of gambled trade-off over time; but it is also a trade-off over space, as the areas that would be the prime zones of mineral extraction would be in the highlands, while much of the benefits from public infrastructural investment would be enjoyed in the lowlands.²⁶

3.6 The capacity of the public sector to manage the potential tensions and sequencing issues involved in these interactions between mining, water, agriculture and public investment is especially important because Piura is one of two or three new frontiers for mining expansion in Peru. This notion of Piura as a frontier is one shared by both proponents and critics of current mineral expansion - it is also apparent from the current map of mineral concessions in the department (Figure 2). As rates of growth in other regions begin to slow, the mining sector is challenged to open new frontiers in order to sustain these rates of growth. The potential for unplanned and non-strategic mineral development (and water management) is therefore high. Given that it hopes to be the first, non-phosphate, post-1990s mineral development project in Piura, the manner in which decisions are made regarding the Rio Blanco Project will therefore go a long way in determining how far this mineral expansion turns out to be a strategically managed process in which mining, regional development, land-use and environmental planning are managed as part of a regional whole, or conversely a process in which project specific decisions are made with little reference to regional development strategies and needs. For this reason, it seems important that any decision on the project is not taken quickly, and is determined on the basis of a careful reflection on the medium and long term development strategies for Piura. Put another way, decision making on Rio Blanco's Environmental Impact Assessment - focused, as it will be, only on the project, and determined, as it will be, by

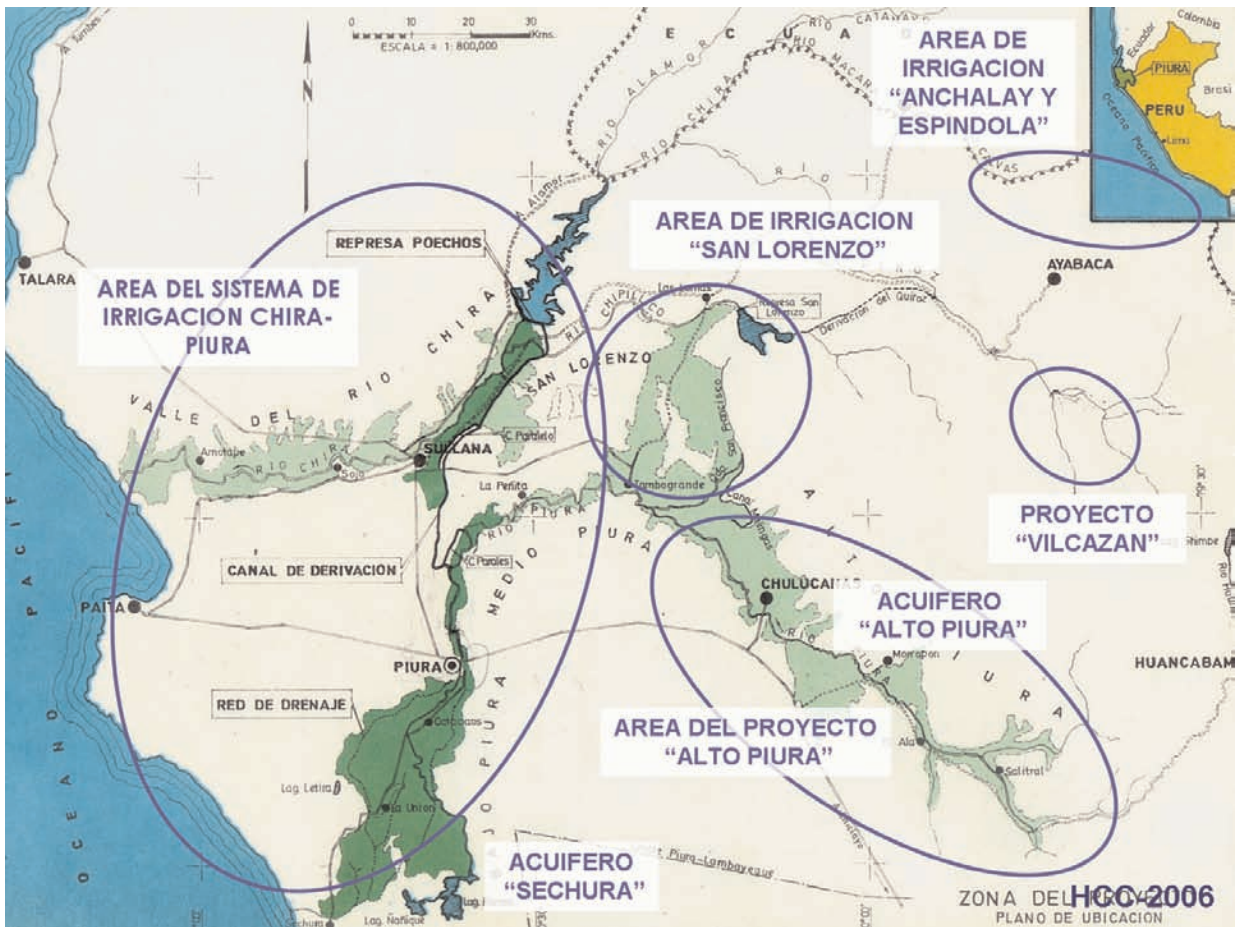


Figure 1: Irrigation and hydroelectric projects in Piura: actual and planned
 Source: Correa 2006a

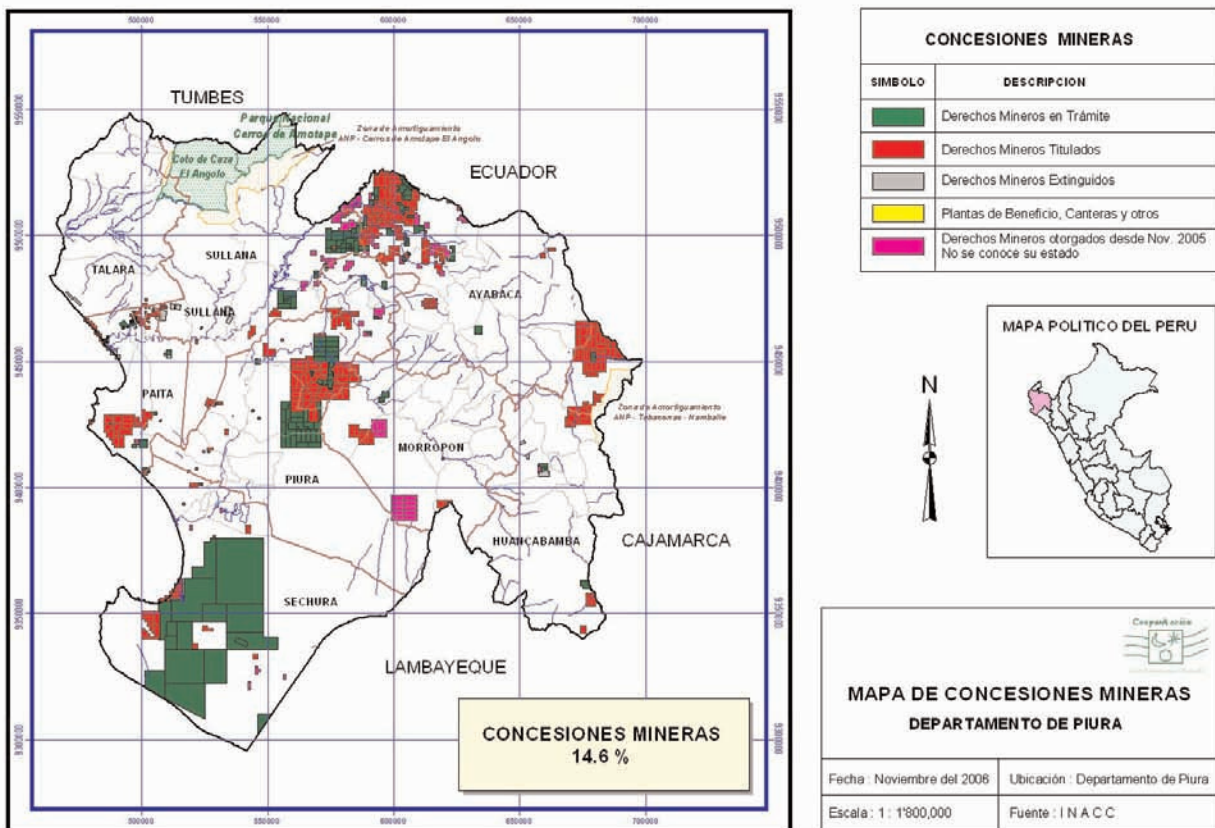


Figure 2: Map of Concessions in the Department of Piura
 Source: Figure prepared by Cooperación with data from the Ministry of Energy and Mines

the MEM alone (World Bank, 2005) - constitute a woefully inadequate vehicle for addressing the larger development issues raised by the project.

3.7 Rio Blanco was not initially to have been the first post-1990s mining project in Piura to be taken to the exploitation stage. In the town of Tambogrande, a Canadian junior company, Manhattan Minerals Corporation, sought to bring a gold mine to approval in the late 1990s and early 2000s. This led to a period of sustained conflict between local populations and the company between the years 1998 and 2003²⁷ until the company finally withdrew from Tambogrande and from Peru altogether (Portugal, 2005; Guarango, 2006). There are many explanations of what happened in Tambogrande - ranging from those that allege political manipulation and international NGO interference at one extreme, through to those who claim that Manhattan's failure was a consequence of deeply-felt public indignation and antipathy to mining. Regardless, certain points seem clear. First, the conflict was made especially acute because it pitched mining directly against human settlement and export agriculture. The mine would have required resettlement of much of the town, and potential damage to a zone of successful, export oriented, high-value irrigated agriculture made possible, *inter alia*, by earlier World Bank investments in water management. The case thus lent itself to clear dichotomies: a private investment undermining an earlier successful public investment; a mineral development landscape undermining an export-oriented landscape that appeared more economically productive, more socially inclusive and able to generate more local employment; and a mine displacing people from their homes and livelihoods.

3.8 Whatever the explanation, the conflict escalated quickly and became violent. The main leader of the opposition to the mine was murdered, and further escalation seemed only to have been avoided through the decision to implement a local referendum on mining. This referendum, organised by the local government and supported by national and international nongovernmental organisations (and in some sense indirectly by the National Office for Electoral Processes, ONPE),²⁸ saw a turnout of some 27,015 people, roughly 75% of eligible voters. The result was that 93.85% voted against mining activity in Tambogrande and 1.98% in favour (the balance being abstentions, spoiled ballots etc.).²⁹

3.9 This prior experience in Tambogrande is important to the Majaz case in several ways. First, the referendum in Tambogrande and the departure of Manhattan occurred just as exploration in Rio Blanco began to scale up. To the extent that part of the conflict in Tambogrande was not only over Manhattan's project but also over the general expansion of mining in Piura, the rise of exploration in Rio Blanco would have suggested to activists that while they may have won the battle in Tambogrande, the larger war was still to be

waged - just as it would have suggested to the mining sector and MEM that even if it had lost a battle, the war was still there to be won. Second, to those living in the vicinity of Rio Blanco doubtful of mining's benefits, the Tambogrande experience provided an antecedent that helped instil what anthropologist Alejandro Diez calls "scepticism in Huancabamba and open opposition in Ayabaca" to the Rio Blanco Project (Diez, 2006). Third, and related, activists in Tambogrande had been supported by a group of advisors (organisations and individuals) which subsequently formalized itself as a national organisation, the Red Muqui. Once the Rio Blanco conflict began to unfold, the Red Muqui fostered the creation of the Majaz Support Group, which then began to provide support to local authorities and activists critical of the way in which the Rio Blanco Project was evolving.

The conflicts surrounding the Rio Blanco Project thus constitute something of a replay of the Tambogrande case - the next battle in the same war.

3.10 The conflicts surrounding the Rio Blanco Project thus constitute something of a replay of the Tambogrande case - the next battle in the same war. While part of this conflict constitutes real, specific concerns about the legality and potential effects of the project in its area of influence, another part of the conflict constitutes an argument over whether or not there will be and should be mining in Piura, the conditions under which decisions about such mineral development should be made, and who should participate in those decisions. In this larger conflict, the mining sector (MEM, SNMPE and related parties) line up on one side in favour of mineral expansion in the north of Peru. On the other side lines up an activist sector combining those utterly opposed to mining as well as those who see an important role for mining in the Peruvian economy but insist that its expansion should be planned and occur in a way that respects and deepens citizenship in Peru. The difference in this case is that there is probably a larger group caught between these two camps who really don't know what to think: who see the need for new forms of investment in Piura, but feel completely unable to form a view on Rio Blanco because they feel they lack adequate and trustable information and question the credibility of most of the parties involved (company, government and activist).

3.11 The larger conflict over the overall desirability of mining in Piura - often written off by those in favour of mining as a consequence of political manipulation - is just as legitimate as the more specific ones about design details of Rio Blanco. Indeed, it is critical to any understanding of what is happening in Rio Blanco. This larger conflict explains why many of these actors are in Piura in the first place. Mineral exploration rights would not have been conceded and the Government of Peru would not have given Monterrico Metals special permission³⁰ to

operate in Rio Blanco had it been that the government did not want to expand mining activity in Piura. Likewise, national and international organisations have come to support activists in Piura not only because of the local grievances surrounding the Rio Blanco Project but also because of the larger issues that are at stake. Finally, the *Defensoría del Pueblo* (the Ombudsperson's office) has come to take such interest in this case (*Defensoría del Pueblo*, 2006a,b) because of the larger issues that it raises. To suggest that these external actors are meddling in what is just a local issue that should be resolved locally, in Huancabamba and Ayabaca, therefore seems to the Delegation to be disingenuous. The conflict in Rio Blanco is a local conflict, a regional development dilemma, a national issue and an international conflict at one and the same time. Each dimension of the conflict is equally legitimate.

The conflict in Rio Blanco is a local conflict, a regional development dilemma, a national issue and an international conflict at one and the same time. Each dimension of the conflict is equally legitimate.

²⁴ We refer to discussions with persons from the Universidad Nacional de Piura, the Universidad de Piura and CIPCA. CIPCA is an important and respected regional NGO linked to the Jesuits with both operational capacity and research capacity - as reflected in its participation in various studies funded by Peru's Consortium for Social and Economic Research (CIES), the most demanding source of social science research funding in the country.

²⁵ This and the following data were supplied by Humberto Correa, Professor of Economics at the Universidad Nacional de Piura and advisor to the regional government. See Correa 2006a.

²⁶ There is a long history of such coastal bias in Peruvian government behaviour. Food policy has long been biased in favour of coastal consumers rather than highland producers; large-scale public investment has favoured the coast; and Lima has benefited disproportionately.

²⁷ However, it is important to note that there was an earlier round to this conflict in 1979 when the French government's Bureau de Recherches Géologiques et Minières de Francia (BRGM) together with the Peruvian state also sought to develop mineral projects here but were rejected by the local population (Portugal, 2005). This antecedent weakens those arguments that the rejection in 2003 was only a result of external interference.

²⁸ ONPE did not formally assist in the implementation of the referendum, but did supply electoral registers.

²⁹ In early 2000, a survey commissioned by Manhattan concluded that 84% of the population was against mining activity (AMIDEP, 2000 cited in Portugal, 2005).

³⁰ The nature of this special permission (a Presidential Supreme Decree) is explained later in the text.

Chapter 4

Majaz: background information on the case and this Delegation

Monterrico Metals plc. and Majaz³¹

4.1 Monterrico Metals plc. is a London based resource development company that was incorporated in 2001. It is a 'junior' company in the sense that its function is to identify potential mineral projects and conduct the preparatory exploration and design work, and to initiate the legal work necessary to convert them into bankable, extraction projects. The company itself lacks the capacity to implement the project it is designing for Rio Blanco, and so at the point of its conversion from exploration to full-blown mining projects, it will seek large scale investment from partners or will sell to senior mining companies possessing the in-house capacities required.³² As a company, Monterrico's only experience to date is in the identification, exploration and design stages of mineral project development.³³ It has been in the conduct of these activities that it has interacted with local populations.

4.2 Monterrico operates exclusively in Peru where it has seven projects - four in gold, two in copper and one in silver - each implemented by its wholly owned subsidiaries.³⁴ Currently the most significant and most advanced of these projects is the Rio Blanco project, located in the region of Piura, close to the border with Ecuador. Minera Majaz is the most recent in a long stream of companies (themselves linked through complex ownership and option arrangements) that at different times have been linked to this project. In 1993 Minera Coripacha was incorporated in Peru and acquired concessions in the Rio Blanco area that precede the concessions that are currently owned by Minera Majaz. The copper deposit at Rio Blanco was identified in 1994 through regional reconnaissance work undertaken by Newcrest Mining of Australia,³⁵ who optioned it in 1996 to Cyprus Amax. On October 23rd 1996 the company Rio Blanco LLC was registered in Colorado, USA, with Newcrest owning 50% of its shares, and Cyprus the other 50%. Rio Blanco LLC then acquired 99.99% of the shares of Minera Coripacha. Cyprus Amax was in turn acquired by Phelps Dodge Corporation which subsequently relinquished their rights in the project. In 2000, Gitennes Exploration Inc. acquired the divestment package of Peruvian assets

from Newcrest and in turn optioned the Rio Blanco project to Monterrico in the following year. In 2003, after results from the initial drilling programme, Monterrico negotiated the acquisition of 100% of the Rio Blanco project. In the Rio Blanco area, Monterrico, via its wholly-owned Peruvian subsidiary Minera Majaz SA, has registered title to eight mineral concessions, covering an area of 6,472 hectares.

4.3 Exploration began in the second half of 2002 (Diez, 2006). In 2003 the MEM approved the Environmental Evaluation presented by Minera Majaz, documentation that outlines how the environmental and some social effects of the exploration phase would be handled. With this approval in hand (whose legitimacy has since been questioned: Defensoría del Pueblo, 2006a), Majaz initiated significant exploration and this has since progressed to the completion of an initial draft of the mine's Detailed Feasibility Study by the end of 2006,³⁶ and the Environmental Impact Assessment during the first quarter of 2007. The initial approval for exploration activities given by the MEM expired on November 28th, 2006. On June 12th, Minera Majaz presented to MEM a modification for an extension of this Environmental Evaluation in order to continue exploration activities. A Peruvian organization, the Ecumenical Foundation for Peace and Development submitted observations on this request. Procedures towards approval were still underway when on December 21st 2006 Minera Majaz withdrew its proposal for a modification on the Environmental Evaluation.³⁷ In the interim, the Legal Advice Office of the MEM concluded that the termination of the permission to explore did not affect Majaz's right to continue using the surface area of the Rio Blanco Project.^{38,39} As we will note later, the correctness of MEM's interpretation of this law has been questioned by the Red Muqui⁴⁰ and by the report of the Defensoria del Pueblo (2006a). Meanwhile Majaz is completing the Environmental Impact Assessment for the project which will be submitted to the MEM for approval in the first quarter of 2007. The approval of the EIA would effectively convert the exploration project into a mineral development project.

Project design and location

4.4 As at the time of preparing this report, Monterrico was completing its Detailed Feasibility Study (DFS)⁴¹ of the Rio Blanco copper-molybdenum project, our information on site design is preliminary. At the time of the Delegation's visit, the conceptual design consisted of:

- An open-pit mine
- Froth-flotation extraction process
- Piping of slurry approximately 300 km to the port of Bayóvar on the Piura coast for further extraction and maritime transport to international markets
- Dry-filtered storage of tailings on-site
- Waste rock storage on-site

The primary ore body is located in Henry's Hill, which has an average slope of 42 degrees. Henry's Hill will be completely removed during the open-pit excavation. The footprint of the open-pit mine is estimated by Monterrico at 400 ha with some 1,000 hectares in total affected by mine, tailings, waste rock, plant and other uses. It is likely that the depth of the open-pit mine will be below the local water table.⁴²

4.5 In its early years the project was colloquially referred to as the Majaz project, though in recent years Monterrico Metals has come to refer to it as the Rio Blanco Project. The Rio Blanco designation refers to the river that skirts the project site and which marks the frontier between Peru and Ecuador. The project is located in the department of Piura in the provinces of Huancabamba and Ayabaca (Figure 3) at altitudes of between 2,200 to 2,800 metres a.s.l. The project site is near the crest of the Andes, located in primary cloud forest. Annual rainfall is estimated at 2,000 mm, concentrated in the wet season. The Andes are a tectonically active region with numerous earthquakes during the written historical period that have exceeded magnitude 7.0 on the Richter scale.

4.6 More specifically the project is located on lands belonging to the two *campesino* communities (*Comunidades Campesinas*) of Segunda y Cajas and Yanta. Though not particularly populated nor intensely cultivated, ethnographers in the area note that it is used by the communities for extensive pasturing and more generally as a 'reserve' (a sort of savings account). Archaeological work contracted for a May 2006 *Evaluación Ambiental* also records some evidence of historical occupation of the more general area (with pre-hispanic archaeological remains in parts of the area under concession that Majaz was not intending to develop: Golder Associates, 2005). The exploration site is also located adjacent to Peru's international border with Ecuador. This location meant that for the project to go ahead a Supreme Decree (N° 023-2003-EM) had to be issued in 2003 declaring the project to be of public necessity and national interest. This was necessary because the Peruvian Constitution of 1993 prevents for-

eight investors from realizing operations within 50 km of the national border.

4.7 During the Delegation's visit, company representatives stated to us that Monterrico is only interested in developing one site, known as Henry's Hill - on the grounds that this already contains very large quantities of ore, sufficient for several decades. People in the area with whom we spoke had this same impression, and a recent documentary broadcast on national television focuses on the Henry's Hill site (Brack Egg, 2006).⁴³ On October 6th, 2006 Monterrico gave a presentation to investors in London⁴⁴ at which it suggested that one of the "upsides" of the project is that it has the potential to be a (central) part of a wider mining district that could incorporate other deposits in the region as well as on the other side of the frontier with Ecuador. This is a "project not only of a single opportunity but has the makings of a mining district" and the potential for such a district is considered as a "considerable upside" that potential investors in Monterrico ought to consider (Dorman, 2006). The map presented in that presentation refers to five "future exploration sites" as part of this district, one of which is labelled "Ecuador" (Dorman, 2006).⁴⁵

4.8 Even without this proximity to the Ecuadorian border, the administrative and social geography of the area is complex. As noted, the concession is located within the political boundaries of two legally recognized peasant communities, Segunda y Cajas and Yanta. The fact that the concession lies on Peasant Community (*Comunidad Campesina*) land is important. *Comunidades Campesinas* are legally recognized, self-governing entities. Their significance is political (they are self-governing), socio-economic (community mandated forms of collective action play an important role in maintaining public goods) and cultural (for the community marks an institutional link to a far longer local history of territorially based governance that itself is part of a long-standing cultural identity and patrimony). *Comunidades Campesinas* elect their own authorities who in turn have to respond to the Community Assembly, the body in which decisions are taken. While private land rights exist within communities, different bodies of legislation in Peru give the collectivity a degree of authority over how land can be used. Land in *Comunidades Campesinas* is therefore different from normal private property, and is not alienable in the same way as is an unencumbered plot of land elsewhere. In the specific case of mining, while communities (like all surface owners) do not own the subsoil rights (the state does), community members have to give a two-thirds majority approval in the community assembly before the surface can be used and occupied by any third party actor possessing rights to explore and exploit the subsoil.

4.9 These communities are far larger in population and geographical extension than many in other parts of the Andes. Thus the community of Segunda y Cajas

encompasses more than one district (it encompasses the whole district of Carmen de la Frontera plus parts of others), and within its boundaries are included many different nucleated settlements ranging from hamlet-sized settlements through to the town of Huancabamba. Segunda y Cajas is particularly important because much of the provisioning of the potential mine site enters through its lands. The community of Yanta, in whose lands much of the concession is located, cuts across the boundaries of the provinces of Huancabamba and Ayabaca, though its nucleated settlements are centred in Ayabaca. While the concession is located on lands belonging to Yanta, access from its settlement centres to the mine site is difficult and so there are likely to be far fewer direct economic multiplier effects in Yanta than in Segunda y Cajas (at least, not until taxes are paid following the initiation of extraction, and transferred back to Ayabaca).

4.10 The area of the concession is thus located within a series of authority structures: those of the communities, districts and provinces in which the project will occur. In addition, the waters flowing from the mine pass by two provinces of the department of Cajamarca, Jaén and San Ignacio, whose authorities and populations therefore also feel entitled to have a say in the form that the project should take given their fear that water and air contamination would compromise their agricultural economies (economies with a significant component of organic coffee production).

4.11 Further complicating the panorama is that within the communities and provinces that would be influenced by the mine, there exists a further organisational structure of considerable importance in the North of Peru; that of the *rondas campesinas* or peasant controls (Apel, 1996; Starn, 1999). These *rondas* emerged to combat cattle rustling, local crime and - during the period of armed conflict - incursions by *Sendero Luminoso*. This has led them to assume not only vigilance roles but also judicial roles. So, though their constitutional entitlement to do so is a point of debate, *rondas* also exercise local justice. These *rondas* are organised in federated structures that aggregate local *rondas* into provincial federations which have their own elected leaderships and authority structures (see Box 3).

4.12 The area of influence of the mine is also poor, as demonstrated by the data in the Table 1 below (Foncodes, 2006). In both provinces, access to basic services is low, female illiteracy still a serious problem, and over half of the population suffers some level of malnutrition. If only rural populations within each province were considered, the data would be even more worrying, as indicated by that for Carmen de la Frontera, the district in Huancabamba located most closely to the exploration site (and which itself makes up much of the community of Segunda y Cajas). As the table notes, the two provinces are poor in comparison with the department of Piura as a whole, but also on a national scale. In a ranking of Peru's 194 provinces according to their Human

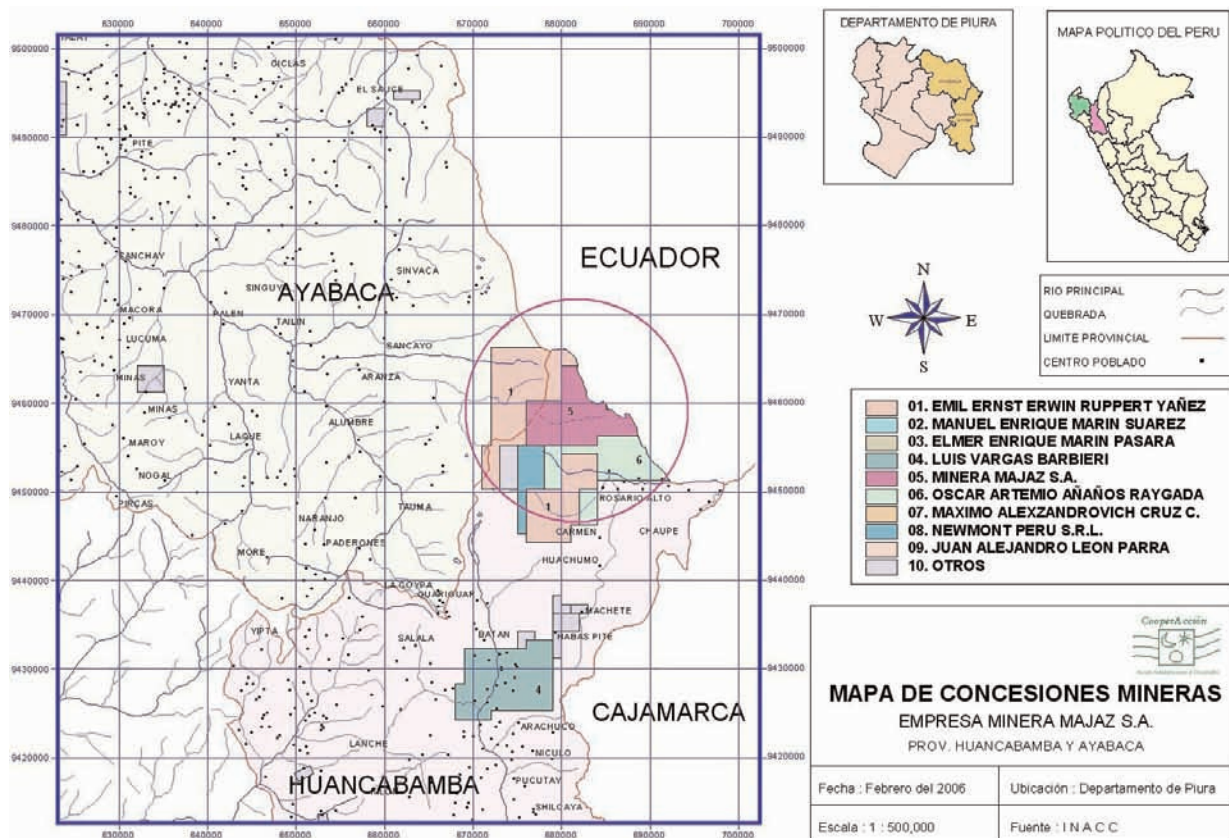


Figure 3: The project site, Huancabamba and Ayabaca
Source: Correa, 2006

Development Index, Ayabaca ranks 159th and Huancabamba 135th, the two lowest-ranked of Piura's eight provinces (Correa, 2006a).

A chronology of early conflicts: 2003- March 2006

4.13 Tensions between the mine and sectors of the local population emerged soon after exploration began in earnest in 2003. Diez (2006) suggests that three factors help explain these tensions: the work of activists in the area; the antecedent of Tambogrande that itself generated much distrust of mining in the local population; and the nature of the agreements that the company had secured and that had since been challenged. Minera Majaz had only been given permission to work in the area by a handful of leaders rather than by two-thirds of the community members (as required by legislation governing the disposition of land in *comunidades campesinas*), and leaders had only given permission for 'seismic' tests, not for mineral exploration nor for the establishment of a large camp and fixed structures. In later assemblies both communities rescinded any permission that their leaders may have given to the mine to operate, and demanded the withdrawal of the company - these demands were sent to the MEM (Cooperación, 2006). The Community Resolution No 001-2004-CSC of Segunda y Cajas issued on January 26th, 2004 formalizes the decisions of the community assembly of May 18th, 2003 to "Declare null the authorization for seismic prospecting that was given by the community management committee (*Junta Directiva*) of the Community of Segunda y Cajas to the company Minera Majaz Ltd." and to "Prohibit in all community territory any mining activity or similar that damages or contaminates the communities' natural resources or threatens the health and life of community members." The Minutes Book of the Community of Yanta records that the general assembly of the community on January 10th, 2004 declared "unanimously, among all the men and women community members, sectoral authorities and community leaders, were united in saying no to Mining and there is no mining company that has any permission to be in the community of Yanta." In a public declaration dated January 30th, 2006 and faxed from the town hall of Ayabaca, the community leaders who gave permission to operate on the lands of Yanta note that "Given the fair complaint of the General Assembly of the Community of Yanta, we the below signed have publicly recognized our mistake and we declare that this was because we were unaware of the consequences that this decision would bring with it. Furthermore, at no time did the representatives of the mining company request permission to install the permanent camps that they have established in the territory of the community."

4.14 From very early on, then, both the legality of Majaz's presence on community lands, and the social acceptance of that presence, have been in question, a

point we return to later. Local opposition to the project became quickly more organised, and in the absence of a response to the demands sent to the MEM, a "massive" assembly of communities gave the company and MEM a 15 day ultimatum (Diez, 2006).⁴⁶ On April 22nd, 2004 a large number of *ronderos* and community members marched on the mine site. The marchers were repelled by the police who had been called in to guard the site. In the confrontation one *Campesino*, Reemberto Herrera Racho, was killed by a tear-gas grenade which hit him directly in the head (Cooperación, 2006). Ten policemen were initially accused of this killing, and legal proceedings began. The policemen were later absolved of all responsibility, as was the police force as a whole. To date, nobody has been found responsible for these killings.

From very early on both the legality of Majaz's presence on community lands, and the social acceptance of that presence, have been in question

4.15 In response, the regional government of Piura created a Roundtable (*Mesa de Concertación*) that was intended to bring the main actors together, provide information and allow for more participation in the preparation of the mine's Environmental impact assessment. The *Mesa* was coordinated by the Centre for Conflict Analysis and Resolution of the Catholic University (*Pontificia Universidad Católica del Perú*), but leaders of community and other social organisations withdrew from the Roundtable feeling that the Centre was favouring the company (Cooperación, 2006), a belief also voiced to the Delegation. By July 2005 the Roundtable had failed, though the company retained the Catholic University to do some promotional work in some parts of Huancabamba, in a context of acute criticism of the Catholic University in the zone. The situation was such that the Catholic University terminated the relationship with Minera Majaz in the first half of 2006. Monterrico's Annual Report for 2005 (with CEO's forward dated May 15th, 2006) notes that, "The Company's relationship with the Regional Government and the Catholic University in Piura continues to build trust within the communities while helping to disseminate objective and technically sound information concerning issues surrounding the advancement of the project" (Monterrico Metals, 2005: 23). This report was presented to Monterrico shareholders at the 2006 Annual General Meeting on 19 June, 2006 held at Tallow Chandlers Hall, London.

4.16 A second march was organised for July 25th, 2005 and brought together 2-3,000 *ronderos* from Ayabaca who met in Yanta to march to the site. Also marching were *ronderos* and *campesinos* from Segunda y Cajas as well as San Ignacio and Namballe - two population centres located in the Department of Cajamarca, downstream from the proposed mine site, who were concerned about the potential impacts of the mine on their

Box 3 Rondas Campesinas

Rondas campesinas in Piura are organised within a regional, district and local institutional and bureaucratic structure. They emerged from the *rondas campesinas* that were first established in the neighbouring Department of Cajamarca during the 1970s (Apel 1996; Huber 1990). The Cajamarca *rondas* were a local, organised response to delinquency, cattle rustling, petty thieving and land seizures during social and economic crises in the 1970s, following the agrarian reform (Starn 1992). *Rondas* maintained law and order in the absence of a distant state and judiciary centred on Lima. The *rondas* Starn describes were flawed in many

ways and supported patriarchal principles that reproduced gender inequalities in local law courts, for example. However, they had also imbued models of discipline and torture practices from the Peruvian military and police.

Debates about the more recent *rondas* that emerged in response to political violence are instructive on the role and legitimacy of *rondas*, generally, in contemporary Peru. Some of the *rondas campesinas* that were established during political violence were grassroots initiatives whilst others were established by the armed forces. In the absence of adequate intelligence (Taylor 1998) the Peruvian armed forces depended on the efforts of *rondas campesinas* to

combat Shining Path on the ground. However, the state did not officially recognise *rondas campesinas* as legitimate state actors until in the early 1990s under President Fujimori. Once the Peruvian state recognised *rondas* as legitimate actors they were given and allowed to carry arms for the first time in their history. The armed participation of *rondas* in the counter-insurgency efforts led to the 'defeat' of Shining Path (Degregori, Del Pino, Coronel and Starn 1996). However, the contribution of *rondas* to Shining Path's 'defeat' was later glossed over by President Fujimori, who focused on his own role in this 'victory' as President of Peru, contributing thereby to his two successful bids for re-election in 1995 and 2000.

agriculture and tourism.⁴⁷ This march led to another confrontation between security forces (in this case DINOES, the unit normally responsible for leading special operations against drug trafficking, subversion etc.)⁴⁸ and campesinos, which also led to a second campesino death (Melanio García Gonzales) as well as the maiming of a policeman and blinding of another campesino.

4.17 This eruption of violence occurred in the context of a failed⁴⁹ negotiation mission that had been designed to defuse the conflict.⁵⁰ This mission (composed of Bishop Daniel Turley of the Chulucanas Diocese, Javier Aroca of Oxfam America, and Miguel Palacín of CONACAMI, and constituted at the instigation of the MEM) failed because the air force's helicopter

taking it to the exploration camp (where the stand-off was occurring between the *ronderos* and the police forces) left the mission at a police camp in Pan de Azucar, a point several hours distant from the site. The police there would not allow the commission to walk to the mine site. A member of the mission later reported back to the MEM, "The commission had understood that it ought arrive to the installations at the mine camp, but at Pan de Azucar we were told we had to speak with the *ronderos* who were at that place, some 70 people. That we did The following day, July 29th 2005, we asked that we be taken to the installations of the mine site at the place named Henry's Hill, where it was said there were 450 *ronderos*. We waited all morning, and finally at around 2 in the afternoon the helicopter picked us up at Pan de Azucar and took us to the city of Huancabamba"

Table 1
Socio-economic indicators: Piura, Ayabaca, Huancabamba and Carmen de la Frontera

Geographical Unit	Population 2005	Index of unmet needs*	Population without			Female illiteracy rates	Malnutrition rates, 1999
			Water	Sanitation	Electricity		
Piura (department)	1,630,772	0.5775	35%	32%	38%	14%	33%
Ayabaca	138,245	0.9580	82%	74%	86%	29%	57%
Huancabamba	123,456	0.9396	60%	65%	87%	36%	59%
Carmen de la Frontera	12,693	0.9357	73%	68%	96%	35%	60%

* this index is from 0 to 1, with higher figures denoting more unmet needs

(much further away from the mine site). It was only later in the evening of the 29th that the delegation was told it had not been taken to the mine site for its own safety, because trouble had already broken out. On the 30th the commission continued to ask to be taken to the mine site, but this was not allowed, and the MEM made it clear to them that they should not demand this - even though the *ronderos* had communicated on the night of the 29th that they would only talk to the delegation at the mine site, and in the presence of the government and the company. By the afternoon of the 30th the commissioners also became aware that the newspaper *El Correo*, of Piura, had begun a media campaign against the members of the commission and especially Bishop Turley and the Vice Minister of MEM. At that point the commission decided its work was over.

4.18 The media attacks on the commissioners pre-saged the following period in the conflict, which was characterized by what Diez (2006) calls a “media war” conducted through local, departmental and national print media, as well as national television. This involved repeated attacks by some media outlets on local activists, authorities, a priest and two bishops in the region and allegations of involvement in terrorism and drug trafficking. On October 23rd, 2005, the programme *Panorama* of Channel 5 (a national channel) presented a report on a “network of terror” that had been organised to resist the Rio Blanco Project. Among others the Bishop of Jaén was identified as belonging to this network, an accusation that still causes him problems - in a recent public gathering he was referred to as a “*terruco de mierda*”.⁵¹ Of course, not all the media participated in this ‘war.’ Some outlets were critical of the mine and others focused on aiming to understand what was happening. An article in the national newspaper *La República*⁵² suggested that this television programme was based on material distributed to the national press by the then Director of the Office of Social Communication in the Ministry of the Interior.

4.19 The period after the second march also involved the emergence of new organisations and another round of failed attempts at dialogue. Several days after the march, a meeting involving Church authorities (including the “*terruco de mierda*”), the Vice-Minister of Energy and Mines, elected government authorities, the *Defensora del Pueblo* of Piura and company representatives was arranged to broker a way forward. This meeting was also disrupted by violence and was cut short by rocks and tear-gas, and the Vice-Minister was physically attacked (the company representatives escaped unharmed some time before the other participants were able to escape). Shortly after, the mayors of the four provinces that perceive they will be affected by a mine project (Huancabamba, Ayabaca, Jaén and San Ignacio) formed a coordinating body that by September had transformed itself into the *Frente por el Desarrollo Sostenible de la Frontera Norte del Perú* (the Front for the Sustainable Development of the Northern Frontier of

Peru, or the *Frente* for short) which brought the mayors together with leaders of peasant communities, *rondas* and local defence fronts. The technical group supporting the *Frente*, the Majaz Support Group, was also formed at this time to monitor the case of Rio Blanco.

4.20 As noted earlier, there was overlap between the membership of this group - a working group within Red Muqui - and the technical committee that had supported the Tambogrande case. A second continuity is that there is a Tambogrande representative on the *Frente*. And a third continuity, having formally created the *Frente* at the meeting on September 25th, 2005, they adopted as their stance the proposal that the central government should begin a process of dialogue that would culminate in a citizen referendum on whether the Rio Blanco Project should advance or not.

4.21 The *Frente* became, for a while, MEM’s recognized partner in dialogue. However, while a series of meetings occurred over the following months, they made limited progress. The core obstacle was that the *Frente* insisted that Minera Majaz could not be part of the dialogue because it was operating illegally (having not gained the consent of two-thirds of the communities of Yanta and Segunda y Cajas), while the MEM insisted it had to be present. The Ministry withdrew from the dialogue because of another day of pitched violence on March 12, 2006 in the town of Huancabamba triggered by a conflict between a large group of pro-mine *campesinos* and members of the *Frente* and the Majaz Support Group. The pro-mine *campesinos* had come to town organised and arrived ready armed (with stones) in order to disrupt a workshop being held by the *Frente* (*Propuesta Ciudadana*, 2006:62; *Cooperación*, 2006).⁵³

4.22 By April of 2006 Diez concluded “The current situation is one of permanent tension and with no clear path towards a solution, with actors of both sides continuing to commit acts that pressurize the other” (Diez, 2006).^{54, 55}

The UK-Peru dimension and the origins of the Delegation

4.23 Just as social conflicts over other mines in Peru have extended beyond Peru and into the countries in which the relevant mining companies are incorporated,⁵⁶ so too with the Rio Blanco Project. One of these avenues to Britain was via the UK-based Peru Support Group (PSG), a membership organisation of persons concerned about the forms taken by economic and social change in Peru and their implications for human rights and human well-being.⁵⁷ As the PSG became increasingly interested in the role of mining in Peruvian development (e.g. PSG, 2005),⁵⁸ it came to focus attention on the Rio Blanco Project for two principal reasons. First, the project had become the focus of particularly acute conflicts (as just noted); second, the company

involved was British and therefore of more direct interest to UK citizens and government. As part of this interest, the PSG arranged a public meeting on the 21st March 2006 at Portcullis House in the Houses of Parliament⁵⁹, Chaired by Lord Avebury, the PSG President, and invited Nicanor Alvarado Carrasco from the Vicariate of the Environment of the Diocese of Jaén (Cajamarca) to speak on the case of Rio Blanco. Alvarado and the Diocese had been directly involved in these conflicts (and had been named as parts of the afore-mentioned “network of terror”). Representatives of Minera Majaz/Monterrico Metals attended the meeting and the discussion period revealed significant disagreement on the nature of events at Rio Blanco. Alvarado asserted that company staff had supported and been involved in violence, had paid local newspapers in campaigns of defamation against local activists, and had pursued legal action against residents and activists. Company staff denied this. Monterrico Metals also charged that Alvarado had presented the case incorrectly and was putting out false information. Amongst the demands made by Alvarado on behalf of the *Frente de Desarrollo Sostenible del Norte*, was that a UK Delegation should come to see for themselves what is happening at Rio Blanco. As a result of these debates, the Project Manager for Rio Blanco said that the company would be willing to accept the Peru Support Group on a fact-finding mission. A subsequent (undated) letter from Chris Eager, then CEO of Monterrico Metals, to Lord Avebury, hand delivered by representatives of Monterrico Metals shortly after the meeting in the Houses of Parliament, reiterated both the charges and the invitation to the PSG visit.

4.24 From this, the idea emerged of the PSG sending a Delegation to gain first-hand information on the situation in the region and then to make this information available to interested parties, the public and its membership. This Delegation would not include PSG staff (of which there is one), except for coordination purposes, and would instead be made up of competent, independent parties (it was ultimately composed of the academics, journalist and Member of Parliament noted on page ii). The Delegation would be coordinated, organised and made possible by the Peru Support Group, but would be independent in that Delegation members would write the report, determine the questions to be asked and methods of enquiry to be used while in Peru. Delegation members did the work on a *pro bono* basis, while operational costs were covered by other agencies through grants to PSG.

These agencies were:

• Oxfam GB	£2,530
• Christian Aid	£3,500
• Progressio	£ 800
• Catholic Fund for Overseas Development	£3,150
• Worth Abbey, Outreach Peru	£2,350

4.25 In addition, the Delegation received some support in kind while conducting its field work. The Diocese of Chulucanas provided the use of two pick-up trucks during two days in order to visit the area affected by the proposed mine. Monterrico Metals provided vehicles and use of a helicopter to visit the mine site, also over a two day period.⁶⁰ All other costs incurred whilst with these parties were covered by PSG.

4.26 The Delegation worked to a broad scope of work defined and adapted in dialogue with the PSG whose involvement was primarily limited to determining the limits of what would and would not be touched on in the report. This scope of the Delegation’s work was defined as:⁶¹

“To collect and present evidence to contribute to a greater understanding of the range of perspectives on these issues, and in particular the viewpoints found locally in areas directly impacted by UK mining.”

and determined that the Delegation would, above all, collect information on the following dimensions of the Rio Blanco Project:

- Environment - Water;
- Development;
- Social impacts;
- Question of legality and norms

³¹ Much of this section draws on Monterrico Metals’ own website, <http://www.monterrico.co.uk/>, accessed on November 9th, 2006. It also uses material from Defensoría del Pueblo, 2006a.

³² In late 2006, Monterrico Metals made press releases speaking of an unidentified company expressing interest in a takeover of Monterrico. Subsequently, on 6th February 2007, the Financial Times reported that a Chinese conglomerate, the Zijn Consortium, had made an offer to acquire Monterrico. This offer is still under consideration.

³³ The explosion of mining investment in Peru has brought in many junior companies as well as individuals, all buying concessions. El Comercio reported in 2005 fully 1415 juniors and individuals holding concessions. There is also a significant current of opinion questioning whether there is a role for junior companies, given their very limited capacities in particular in managing community relations (see for instance, El Comercio,

2005; *Semana Económica*, 2005). Others view these as arguments promoted by large companies who do not want competition.

³⁴ In its 2003 prospectus, Monterrico noted that at that time it had nine wholly owned subsidiaries, incorporated either in the Cayman Islands or in Peru.

³⁵ For whom one of Monterrico's co-founders then worked.

³⁶ Monterrico Metals press release, December 22nd, 2006, accessed from Monterrico Metals' website.

³⁷ Letter from Andrew Bristow to the Director General of Environmental and Mining Affairs, MEM; see also the MEM document 024-2007-MEM-AAM/MLT dated January 9th, 2007.

³⁸ Text as quoted by Minera Majaz in its public announcement issued in *El Comercio* dated January 22nd, 2007.

³⁹ Monterrico Metals press release December 1st, 2006, accessed from Monterrico Metals' website, states that the MEM had confirmed "the legal title held by Minera Majaz S.A. ... over the Surface Rights covering the Rio Blanco project".

⁴⁰ See their statement issued on January 23rd also in the national press.

⁴¹ Monterrico Metals' website records a press release on December 22nd, 2006 noting that it is now in possession of the draft DFS, prepared by Hatch Engineering. They report that the DFS is to be audited but in the meantime, further work, including test work, was required on the filtered tailings facility and the concentrate pipeline.

⁴² We comment on the implications of this point in Part 7.

⁴³ We were told by the company that they assisted the producer in making the documentary, though the producer retained editorial control.

⁴⁴ The presentation was given at the Copper Day, one of the Mining Journal's 20:20 Investor Series of seminars. The web-cast of the presentation and overheads is available at http://www.mclwebcasts.com/Copper-monterrico-6-10-06_files/fdefit.htm.

⁴⁵ The notes linked to the map say "The property is open at depth; to the North through the SOHO targets; to the West with the Quebrada del Cobre and New York targets and across the border into Ecuador" (http://www.mclwebcasts.com/Copper-monterrico-6-10-06_files/fdefit.htm).

⁴⁶ Critics of the mine suggest 3000 campesinos were present; others suggest less though Diez still notes the meeting was massive.

⁴⁷ The mine is located on the boundary of the buffer zone of a protected area, the National Sanctuary of Tabaconas-Namballe.

⁴⁸ DINOES are the Executive Divisions for Special Operations (Divisiones Ejecutivas de Operaciones Especiales), a specialized national unit prepared to handle violent conflicts.

⁴⁹ The failure was apparently a result of sabotage. Members of the commission report lack of support and obstructive behaviour by the forces of law and order who were supposed to deliver them to the site.

⁵⁰ The idea of the commission came from CONACAMI, though the MEM reformulated and ultimately coordinated its organisation - its creation was announced by the Vice Minister of MEM on July 27th.

⁵¹ "Terruco de mierda" perhaps best translates as "terrorist bastard."

⁵² *La Republica*, December 25th, 2005 pages 10-11

⁵³ *Propuesta Ciudadana* (2006) notes that police reports have registered and proved that these people were contracted by the company.

⁵⁴ Diez was involved in the work of the Centre for Conflict Analysis and Resolution of the Catholic University of Peru, and

has since continued to research the case.

⁵⁵ Other incidents of violence include: in February 2006, ronderos of the community of Yanta kidnapped community members who had worked for the mine - these were later freed by the police; the transmitter of an environmentalist radio station, *La Poderosa*, was destroyed.

⁵⁶ For instance, conflicts around Yanacocha have led to activities in Denver (where Newmont is based) and Washington DC (where the IFC is based).

⁵⁷ PSG has 500 registered members, one paid member of staff, and an annual budget of £35,620. Its members include academics, politicians, journalists, NGOs, church groups, civil society groups, trade unionists, twin town groups, students, former ambassadors and citizens with an interest in Peru for varying reasons. There are no corporate members

⁵⁸ At its 2005 annual meeting, members voted to focus on mining as a campaign activity.

⁵⁹ This was announced as: Peru Support Group Public Meeting - Big challenges ahead for UK mining in Peru 21st March 2006, 4.00-5.30pm Houses of Parliament, Portcullis House.

⁶⁰ The helicopter was also conducting routine servicing of the site at the same time.

⁶¹ Three other aims related to the effects that it was hoped the Delegation might have on discussions of mining, corporate responsibility and development in the UK.

Chapter 5

Method and process of the Delegation

5.1 The work of the Delegation in Peru involved interviews, group discussions and site visits. The Delegation sought a wide range of views on the Rio Blanco Project from a variety of people and institutions directly or indirectly involved. Interviews were conducted with government and civil society organisations as well as with the company and residents of areas affected by the project.⁶³ Part of the Delegation's work was in Lima, where meetings were held, inter alia, with the Ministry of Energy and Mines (Minister and Vice-Minister), the Ombudsperson's Office⁶⁴ (with the Ombudsperson and advisors), the President of the Congressional Ordinary Commission on Energy and Mines, the Majaz Support Group, the British Embassy and various expert informants as well as with members of Monterrico's social development team. The other part of the Delegation's work was in Piura, primarily in the province of Huancabamba.⁶⁵ Here meetings were held with community members, local authorities (from government and community organisations), the Church, the Front for the Sustainable Development of the Northern Frontier of Peru, researchers, NGO staff and mine staff. The mine site was also visited. In a number of interviews in Lima, respondents asked for material to be considered anonymous. This material has not been sourced in the report, though it has influenced our interpretation in some respects. Finally, material gleaned in the course of conducting other research has been used where appropriate.

5.2 Given the nature of the conflict that the Delegation was addressing, it is not surprising that in a number of instances interviewees were cautious before speaking to us.⁶⁶ This was the case both with the company and with activists and critics of the company. For some activists critical of the mine, the very fact that we were a UK Delegation inspired distrust: surely, it was felt, this meant we must be linked to the mine or at least working to support the interests of British investment in Peru. With time, some of this distrust was overcome, though not completely. Indeed, this is one sense in which the experience of the Delegation was itself indicative of some of the issues at stake in the conflict it sought to understand. The intense distrust surrounding this conflict restricts the possibility for open and honest discussion

and creates an atmosphere in which actors are very quickly pigeonholed either as 'pro-mine' or 'anti-mine.' This is a point to which we return in a later section.

The Delegation's experience served to highlight several additional dimensions and dynamics of the conflict that we were seeking to understand

5.3 The Delegation's experience served to highlight several additional dimensions and dynamics of the conflict that we were seeking to understand. In particular, in several cases, we were given conflicting information by different parties regarding the relationships that they had with each other. In two instances, Monterrico informed us they had a certain arrangement with another person and organisation, while that person insisted to us that this was not the case. At the very least this implied that the two parties saw their mutual relationship in quite different ways; and it may have implied that at least one of them did not wish to be honest with us about the true nature of that relationship. In such an environment, once again, it is difficult for anyone to be clear on what is happening and on the precise nature of the relationships involved.

5.4 Also, during our time in Huancabamba, local actors attempted to turn the Delegation into a source of information. Repeatedly the Delegation was asked to explain technical and hydrological aspects of mining, types and levels of risk associated with a mine of this type, and the nature of the mine that was being considered in Rio Blanco. By and large it was not our position to respond: but this desire to garner information from us itself seemed to indicate a general lack of information among those with whom we spoke. Indeed, one of the strongest senses that the Delegation formed on coming away from its community meetings was that local populations (rural and urban) are chronically ill-informed on both the likely nature of the mine at Rio Blanco (in particular its potential size) and the possible environmental impacts it might have. More often than not, people were not informed at all. To the extent that lack of information is directly related to perceived risk (and of course it must be) this is only likely to increase propensity to protest.

5.5 Finally, the Delegation itself quickly became caught up in the conflicts and tensions surrounding the mine. Having arrived in Huancabamba at 4pm, by mid morning the following day the Delegation was already being discussed and defamed on a local radio station that argued that we were a highly paid NGO working for the mine and sowing confusion in the zone. More significantly, perhaps, a number of the group discussions we held - some of them tense - themselves became venues for the venting of quite different views on the desirability of the mine and the rights and wrongs of the behaviour of different actors. The Delegation's own experience became, then, indicative of how difficult it is for an actor to assume an independent viewpoint, and how difficult it is to form a view on the 'reality' of things in a context in which opinions are so deeply held, and so opposed.

⁶² Annex 5 contains a list of interviewees.

⁶³ Defensoría del Pueblo.

⁶⁴ The delegation did not address issues related to the 300km pipeline for piping mineral slurry to the coast, nor with the port. We were informed of conflicts and issues surrounding each of these components, but were unable to pursue them.

⁶⁵ Some, for different reasons, requested anonymity which we have respected. The majority of persons asking for anonymity worked in the mining sector.

Chapter 6

Events and changes since April 2006

6.1 It was important to define the moment and context in which the idea of convening this Delegation was formed for two reasons. First, one task of the Delegation was to form a view on the accuracy of the statements made by Nicanor Alvarado and representatives of Monterico Metals during the debate on March 21st, 2006. Second, it marks a point in time from which we can trace the most recent events and changes surrounding the Rio Blanco Project. The first of these issues is dealt with later on when we deal with the Delegation's views on the Rio Blanco Project. The second is addressed in this section where we trace the continuities and changes that have occurred in the conflict between April and November, 2006. We also discuss changes in the internal organisation and public presentation of Rio Blanco and, finally, we discuss some changes in the proposed design of the project.⁶⁶

6.2 Since the idea of the Delegation was first conceived, there has been both continuity and change in the relationships between stakeholders in Rio Blanco. The continuity is most apparent in the dynamics of the conflicts between the company, local actors and government; the change is most apparent within Monterico Metals and Minera Majaz and the ways in which they present themselves publicly.

6.3 In April, 2006, the Defensora del Pueblo (Ombudsperson) of Piura suggested the importance of preparing a full report on the presence of Minera Majaz in the communities of Yanta and Segunda y Cajas - a report that these communities requested (Defensoría del Pueblo, 2006). Shortly afterwards, "the Ministry of Energy and Mines ended up officially withdrawing from the dialogue [with the Frente], apparently closing off the [then] most recent cycle of negotiation" (Diez, 2006). As a response, a few days later a strike was called in the provinces of San Ignacio, Huancabamba and Ayabaca protesting about the presence of mining in the area, and calling both for the withdrawal of police presence, and for a legally binding referendum that would determine whether mining should occur there (Cooperacion, 2006). Then in August, 2006, leaders of 50 communities from Ayabaca, Huancabamba and San Ignacio met with officials of the new government in Lima to request the

termination of mine activities. The government however called for continued dialogue (Propuesta Ciudadana, 2006).

6.4 August and September of 2006 were dominated by the release of the report by the Defensoría del Pueblo on the legality of Minera Majaz's presence in Yanta and Segunda y Cajas. The report was released on August 9th, and was followed by a response from the MEM on September 1st. This was followed ten days later by a public apology from the company (see below) for conflicts arising from the behaviour of some of its staff.⁶⁸

6.5 The Ombudsperson's report (Defensoría del Pueblo, 2006) found four failings in the way in which the MEM had given the company permission to explore in the communities of Yanta and Segunda y Cajas.

a) It concluded that the MEM had taken longer than the stipulated 40 days to grant permission to the company.
b) It found that the public announcements issued to invite the communities to comment on the company's 'environmental study' had misnamed the area for which the company was requesting exploration rights. The public announcements referred to the district of Huamarca in the province of Huancabamba (itself a misspelling of Huamarca), while in fact the request was for exploration in the district of Carmen de la Frontera. The Defensoría argues that this could have been an obstacle to public participation in the process - noting, indeed, that the MEM had received no observations on the proposed exploration project.

c) It found that while the law requires that exploration activities receive ex ante approval from owners of the surface property where exploration is to occur, the MEM failed to include this in the guide on paperwork that it requires from companies requesting approval of their Environmental Evaluations, possibly meaning that companies fail to gain this permission.

d) It noted that, where the surface owner is a *Comunidad Campesina*, the Law 26505 states that permission to explore requires approval, in a community wide assembly, of two thirds of the community's members. Minera Majaz only gained approval from community leaders. The Ombudsperson therefore asked the MEM

to clarify how it would rectify the situation so that the company's permission might be considered valid.

6.6 The Ministry responded to each of these observations as follows (MEM, 2006):

- a) The first it viewed as an incorrect reading of procedures on the part of the Ombudsperson's office.
- b) The second it accepted, though rejected that this had influenced levels of participation because the MEM organised workshops in three localities of Carmen de la Frontera to disseminate information on the exploration request. These were held on August 17th, 18th and 19th, 2003.⁶⁸
- c) On the third, it argued that the MEM does not need to see such permission in order to approve exploration requests - and that such permission is only required prior to the "development or exercise of mining activities" by the owner of mineral rights.
- d) On the fourth point, it repeats the argument that the MEM did not need to see this approval from two-thirds of community members in order to approve the request to explore. The MEM did request more information on steps being taken by the company to avoid conflicts in the area and, once satisfied, gave Majaz permission to explore. However, MEM also notes that the mining company does need two-thirds approval in order to begin developing mining activities.

6.7 It is important to note that the role of the Ombudsperson is to ensure that the actions of other state entities respect and ensure citizen rights - not the actions of companies. The exchange between the Ombudsperson's office and the MEM therefore revolved around the extent to which the MEM followed legally prescribed processes. It did not in this first report pass judgment on the legality of the company's presence in the communities of Segunda y Cajas and Yanta one way or another, though importantly the MEM notes that "For the Ministry of Energy and Mines, as for any other public authority, in order that it be considered valid, the form in which the agreement with the community for the use of surface land should be supported is prescribed by the appropriate law, which is to say Law 26505 and its norms and procedures." That said, in a subsequent interview, the Vice Minister insisted that to begin exploration activities, community approval is not required (El Comercio/Padilla, 2006).

6.8 The nature of the case, and of the exchange with the MEM, prompted the Defensoría to go beyond its initial shorter statement on the case and to prepare a more detailed report on the conflict. This was issued on November 20th, 2006. This larger report goes further than the earlier statements. It does not accuse Minera Majaz of acting illegally, but does conclude that MEM approved Minera Majaz's Environmental Evaluation (which gives effective permission to explore) without the company having secured all necessary permissions as laid down in Peruvian law (a finding that Minera Majaz

contests).⁶⁹ The report concludes that with the information that it had at its disposal, the MEM should have known that Minera Majaz had not gained the permissions it needed in order to be legally present on the lands belonging to the *Comunidades Campesinas* of Segunda y Cajas and Yanta - and that even with this information in its hands, the MEM still proceeded to approve the Environmental Evaluation (effectively telling the company it could begin exploration).

6.9 Importantly, the report of the Defensoría was delivered to the MEM before the day and time at which Minera Majaz's current permission to explore on these lands expired and exactly at the time that MEM should have been forming a view on Minera Majaz's request for a renewal of permission. The report requires that before renewing this permission, MEM be sure that the company had resolved these legal problems. Yet, on December 1st, 2006 Monterrico Metals issued a press release saying that "Monterrico is pleased to announce that as part of its internal due diligence process the Government of Peru was asked to confirm, and has so confirmed, the legal title held by Minera Majaz S.A. (a 100% subsidiary of the Company) over the Surface Rights covering the Rio Blanco project".⁷⁰ In essence, knowing that the legal basis of the company's presence on the *Comunidad Campesina* lands of Segunda y Cajas and Yanta had been deemed inadequate by the Defensoría, and had been questioned by the communities themselves, the company requested permission to remain on those lands from the Ministry (not the communities) and the Ministry gave this permission. A legal expert at the Defensoría advises that in doing this, the MEM is quite simply "going against the law."

Minera Majaz has recognized the existence of difficulties in its relationships with local populations, though has not accepted any argument that its presence on community lands is illegal

6.10 Minera Majaz has recognized the existence of difficulties in its relationships with local populations, though has not accepted any argument that its presence on community lands is illegal (a point we take up in more detail in the next section). Its recognition of these difficulties was recently reflected in a letter from Andrew Bristow, Operations Manager, to the MEM in which he said that Majaz was withdrawing a request to expand its area of explorations that it had filed on June 12th, 2006. The letter notes that this has been done because Majaz "considers it necessary to prioritize actions that will lead to the search for solutions to the concerns and interests of the local populations that in some way have led to a partial opposition to the exploration stage of the project."⁷¹ A MEM press release of January 16th, 2007, notes that Vice Minister Padilla reported on this request in her report to the Congressional Commission on Amazonian, Andean and Afro-Peruvian Peoples, Ecology

and Environment. In her testimony she noted that “the company has tried to organise meetings with community and other local representatives as well as with representatives of organisations, but the rejection of the company continues.” However, the letter from Majaz to the MEM also notes that the suspension of exploration is merely temporary, until the presentation of its EIA in the first quarter of 2007, and that “once said EIA has been approved, Minera Majaz will proceed with the construction and exploitation of the mine.”

Changes in Monterrico Metals and Minera Majaz

6.11 Since April 2006, Monterrico Metals and Minera Majaz have instituted a series of changes in the composition of their Board of Directors and their staffing. Most interviewees asked interpreted these changes as consti-

tuting a response to some of the difficulties encountered by the companies in their relationships with distinct stakeholders in Peru. At the Board level of Monterrico, a significant change was the incorporation of Richard Ralph as Executive Chairman of the Board of Directors. Ralph had been “British Ambassador to Peru from 2003 to 2006, before he retired in April”⁷² and joined Monterrico’s Board in August of 2006.⁷³ The appointment is deemed by some as a serious effort to modify the company’s public image and high level relationships in Peru. Certainly the contacts developed by Ralph as a result of his work as British Ambassador will be an important asset to the company and the company notes that his “assistance in bringing the project forward at the Peruvian national level will be invaluable to the development of the Rio Blanco Project” (Dorman, 2006). During his time as Ambassador, Ralph was active on mining issues and among other things helped create an informal group of the Embassies (UK, Canada, Australia...) to discuss mining issues and

Box 4 Minero Majaz's Public Apology

Rio Blanco Project
Working Together
PRONOUNCEMENT

Minera Majaz S.A. addresses the public opinion of the provinces of Ayabaca, Huancabamba, Jaén and San Ignacio, belonging to the regions of Piura and Cajamarca; and in particular the families of the communities of Segunda y Cajas and Yanta as well as to organisations of rondas campesinas and social leaders, and wishes to express the following:

1. Minera Majaz S.A. is a company that is currently undergoing a sincere period of change and substantial improvement in its attitude towards engagement and dialogue with all those who are located in the area of influence of the Rio Blanco Project.

2. In this sense it wishes to express its public censure and its most deeply felt apologies for attitudes and conflicts that in the past have occurred between certain of its staff and workers, and

some families, and organisational and community leaders of the provinces of Huancabamba and Ayabaca.

3. The people associated with these conflicts have been seriously reprimanded and permanently separated from our company, as an expression of the desire among The Directors of Minera Majaz that such attitudes are never again repeated in the future.

4. Likewise, fundamental to the changes effected by our company, the management of Minera Majaz's community relations is now the responsibility of a new Social Team that takes social and environmental responsibility to be the policy guiding its relationships with the human and natural environment of the Rio Blanco Project. A vital element of that policy is the use of the most up-to-date technology in order to assure community families that neither their water sources nor agricultural lands will be contaminated. Likewise, Minera Majaz S.A. wishes to promote a frank, sincere and open dialogue with those who disagree with, or express doubts or fears regarding the mining operations of our

company.

5. As an expression of our good will in engaging the community we have given a new Legal Team the responsibility for legal proceedings that are currently in process, and that team is currently conducting an exhaustive review of each case. Without compromising that review process, we wish to express our greatest collaboration and desire that these legal cases currently in process be resolved harmoniously and without prejudice to those involved. In this sense, we inform you that from here on Minera Majaz S.A. will initiate no more legal proceedings; this will be the role solely of the Public Prosecutor.

6. Finally, we wish to reiterate our commitment to local development, which means consistent support for the improvement of the quality of life of families of Piura.

Lima, September 11th, 2006

Note: our translation of the original Spanish published in *El Tiempo* September 11th, 2006 (*El Tiempo* is a regional newspaper in Piura).

support the sector. He also served as Chair of the Board of the Tintaya Foundation, a mine funded foundation working in another conflictive mine site in Cusco. As ambassador he had visited the Majaz exploration site and voiced support for the project and confidence in the company's predisposition to satisfy all environmental norms.⁷⁴ Since assuming his Chairmanship he has already engaged in several rounds of senior meetings in Peru in his new role.

6.12 Alongside these board changes, Monterrico and Majaz instituted several modifications in its team and organisation in Peru. The essence of these staffing changes was announced in a public apology issued on September 11th, 2006 by Minera Majaz regarding the behaviour of members of staff of Minera Majaz. In this apology (Box 4) the company accepted that a number of its staff had been involved in forms of behaviour that had induced conflicts in the area of influence of the project (defined in the apology as the provinces of Ayabaca, Huancabamba, Jaén and San Ignacio). In September the company terminated the contracts of the community relations team and also changed its legal team. A new community relations team was recruited, led by Virginia Montoya, a social scientist hired in May 2006 and with prior experience on the Shell-Camisea natural gas project (among others). Members of the team recruited more recently brought with them experiences from the Social Capital Group (an important consulting group working on social dimensions of extractive industries), Camisea, and others.

6.13 The new community relations team has also sought to overhaul the nature of the community development programme, both in the exploration and exploitation phases. They explain that the new approach is one framed in terms of participation and equity. It will focus particularly on supporting small-scale economic activities (handicrafts, livestock, agro-ecology, tourism) and vocational training. They have also attempted to reach out to national luminaries in ecology and the social sciences.⁷⁵ One success in this regard was that Antonio Brack, a well known Peruvian ecologist, featured Minera Majaz's proposal for mining and community development on his monthly TV documentary, *La Buena Tierra*. In other cases it is less clear that the company's initiatives have led to new working relationships (see later).

6.14 The mining and environmental components of the project have also been changed in recent months. In particular the company has decided to shift to the use of a relatively new, organically based technology in the treatment plant that will be located near the mine. The technology will also reduce the amount of water that the mine uses - through combining water recycling, the drying of tailings and the production of a semi-dry slurry of partially processed ore that will then be transported to a separation plant located 300 km away on Pacific coast.

6.15 Putting these components together, the company now packages the mineral extraction part of the project with conservation and social components. The company now presents Rio Blanco as an "Integrated development model" (Monterrico Metals, n.d). While the very largest share of investment will go towards the mine, processing plant, mineral-duct (if this is, in the end, built), road improvement, concentrate separator and port facilities. The project now presents an image of combining community development and the creation of a protected area. Indeed, the project is advertised as being a vehicle through which some 10,000 ha of land will be protected - land that would, it is suggested, otherwise be deforested by the progressive expansion of the agricultural frontier (Brack, 2006).

⁶⁶ At the time of writing these continue to be subject to change, because the feasibility study and EIA have not yet been completed.

⁶⁷ The public apology is published in *El Tiempo*, the Piura newspaper, on September 11th, 2006 on page 5, as a "Pronunciamiento" of Monterrico Metals and the Rio Blanco Project. The apology is translated in full later in the text.

⁶⁸ The Defensoria has subsequently concluded that these workshops did not provide information on the project itself but rather on the process of consultation.

⁶⁹ See Section 7 for more on the issue of legality. Minera Majaz's public disagreement with this view is included in its public announcement of January 22nd, 2007.

⁷⁰ Monterrico Metals website, accessed December 9, 2006.

⁷¹ Letter from Andrew Bristow to the Director General of Mining and Environmental Affairs, MEM, dated December 21st, 2006.

http://www.minem.gob.pe/common/novedades/data/Desistimien toMajaz_dgaam.pdf

⁷² Quotation from Monterrico Metals website, accessed November 11th, 2006.

⁷³ Monterrico Metals press release, August 14th, 2006: accessed from Monterrico Metals website, November 11th, 2006. The press release details several changes on the Board and notes "The Board granted an option over 100,000 ordinary 10p shares to Mr Ralph on his appointment as Executive Chairman exercisable after 1 year with the exercise price being the closing share price on Monday 14th August, 2006. Mr. Ralph does not hold any common shares of the Company. There are no further disclosures pursuant to Schedule 2 (g) of the AIM Rules in relation to Richard Ralph's appointment."

⁷⁴ *La Hora*, November 11th, 2005, Piura; and Monterrico Metals website.

⁷⁵ A recent essay is less forgiving, speaking of a "press campaign that instrumentalizes such respectable professionals as Antonio Brack and the former Rector of the University of Cajamarca, Pablo Sánchez" (Revesz and Diez, 2006)

Chapter 7

Assessing the debate on March 21st, 2006

7.1 This Delegation was charged to report in four main domains. Most specifically, it must form a view on the accuracy of interventions made during the debate that occurred at Portcullis House on March 21st, 2006, some of which Monterrico Metals (in their CEO's letter to PSG) felt constituted an untrue representation of the situation in Rio Blanco. Second, at a slightly wider level, it is charged to consider the relationships between the Rio Blanco Project and development processes in the project's area of influence. Third, it is charged to consider relationships between the project and environmental quality and security. Fourth, it is asked to comment on the broader, sectoral issues that this case highlights. This chapter addresses the first of these charges, and the remaining three charges are addressed sequentially in Chapters 8, 9 and 10. Chapter 11 concludes and seeks broader lessons.

7.2 As recorded in the report on this meeting, the exchanges between Nicanor Alvarado and representatives of Monterrico Metals on March 21st, 2006 involved disagreements over the following:

- the environmental impacts that exploration activities have had to date, and that the mine might have in the future;
- the behaviour of the company and its relationships with communities and other actors;
- the legality of the presence of Minera Majaz in the lands of the communities of Yanta and Segunda y Cajas; and
- the extent to which Nicanor Alvarado's presentation was an accurate reflection of the nature and diversity of local views on the project.

7.3 The views and opinions formed by the Delegation on these four points are developed from our interview material, the exercise of logical and scientific reason to some of the arguments, and analysis of the internal coherence of statements made by stakeholders. They are based on facts, but they are necessarily opinions and not statements of fact. These views constitute what the Delegation views as the best and most tenable working hypotheses about events and the situation in Rio Blanco.

Environmental issues

7.4 While the bulk of the argument in the debate at Portcullis House revolved around human rights issues, there were also disagreements regarding the environmental effects that the project has had to date and might have in the future. Some of these were about the footprint effects of the proposed mine and its design, and others about the effects of its production processes. We take each in turn.

7.5 Nicanor Alvarado argued that the project is located in a delicate cloud forest area that is home to a number of endangered species, and that it would also have a damaging impact on the Tabaconas-Namballe National Sanctuary. He also argued that its proximity to *páramo* ecosystems (higher altitude grasslands) meant that it would have a negative impact on regional water resources. In response to this, representatives of Monterrico Metals argued that the mine was located at altitudes below the *páramo* and that the mine would protect the landscape because the company was proposing a conservation area around what would be the actual mined area. This conservation area would include the communities and preserve the forest.

7.6 The mine site is located in a fragile cloud forest area that hosts certain endangered species - some informants reported sighting the rare Andean spectacled bear. That said, it is likely the case that some of these animals will already have been scared away from the area by the disturbances and noise linked to exploration processes. The risk to the Tabaconas-Namballe National Sanctuary⁷⁶ is harder to assess. The project is located on the boundary of the buffer zone of the Sanctuary. The Sanctuary plays an important role in protecting several threatened species (including the Andean bear, puma, and tapir: Amanzo et al., 2003: 136), as well as hosting many endemic species. A study by WWF and the National Institute for Natural Resources (INRENA) concludes that "the current area protected by the the Sanctuary (29500 ha) is insufficient to maintain minimally viable populations of the Andean bear, Andean Tapir and the *pava barbata*" (Amanzo et al., 2003: 139). That study therefore recommends expanding the size of this

Sanctuary to create a corridor linking it to the Podocarpus national park in Ecuador and thus also protecting avenues for species and seed movement (*ibid*: 140-142). The mine site would challenge the integrity of such a larger protected area. However, if the mine did prove to be a spearhead catalyzing a larger potential mining district (in the sense that the Monterrico Metals project manager suggested was possible in his presentation to industry experts and investors in the UK) then there would be substantial increase in the risks to páramos and the larger ecological zone of which Tabaconas-Namballe National Sanctuary is a part.⁷⁷

7.7 The company is - as it argued in March 2006 - proposing the creation of a protected area that would cover some 10,000 ha. adjacent to the mine. The details of this area and how it would be managed still needed to be worked out at the time of the Delegation's visit. Such an area would have the potential to protect forest resources in the face of an expanding agricultural frontier in the area. As suggested by other protected area experiences in Peru and elsewhere, this will only be so if the initiative is well funded and if relations with communities are worked out so that they have a clear stake in, and identification with, the protection of the area. Otherwise the area could become little more than a line on a map.

7.8 Perhaps the more important disagreements regarding the mining processes that are being proposed for the Rio Blanco Project relate to the use of chemical reagents. As Monterrico stated, cyanide will *not* be used and the processing methods being proposed will use organic reagents (see earlier and below). The sense of the Delegation is that in general, reagents will not be an important source of environmental hazard and contamination (see below). Related to these concerns, Monterrico also noted that they were carrying out the Environmental Impact Assessment for the project to World Bank Equator Principles (World Bank Safeguard Policies and Sector Guidelines) and are sure that the project will be found environmentally manageable. The same statements were made to the Delegation. However, the Delegation's requests to meet the consulting company that is preparing the impact assessment study did not yield fruit (we assume for business confidentiality reasons), and so we are unable to comment on the principles guiding the assessment.

Issues of corporate social responsibility and community relationships

7.9 In the meeting at the Houses of Parliament, company representatives argued that contrary to allegations, the company did not support violence, had not been involved in any violent attacks against local residents opposed to the mine, and did indeed have authorization from the communities to use their land. In a follow-up letter to the PSG, Monterrico Metal's then CEO

also argues that between 1994 and 2006 "there has been constant positive contact between operating companies and the local communities" and that the company has written consent from the local communities. He also notes that Minera Majaz has "community relations and development programs focusing on building trust between the company and the communities and stimulating parallel economic development in the area of influence of the project."

7.10 Monterrico Metals made these verbal and written statements in March 2006. Subsequently in September 2006, the company issued a public apology in which it accepted that some of its staff had been involved in conflicts with families, individuals and community and organisational leaders. The apology would suggest that company management became aware of new information sometime between March 2006 and September 2006 leading it to amend some of the views stated earlier. The dismissal of the community relations development team seems to suggest that the company's "community relations and development programs" had not been "building trust between the company and the communities" and that the Minera Majaz subsequently came to this same conclusion. This suggests forms of corporate management that did not allow management to be aware of staff behaviour that did not foster strong community-company relations.⁷⁸

7.11 The history of conflict in the region (as detailed in earlier sections) also suggests that the management's belief that there had been a "constant positive contact" between Minera Majaz and communities in the area did not reflect what had happened prior to March 2006. Indeed, members of the new social team recruited since August/September of this year themselves comment that, once they began visiting communities, they encountered a history of bad behaviour⁷⁹ on the part of both company staff and activists that took them aback.

7.12 The general sense from the interviews conducted by the Delegation is that the company does not enjoy a good reputation, precisely because of the perceptions that different actors have of its behaviour. The testimony of the Vice Minister of Energy and Mines to the Congressional Commission, and her reference to a continuing "rejection of the company,"⁸⁰ suggests the same. While the recent change in team and Board leadership is deemed by some as potentially important (see below), a range of actors (both pro and anti-mine) entertain doubts about the extent to which the company's behaviour might change given past performance. The company would argue that it is not interested in looking backwards, only forwards, and that its public apology marks a line in the sand. Most of those we spoke to were not yet persuaded by this argument, nor showed themselves inclined to be persuaded.

Legality issues

7.13 A further area of disagreement in the Portcullis House meeting surrounded the legality of Minera Majaz's presence in community lands. In March, 2006, company representatives stated that they were operating legally and that no formal legal challenge or official complaint had been filed against Rio Blanco in the twelve years since different companies began activity in the zone. These statements are re-iterated in the CEO's undated letter to the PSG sent following this meeting.

7.14 The CEO and company staff are correct in saying that no formal legal challenge to their occupancy of the concession site had been made in March (though a formal approach to the Ombudsperson's office was made shortly after by the communities of Yanta and Segunda y Cajas). However, each of these communities had made a formal complaint to the MEM following community assemblies they held on May 18th, 2003 and January 10th, 2004. At these same assemblies, community members rescinded any permission community leaders may have given to the company to operate (Cooperación, 2006). Having read the minuted responses given by the company in March, 2006, it would be our opinion that they did not represent all that had happened in Peru.

7.15 Once a complaint was made in May 2006 to the Defensoría del Pueblo, this triggered a far more searching discussion of the legality of Minera Majaz's presence in Rio Blanco. The exchanges between the Defensoría del Pueblo and the MEM during September and October of 2006, while not casting a direct opinion on the legality of Minera Majaz's presence, demonstrate that there is much more doubt about this question of legality than is implied by the company's statements in March. The Vice-Minister has argued in a press interview (and to the Delegation) that companies do not need two-thirds community approval to explore in community lands - which would imply that she believes Majaz's presence is legal. The lawyers of the Red Muqui argue the opposite, insisting that the legislation⁸¹ is clear that this two-thirds permission is required for mineral exploration and indeed for any third party to use surface lands of communities - unless they wish to open a process of compulsory purchase of use rights (a position with which the Ombudsperson's Office agrees - see below).

7.16 The Delegation is not in an expert position to have a view on which interpretation of Peruvian law is correct. We note that it is not surprising that a Ministry whose role is to promote mineral investment and mining activity would have the view expressed by the Vice Minister. Likewise one would expect that human and legal rights groups would emphasize those laws and articles that respect community rights against those of third parties. If our criterion is that development expands free-

doms and empowers, then legislation protecting the rights of historically (and currently) disadvantaged and excluded groups would be more in accord with this view of development than would legislation that allows use of their lands without their majority permission.

7.17 More importantly - because its view is not overtly influenced by stakeholders - the Defensoría del Pueblo has subsequently made a more specific statement on the legal basis of Minera Majaz's presence in Rio Blanco in a report issued on November 20th, 2006. This report concludes that - contrary to the Vice-Minister's view - mining companies do need two-thirds approval from a community assembly in order to conduct exploration that involves the degree of landscape modification anticipated by Majaz's exploration (pp. 5-6). It also concludes that the agreements which Minera Majaz elicited from leaders of the two communities did not meet this legal requirement (because they were not based on assembly decisions, nor were they legally validated in the way required by the law). The Defensoría concludes (p.9):

"these documents do not constitute a valid basis for showing prior community agreement to realize exploration activities on the surfaces of the property of the communities of Segunda y Cajas and Yanta."

7.18 When requesting approval of its Environmental Evaluation in 2003, Minera Majaz also presented an agreement between Segunda y Cajas and Minera Coripacha, the company that had been the operating face of some of the prior owners of the concession in Rio Blanco. The Defensoría concludes that this agreement was legally adequate for Coripacha's presence on those lands. However, the Defensoría notes that this agreement is with Minera Coripacha and not with Minera Majaz. As the agreement is, legally, a contract, it is governed by the Peruvian Civil Code. The interpretation made by the lawyers and staff of the Ombudsperson's office is that this Code stipulates that such contracts for exchange of services (land use in return for community development) do not automatically pass with the property - they are tied to the parties, not to the land. As such they would have to be re-celebrated by the communities and the new concession owners. This re-celebration did not occur. These are the agreements that Minera Majaz has presented to MEM. According to Vice Minister Padilla, however, MEM has "required Majaz to present up-to-date documents that demonstrate the existence of a relationship of trust with the communities of Yanta and Segunda y Cajas regarding the surface use of the land."⁸² On January 17th, Padilla is reported as having "recognised that Majaz mining company has been undertaking illegal mining activities since 2003 ... because it had not been formally given the use of peasant community land, even though at the time a resolution was published in *El Peruano* saying that they had." However, she notes that Peruvian law only allows a year to make cor-

Box 5

Minera Majaz's statement on the legality of its presence in the Rio Blanco area

Majaz Mine Ltd. Public Announcement

In response to a number of publications suggesting that Monterrico Metals has been carrying out illegal exploration activities since 2003, the firm would like to express the following:

1. Since beginning its activities in the zone of the Rio Blanco Project Monterrico Metals has requested from the relevant authorities the necessary permits and authorizations, which have been duly granted;

2. In the month of January 2003 Monterrico Metals requested from the Ministry of Mines and Energy (MINEM) approval of the Environmental Assessment of the Rio Blanco Exploration Project. The assessment was approved on 28 November 2003 as recorded in Resolution No. 478-2003-EM/DGAA. This authorization expired on the 28 November 2006.

3. During the course of this permit, the company began and completed its exploration activities to determine the magnitude

of existing mineral deposits.

4. Having completed the objectives of the exploration phase the company declined to proceed with an application to extend the environmental permit filed with MINEM in June 2006; cessation was approved this month [January 2007].

5. Monterrico Metals is currently undertaking activities to rehabilitate the environment in accordance with MINEM requirements and relevant regulations. At the same time, an environmental impact study is being finalised for the next development phase of the Rio Blanco project.

6. Having acquired the assets and rights from its predecessor Minera Coripacha, Monterrico Metals also possesses the necessary permits to use the land surface in the "Yanta" and "Segunda y Cajas" communities. Located in the vicinity of the Rio Blanco project, the permits were granted by the communities with the unanimous approval of their assemblies in October 1997.

7. These permits were presented to MINEM in October 2006. On 28 November 2006 the Director of the legal department of MINEM advised on the legal position regarding the use of the land surface areas by Monterrico Metals (Report 430-2006-MEM/OGJ) stating:

'...the Director General for Environmental Mining Issues (DGAAM) has found as *legal title holder* to the permits for the use of the surface land confirming the *legitimate possession of the use of the area where the Rio Blanco project is located*. The legal position, in the absence of a judicial declaration of nullity or contractual revocation by agreement between parties, *remains valid...*' (our [Monterrico Metals'] emphasis).

Furthermore, it concludes that: '...the general office is of the opinion that the expiry of the mining exploration permit granted to Monterrico Metals does not affect the right to land surface use in the vicinity of the Rio Blanco project...'

Monterrico Metals is a socially and environmentally responsible company. It underlines this commitment by seeking to establish an open, respectful and transparent dialogue with the communities living close by. Its aim is also to address community concerns and expectations, and develop new ways of compensating them for the use of their communal lands, and to reach agreements based on strengthening sustainable development in the region of Piura, especially in the provinces of Ayabaca and Huancabamba.

rections to such errors, and that for this reason MEM had chosen the path of roundtable discussions. For its part, the company issued a public announcement in the national press on January 22nd, 2007 (Box 5), saying that its presence is legal, and is based on prior agreements given by the communities to Minera Coripacha and supported by findings of the MEM in November 2006. Referring to these agreements with Coripacha, as opposed to those that Minera Majaz gained directly from community leaders in 2002 reflects a notable change of strategy and argument on the company's part - a change that a Piura newspaper interprets as the company recognizing that these documents from 2002 are no longer defensible bases for justifying their presence on community lands (*El Tiempo*, January 23rd, 2007).⁸³

7.19 A final observation regards the nature of the agreements that Majaz elicited from community leaders. In these agreements, community leaders gave Majaz permission to use community lands. The agreements do not state many specifics of what the company will give in return for use of the land, and do not say when it will be given. More significantly, more significantly the agreements do not say when Minera Majaz's permission to use land would end, nor do they establish the conditions under which the communities can rescind that permission. The agreement with Segunda y Cajas allows only for seismic prospecting. Neither refers to permission for the establishment of a fixed presence.

Community views on the mine

7.20 In the absence of a population-wide household opinion survey it is impossible to assess the extent to which the critical views expressed by Nicanor Alvarado on March 21st, 2006 reflect widespread community opinion. Indeed, an independent survey of this sort might be a sensible way to gauge the balance of views in the four provinces to which Monterrico Metal's apology was directed.⁸⁴ What we can say is that during the work of the Delegation, a range of views were encountered and not all were as critical of the mine project as those voiced by Alvarado. Many were highly critical, others were moderately supportive of a mining project (though often still critical of the companies' behaviour), and others were simply uncertain, not sure what information to trust and therefore of how to have an opinion. That said, during the five days spent in Piura, we heard far more criticism of the mine in the general spirit of Alvarado's views than we heard support for the mine. It is also the case that neither in Lima nor Piura, did the Delegation hear enthusiastic support for a mineral development project led by Minera Majaz.⁸⁵ In a number of instances, while there was support for a mine project in Ayabaca and Huancabamba, doubts of varying levels of gravity were expressed regarding the ability of Minera Majaz to execute such a project, in large measure because of its own history of community relations and behaviour in the zone.

explicit authorization from the community assembly before they can allow others to use these properties; and Article 11 of Law 26505 (The Law on Private Investment in Economic Development...) states that permission for private actors to use community land can only be given by a vote of two-thirds of the community's members, taken in a Community Assembly.

⁸² Press release on Vice Minister Rosario Padilla's testimony to the Congressional Commission on Amazonian, Andean and Afro-Peruvian Peoples, Ecology and Environment, January 16th, 2007.

⁸³ El Tiempo is one of Piura's two principal newspapers.

⁸⁴ There are antecedents here. The Instituto de Estudios Ecuatorianos conducted a survey of this sort in an area in Northern Ecuador affected by a junior company, and the results have since been published (IEE, 2006). The University of St. Louis conducted a health status study in La Oroya as well, whose findings have proven very useful in informing public and policy debate on the effects of Doe Run in the region. The study in La Oroya focused on health impacts in a sample of the population rather than on community attitudes or opinions.

⁸⁵ Excluding interviews with mine staff.

⁷⁶ "Sanctuary" is a protected area status in Peru.

⁷⁷ One estimate is of a potential doubling of production over that initially anticipated - a doubling which would require \$300 million additional investment (Correa, 2006a). We were told that in certain presentations, Richard Ralph has suggested this could be one of the very largest copper operations in Peru (also see Correa, 2006a and Dorman, 2006); and journalists invited to the mine site by Minera Majaz report that this will potentially be the second largest copper mine in Latin America and the largest in Peru (La Ventana Indiscreta, 2006). This would make it similar to or larger than Cuajone in Ilo and Antamina - themselves enormous projects. Furthermore, the mine holds open the possibility of discovering more deposits in the area (Andrew Bristow interviewed in the same TV programme).

⁷⁸ Alejandro Camino, once of the Mountain Forum in Nepal and former director of the Asociación Ancash, a foundation created by the Antamina mine, suggests a similar situation occurred in Antamina's work, and this was a much larger mining company (Camino, 2006).

⁷⁹ One interviewee referred explicitly to "lies."

⁸⁰ See chapter 6 above.

⁸¹ The relevant laws and articles are: Article 89, paragraph 2 of the Political Constitution that declares that Comunidades Campesinas are autonomous, among other things, in the use and dispossession of their lands; Law 24656, the Law of Native and Peasant Communities that the community territory is a property of the community and that directives have to gain

Chapter 8

The Rio Blanco Project and development in Piura

Mining and regional alternatives

8.1 While much of the argument in Piura has been about the behaviour of Minera Majaz and about the actual and potential impacts of the Rio Blanco Project, there are other, more fundamental, arguments that inform the conflict over Rio Blanco. We say this not to suggest that the conflict over Rio Blanco should only be understood as a vehicle for these wider arguments. There are deep felt, specific and legitimate complaints about the Rio Blanco Project and Minera Majaz that would exist even if the entirety of the local population were in favour of mining in the highlands of Piura.

8.2 The larger argument underlying the conflict over the Rio Blanco Project is one over the type of development that people want for this region, over their views on the contributions that highland Piura should make to national and regional development, and over the role that the nation state should play in highland Piura's development. For many actors in Piura, there is a genuine concern that the Rio Blanco Project will be the thin end of the wedge for mineral expansion in the region. The argument is that this mine would make it far easier and more attractive for other mining projects to go ahead. Furthermore, while the drainage from the Rio Blanco site runs mostly by Jaén and San Ignacio and onto the Amazon and the Atlantic (and thus does not run through Piura), these subsequent projects will be in watersheds flowing through Piura to the Pacific. These subsequent projects will, therefore, have many more implications for water quantity and quality in Piura - and thus for agricultural and human use of water. Indeed, during the work of the Delegation, rural populations in Chulucanas (located between Rio Blanco and the coast) were concerned because they had recently been contacted by the Buenaventura Mine Company, which has concessions in these areas (INACC-Cooperación, 2006). This presence of Buenaventura in the region amplifies the concerns of those living closer to the Rio Blanco Project, because the concessions adjacent to those held by Monterrico Metals belong to Newmont, a US company that is an associate with Buenaventura in Minera Yanacocha. These concessions lie in the headwaters of waters running through Piura to the Pacific (Figure 4).

8.3 The second dimension of these larger arguments relates to central-local relations and citizenship and democracy. The Rio Blanco Project has gone ahead because the government of Alejandro Toledo issued Supreme Decree N° 023-2003-EM declaring it to be of "national interest" and "public necessity" - otherwise the Constitution of Peru would not have allowed a foreign company to own resources within 50 km. of the international border. The project is therefore proceeding because it is deemed important to the nation, not so much by the locality. In a similar vein, the central government promotes mineral development in Peru because it attracts large volumes of foreign investment and generates tax revenue - and indeed, the foreign currency that would be generated by Rio Blanco would clearly be beneficial at a national level. Fifty percent of this tax revenue now goes back to the area influenced by the mine paying the tax, and so mining is also viewed as fostering local development. That said, the promotion of mining investment remains primarily part of a national rather than a local or regional development strategy (though Rio Blanco appears as a source of public investment revenue in some base documents for thinking through regional development in Piura: Dulanto et al., 2006).

8.4 In the highlands of Piura this has generated annoyance. The context in which this project has emerged conveys the sense that regardless of what local citizens and authorities prefer, central government will proceed with development as it sees fit and that in this process certain localities are expected to bear costs while other parts of Peru (in particular Lima) and other actors (in particular central government and mining companies) enjoy the fruits. Congressman Santiago Fujimori, President of the Congressional Ordinary Commission on Energy and Mines, himself emphasized that this unevenness in the distribution of benefits underlies much of the resistance to mining in Peru. The Delegation would suggest that in addition to this unevenness in the distribution of economic benefits, there is a deeply felt sense of unevenness in citizenship rights and this also generates protest. Many people feel that their rights count for less than do the rights of others in Peru.⁸⁶ As a result, more powerful people determine their development - they are not allowed to determine it for themselves. This complaint was expressed a number of times by people in

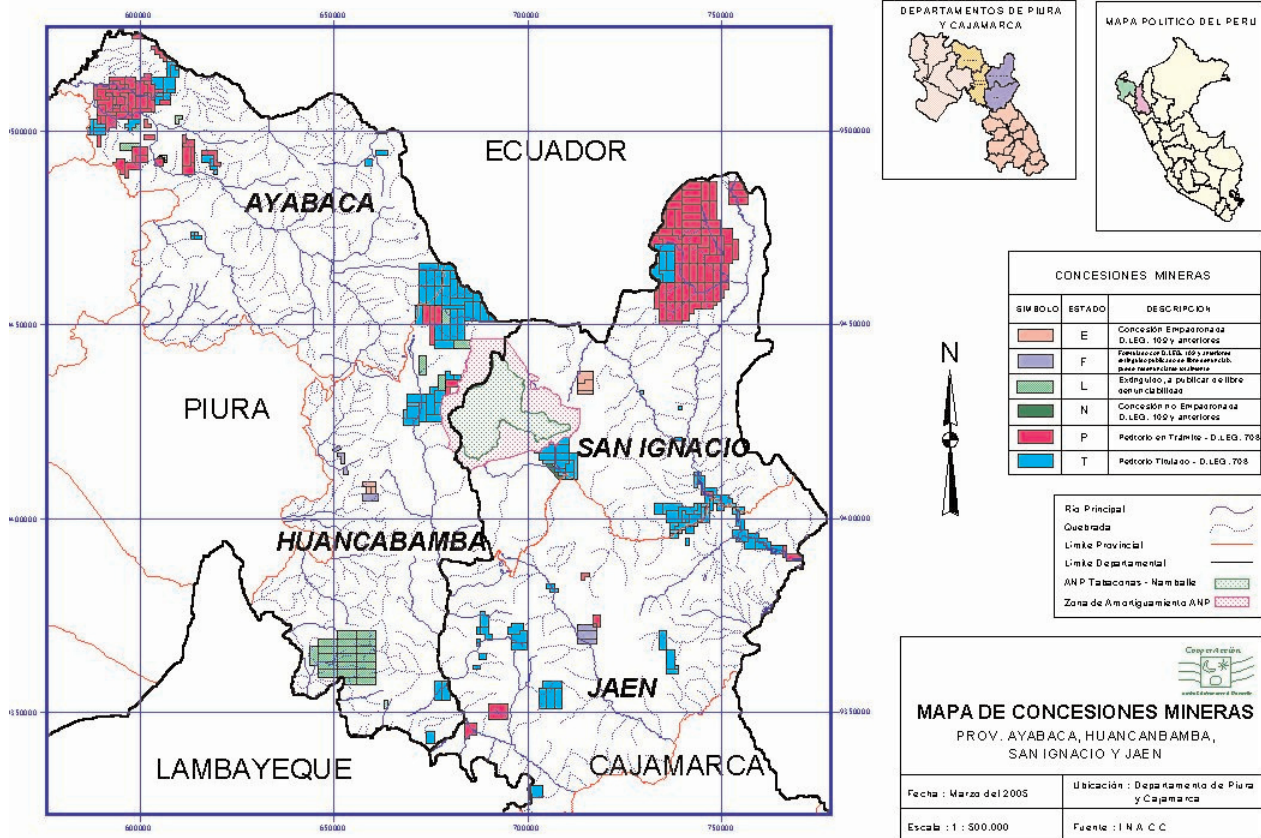


Figure 4: Mineral Concessions in Ayabaca and Huancabamba
 Source: INAAC, 2006; elaboration by Cooperación, 2006

highland Piura, as well as by national organisations supporting them. These latter view the conflict around Rio Blanco not only as a conflict over a particular mining project (though it is this); they also see it as a protest against the unfairness of a system that allows some people's and company's rights in Peru to be much stronger and to count for much more than those of the majority of Peruvians.

The Rio Blanco Project, development and poverty reduction

8.5 At the outset of this report we suggested that the links between mining and development would be considered along two broad dimensions: the reduction of poverty and the expansion of freedoms. These relationships have to be addressed at two levels: what has been the relationship to date, and where does the relationship seem likely to go in the future. This second dimension is the harder one to assess, though it is critical because mining exploration projects claim legitimacy in terms of the future effects of a fully functioning mine complex, not of the effects of the exploration process. This is even more the case for Minera Majaz which, in its public apology of September 11th, 2006 effectively accepts that its development effects to date have been less than desirable. Minera Majaz is effectively asking the population to trust them that the development effects of their future activities will be much better. Given that so much hinges on this argument, following the discussion of the rela-

tionships between mining and poverty, empowerment, freedoms and environment in this chapter and the next, chapter 10 focuses on the extent to which institutions are in place to ensure that statements about the future will in fact come to pass. These institutional issues are the most important, 'wider' issues raised by this case.

8.6 What is the relationship between Rio Blanco and poverty reduction, understood as the broadening of economic opportunity, the reduction of insecurity and the deepening of empowerment?

The Rio Blanco Project and economic opportunity

8.7 The argument for mineral development in Peru is framed primarily in terms of the economic opportunities that it will generate at different levels. Emphasis is placed on the following sources of opportunity:

- the foreign exchange generated through mineral exports
- the canon minero. The canon minero is part of the regular corporate tax revenue paid by mining companies to government. This tax is currently 30 % of profits. The term canon minero does not imply an additional tax payment by the companies. Rather it refers to the special arrangements for the geographical redistribution of the corporate tax that is

paid on income generated by mineral extraction. In this arrangement fifty percent of tax paid returns to sub-national governments in the area influenced by the mine paying the taxes (Figure 5).

- royalties, 100 % of which flow back to subnational governments in the area influenced by the mine (Figure 5). Royalties are essentially a payment by the company to the government for the use of natural resources located within that country. Royalties are negotiated at somewhere between 1 and 3 % of production value, though some companies in Peru have negotiated arrangements with zero royalty arrangements for a given period (meaning that in those instances Peru is essentially giving away its resources).⁸⁷ Monterrico has

said it will pay royalties - many of the largest mining companies in Peru have negotiated arrangements in which they do not pay royalties.

8.8 In addition, arguments are made regarding the direct and indirect (but non-fiscal) economic opportunities created by mines in their areas of operation. These are often broken down into components such as:

- Direct employment during construction
- Direct employment during operation
- Economic benefits created by the social responsibility/community development programmes of the companies (including, sometimes, the effects of community development foundations created by the companies)

Item	Description	
Source of transfer	Income tax (<i>canon minero</i>) 30% on profit 4.1% on dividends Royalties 1-3% on value of production	
Share going to sub-national governments	50 % of the <i>canon minero</i> 100 % of mining royalties	
Distribution of the transfer	<i>Canon minero</i>	a. 20% regional governments b. 5% national universities c. 75% municipal governments of which: <ul style="list-style-type: none"> 10% to districts producing minerals (of which 30% goes to communities in these districts) 25% to municipalities of the province in which the mineral is located* 40% to municipalities in the department in which the resource is located*
	Mining royalties	a. 15% regional governments b. 5% national universities c. 80% municipal governments of which: <ul style="list-style-type: none"> 20% to districts producing minerals (of which 30% goes to communities in these districts) 20% to municipalities of the province in which the mineral is located* 40% to municipalities in the department in which the resource is located*
Mode of fiscal transfer	<i>Canon minero</i>	12 monthly quotas: beginning 60 days after annual declaration of income tax
	Mining royalties	Monthly: within 30 days of the payment
Conditions on use of transfer	<i>Canon minero</i>	<ul style="list-style-type: none"> Pre-investment studies Infrastructural works Maintenance of infrastructure
	Mining royalties	Monthly: within 30 days of the payment
Transparency	<ul style="list-style-type: none"> Payment of taxes: only companies listed on the stock market publish their accounts Transfers: Ministry of Economy and Finance and the National Council on Decentralisation publish the amounts transferred Use of resources: Although the law requires local governments to provide public information on spending this does not exist 	

Source: Arias and IFC seminar, November 3rd, 2006

Figure 5: Rules governing distribution of tax and royalty income

- Multiplier effects in the local economy through local businesses participating in supply chains and input sourcing
- Spill over economic benefits of infrastructure (especially roads) built to support the mine

8.9 These types of benefit often appear far more tangible to local populations - jobs in particular - and have traditionally been those that mining companies emphasize when they first enter an area seeking community support. In many cases, however, this sort of approach has ultimately worked against the company (cf. World Bank, 2005). The number of jobs generated for which local residents are qualified has often proven to be far less than that anticipated by local populations; and higher paying jobs have gone to skilled labour largely brought in from outside the region (because skills are not available locally). Furthermore, if this is the case in general it is even more so for women for whom the mine generates very few jobs (and thus creates the possibility of greater gender inequity). In the case of Yanacocha, the mine has generated relatively few jobs for local people; this, coupled with the destabilizing effects of workers coming in from other regions of Peru, has generated annoyance and complaint, as much among populations initially favouring the mine as well as among critics (Gorriti, 2004). In some senses, employment generation has become a problem rather than a selling point for mining, as it is associated less with local benefits and more with two less than desirable changes: the arrival of 'outsiders', often white or *mestizo* single men, well paid and inclined to behave badly in local society;⁸⁸ and the emergence of new local elites (those who have benefited) who assume superior and arrogant attitudes in their interactions with the population (Gorriti, 2004).⁸⁹

8.10 The local multiplier effects of mines have often been overstated in Peru. To continue with the example of Minera Yanacocha, a recent United Nations Economic Commission on Latin America and the Caribbean (ECLAC/CEPAL) study of industrial clusters in Latin America identified Yanacocha-Cajamarca as the least successful, most enclave-like cluster of the ten studied in depth (Dirven, 2006). Many reasons are at play here - mines need many inputs that the local and regional economy cannot supply, mining companies already have supply chains in place and prefer to work with trusted sources, and so on. The effect is that the direct local development effects of mines have been modest in Peru. Indeed, the relative failure of mining (and other extractive industries) to foster local development in Latin America led the International Finance Corporation (the private sector lending/investment arm of the World Bank) to create in 2005 an "Enhancing Local Benefits" programme within its Technical Assistance Facility for Latin America and the Caribbean. The programme is specifically concerned to find ways of increasing extractive industry contributions to local development. The general message from this is that the direct effects of mining on

local economic opportunities in Latin America and Peru have been disappointing, and cannot be assumed to be automatic.

8.11 With these antecedents, we turn to the effects - actual and potential - of Monterrico Metals/Minera Majaz on local economic opportunities. To date the effects have understandably been modest, and have occurred through two main channels. The first has been a system of recruiting community members as unskilled labourers to work on the exploration site. Some of these labourers have been community residents, others have been community members now resident outside the region (young men who have migrated to the coast looking for work). In this system, workers are employed for 15-day periods. They then rotate off and others are taken on. This allows any one person to work a handful of times a year on the site. This rotational system has the advantage of distributing employment benefits more widely in the community, but the disadvantage that it does not create the sense of a 'real' job for those who benefit from it.⁹⁰ The other problem with this system - commented on below in the 'empowerment' discussion - is that recruitment has occurred through community level organisations created by the company which have the effect of accentuating the visibility of intra-community differences in attitudes to the mine. The Delegation met a number of men who had been employed by Minera Majaz, and opinions were varied. It seems that men are hired much more than women.

8.12 The other mechanism for fostering economic opportunities so far has been the "community relations and development programs focusing on building trust between the company and the communities and stimulating parallel economic development in the area of influence of the project."⁹¹ Having made this statement in March 2006, the company today does not make great claims for the economic development fostered by this programme. Part of the difficulty is that certain projects have been damaged by those hostile to the mine - tree seedling nurseries have been destroyed as have drinking water systems. Another problem is that the programme has not been well managed. The new social team commented that while US\$3 million dollars had been spent in this programme it had "not been well invested." The current team is now requesting a budget of a further US\$2.5 million between October 2006 and July 2007 - knowing that they must do a better job and in anticipation of the urgent need to gain the community support required if this exploration project is to transition into a fully fledged mine.

8.13 Looking to the future, Monterrico Metals forecasts the following economic benefits of the project (Monterrico Metals, nd.):

- the generation of skilled, semi-skilled and unskilled employment (5,000 jobs during the construction

Table 2: Anticipated income from the canon minero and royalties

Years	Local authority income (US\$)	
	Comunidad Campesina Yanta	District El Carmen de la Frontera
Current	50,000	800,000
Year 1 of mine operation	1,500,000	4,200,000
Years 2 - 5 of mine operation	1,000,000	2,000,000
Years 6 - 20 of mine operation	600,000	1,900,000

phase, 1,200 jobs during the operations phase, 7,000 indirect jobs)

- a community development plan promoting agro-industrial, livestock and tourist development in the communities neighbouring the mine
- an area of ecological conservation for the conservation of forests threatened by extinction

8.14 In addition, with its estimated production levels and anticipated commodity prices, estimations of the *canon minera* and royalties generated by the mine suggest significant increases in income to local authorities. One source who is particularly sympathetic to the mine suggests the revenue for the community of Yanta, and the district of El Carmen de la Frontera shown in table 2 above.

8.15 We have not been able to verify these estimates, and on this topic much further accounting research is required. If these figures were approximately correct, such income for local governments would be without precedent, increasing their potential to contribute to local development. Several themes merit comment, though. First, even though Majaz has said it will pay royalties (many other large companies in Peru do not), it remains the case that Peru's royalty rates are low. Botswana, for instance, charges 10 per cent royalty on its diamonds (Christian Aid, 2007). Second, for the *canon minero* to be optimized in practice will also require that the company is not able (or allowed by central government) to use accounting practices to reduce their taxable profits and that much less generous terms for capital allowances and write offs are put in place.

8.16 Third, once the *canon* is realised there are other factors that influence its potential development effects. First, central government rules demand that the canon be spent primarily on infrastructure (Figure 5); it cannot be spent on teachers, doctors, nurses, local microfinance programmes or the like.⁹³ Second, the capacity of local administrations to manage such resources is acutely constrained, and so it will take several years (during which this capacity is developed) before these transfers are likely to make any notable

contribution to local economic development. Once social and institutional learning occurs, however, the assumption is that this contribution will become more apparent.

8.17 In the short (and perhaps medium) term this learning process may also generate insecurity in the area. The regional and municipal elections in Peru, held on November 19th, 2006 were characterized by considerably more violence than has been the case in previous elections. This violence occurred not only during voting, but also - and more importantly - after voting, as initial tallies and exit polls began suggesting likely winners of mayoralties. This post-voting violence involved attacks on candidates' homes, the burning of election materials and the kidnapping of staff working for the national electoral and Ombudsperson's offices⁹⁴ until protestors were allowed into vote counting areas (with a view to destroying ballots etc.). Protestors seem generally to have been linked to losing candidates. It is notable that two of the departments in which this violence was most serious were Cajamarca and Ancash. These are both mining departments in which the *canon minero* has begun to make the control of local government resources look very attractive. One observer of these conflicts in Cajamarca notes:

"Mayoralties have become a source of booty to which everyone wants access, especially in Cajamarca, a region in which municipal budgets have increased to over a million soles (over US\$300,000) as a result of the income generated by the *canon minero*" (Paredes, 2006)⁹⁵

8.18 This is not to deny that the *canon minero* is a very valuable resource. It does, however, bring with it a number of development challenges some of which are not often referred to in discussions of the benefits that mining will bring.⁹⁶ Too often the argument is mining, therefore *canon minero*, therefore local development. The translation of *canon* into local development is, however, far more complex and uncertain.

8.19 Another channel for the local development effects of the mine will be a community foundation that

Monterrico will create, with an initial patrimony of ten million soles (US \$3.3 million, to be augmented later). The details of the foundation's creation are however very preliminary. Other experiences with such foundations suggest that very substantial investments and commitments are necessary for them to have any effect on local development (see for instance, discussion in Camino, 2006).

8.20 Arguably one of the most important economic benefits of a mine investment such as that proposed for the Rio Blanco Project, derives from the infrastructure that must be built in order that the mine can operate - in particular roads and electricity supply. Bury (2004), for instance, demonstrates the positive effects of such infrastructure in communities near Yanacocha. Rio Blanco will involve building a road to service the site and bring in high tension electricity for the site and processing plant. Given the problems of access and poor road quality that Huancabamba currently suffers, such a road would be a great benefit. One of the dilemmas regarding the construction of the road is the precise route it takes. At a meeting with livestock farmers and mine staff, farmers worried that the mine project's current design proposes building the road at a significant distance from the town. They feared that this would mean that Huancabamba would be by-passed by the growth effects of the road. On the other hand, as the company noted, running the road through the town would have negative effects on air quality, noise, circulation and safety in the town. The point is that while the road generates opportunities and costs, both opportunities and costs decline with distance from the road. The location of the road therefore matters greatly. Its final location will depend on the relative weight among mine needs, the minimization of construction cost and the maximization of potential development effects as the criteria determining road design and location.

The Rio Blanco Project and human security

8.21 Vulnerability is a core condition of poverty (Chambers, 1987; Chambers and Conway, 1992; Chronic Poverty Research Centre, 2005). This vulnerability can take many forms: threats to the security of assets on which livelihoods depend; the possibility that an ill-health event can lead a family into debt and income poverty; the possibility of subjection to violence or police and judicial persecution; etc. The sources of vulnerability are also varied. They may, for instance, be environmental (high magnitude events), epidemiological (proneness to outbreaks of disease), economic (unpredictable shifts in prices) and institutional (absence of institutions that serve as safety nets and sources of protection).

8.22 The chronology of events presented earlier in the report demonstrates that the period since 2002 has

been a troubled one in Huancabamba and Ayabaca. It is hard to say whether it has been a period of increased levels of violence and physical insecurity in comparison with the remainder of the period since the end of armed conflict. It has though been a period characterized by forms of insecurity that did not previously exist - the everyday presence of police forces, including special operations police (DINOES), an increased number of law suits being brought against members of the local population, and the two occasions of large scale confrontations between rural people and large numbers of police.

8.23 This sense of a region 'troubled' emerged often in the interviews. This was the case as much with people who were in favour of as among those who were against the mine. The following quotations come from two women and three men of very distinct backgrounds - a peasant leader, a church promoter, a youth, a teacher and a nun who is relatively new to the area:

"before we lived very peacefully"

"there's no longer any tranquillity"

"Huancabamba has changed in recent times...the population used to be united...today they are divided."

"we're not used to having police in our communities"

"they are divided...out of sorts, half happy...they don't help each other..."

8.24 An important element of these quotations is how they handle time in terms of a before and after. That is, regardless of whether one argues that Minera Majaz or activists are the immediate cause of this sense of 'troubles', what does emerge from these quotations is that the 'troubles' have emerged in the period since the arrival of Minera Majaz .

8.25 Another dimension of insecurity encountered by the Delegation - if less than this first one - is the sense that livelihoods and the assets that sustain them now feel less secure than in the past. One bishop in the region commented to the Delegation that he wished that those in favour of mining would realize that, for people who have so little, what to a geologist might seem a relatively small risk will to a *campesino* seem a far greater risk, a far greater sense of insecurity. This worry about livelihood insecurity was palpable in most of the group meetings we had. It was reflected not so much in the accounts of fish deaths and animal illnesses - which as noted in more detail below, are probably not effects of exploration activities even if they have occurred - but more in the recurrent demand that residents made on the Delegation for information. Their evident lack of information was evidently a source of their sense of insecurity. When a large, unfamiliar entity installs itself at the end of your valley, establishes a permanent looking camp, does experiments that it won't let you see, and you don't have any real information about what it is intending to do, one would expect a certain sense of insecurity. One senses that something similar has happened in Huancabamba.

8.26 While the first dimension of insecurity comes from troubles that have already occurred, this second dimension of insecurity comes more from fears about the

future. Notably, this uncertainty about the future also emerged in a discussion the mine organised for the Delegation with wealthier livestock producers. While these producers were by and large supportive of the mine, they also expressed great concern about the mine's road building plans for the reasons stated above. Ironically, what ought to be an important regional asset was also seen as bringing a degree of livelihood insecurity, in this case for local businessmen.

8.27 On several occasions we also heard comments that suggested that people in Huancabamba worried that a mine might spark a geopolitical conflict in which they would be among the first to suffer. Although the border war between Peru and Ecuador has ended, local populations remarked that mining contamination from Rio Blanco could affect water and land in Ecuador that might reignite latent hostilities between the two countries. We perceived a genuine fear of a potential military response from Ecuador if this were to occur - in the face of the Ecuadorian army, said some to us, "we are nothing," insecure and powerless.⁹⁷

8.28 To a considerable degree, the extent to which a mine will generate greater or less (perceived and real) vulnerability will depend on how far the company anticipates the new types of risk that it will generate, and then pre-empts them. One important area of future risk will be the management of sexually transmitted diseases and HIV/AIDS, as a large workforce moves to the area to participate in both the building and then operation of the mine. Mine staff recognise that this will be a serious problem. However, they have very little elaborated in terms of an AIDS/STD prevention strategy. Currently the strategy that was articulated to us consists of a code of ethics that company staff and contractors are expected to follow and which the company notes, is very hard to monitor, and a general strategy of supporting the Ministry of Health in its existing HIV programmes. Asked if they had an HIV control plan yet, a senior staff member said: "Not at this stage," though in the future they would. There are, he said, "a lot more immediate issues we have to resolve now."

The Rio Blanco Project and empowerment

8.29 Empowerment as a dimension of poverty is manifest at three main levels:

- that of the individual, where the concept has elements that are both psychological (having a sense of power and capability) and constitutional (having the right to voice and to be free from repression and discrimination when exercising that voice);
- that of the organisation, where the concept refers to poor people having organisations through which they can pursue their concerns; and
- that of the relationship with the state, where the

concept refers both to the access that people have to state and other institutions, and to their being treated fairly and equally when they exercise this access and when state institutions deal with them.

8.30 While the Delegation cannot elaborate a 'scorecard' on the effects of the Rio Blanco project on these different dimensions of empowerment, certain themes emerged with some force.

8.31 There is overlap between a psychological dimension of disempowerment and the sense of insecurity that derives from lack of information. This lack of information generates a sense of not having enough evidence and information from which to have the power to know. In this regard, at an individual level, there are clear senses in which the Rio Blanco Project has not been accompanied by empowerment. One councillor in Huancabamba commented "the majority feel powerless." In an earlier meeting a woman (a post-secondary school teacher) had reflected this same sense. She was not in favour of people criticizing the mine, explaining her position as follows: "If the government is in favour of the mine what would we do?... it's the people here who are disadvantaged" ... so we can't be too critical otherwise "our wealth will be taken away." Voice was almost a liability, it seemed. On the other hand, exercising voice in favour of the mine can also be a liability in communities where authorities of the *rondas campesinas* have exercised sanctions on those who have collaborated with the mine. In the face of the polarization that has emerged since Monterrico's presence, everyday exercise of individual voice may conceivably have been restrained as much as expanded.

8.32 At an organisational level the story is more mixed. We have already referred to the comments made about division within the local population. These divisions have partly been aggravated by the emergence of new organisations that exist in parallel to existing authority structures both at community and micro-regional levels. In a context in which intra-community opinions on the mine are divided, the company broached communities by creating committees through which the recruitment of local labour would be organised. It did not tend to work with existing authority structures in communities, instead creating organisations made up of those *comuneros* favouring the mine. Some of these *comuneros* may not have been residents - indeed, on various occasions the Delegation was told that the company had recruited labour from among former residents who had since migrated to the coast looking for work.⁹⁸ These work organisations then began to combine labour recruitment and local development and served as Minera Majaz's way into these communities. These committees became the vehicle for arranging Minera Majaz's community development work. The effect has been to create parallel organisations, weaken the legitimacy of existing authority structures and make differences of opinion

within communities more visible by building organisations around them. Minera Majaz has since recognized this was an error and is now aiming to encourage the organisations that it created to become part of the communities' existing organisational structure. How far this will be possible is unclear, though it is one of the tasks of the new social development team.

8.33 In some sense, parallel organisational forms and authority structures have also been created within the province. A senior company representative was quite clear with the Delegation that they had not worked via local governments and mayors (except at a district level in Carmen de la Frontera). The main reason for this is that these authorities have been critical of the mine, though one senior staff member also questioned the capacity of these authorities - they commented that one of the mayors only had formal education up to the fifth year of primary school. "You can see," the representative said to the Delegation, "what type of authority we are dealing with." Discussions with this representative and with the social team suggest that this strategy reflects the view that these local authorities were not the most effective channel for dealing with the local population.

8.34 For these reasons there is a tension between the language of this (and the proposed) community development programme and the practices of the larger Rio Blanco Project. Company material on the community development component of the Rio Blanco Project says that it has been designed in such a way as to "consider that the poor and extremely poor are principal actors in the solution of their needs and wants," and that in order to achieve its goal of "improving the economic conditions of the populations neighbouring the project" it is necessary to "improve the organisational capacity of leaders and authorities, so that they can strengthen their role as actors in their own development" (Monterrico Metals, n.d.). The Delegation is of the opinion that there may be a contradiction here in that the company has by-passed these authorities and authority structures (at a community and provincial level) while at the same time saying that the company's proposal requires the strengthening of these authorities. Also, by not working from the basis of these authorities' local development plans and by following a process in which the company and its social team design their own development plan for the region, it is hard to see a commitment to "strengthen[ing] their role as actors in their own development." For a substantial part of the local population (perhaps the majority) what is proposed is not "their own development." If it were, it would be difficult to explain the level of protest and resistance.

8.35 Now, it must be said that to the extent that Minera Majaz's development planning is not closely coordinated with local authorities and governments, this would be a practice found in many development projects of central government and NGOs as much as companies. It is not uncommon for external actors not to work

with authorities they have difficulty working with. The deeper problem across all these actors, however, is that so often we hear of the calls for more capacity at a local level, yet so often local authorities are not worked with when they are deemed a nuisance.

The deeper problem across all these actors, however, is that so often we hear of the calls for more capacity at a local level, yet so often local authorities are not worked with when they are deemed a nuisance.

8.36 Moving to our third level, relations with external institutions, there appears to be movement in different directions here. In the relationship between the local population and the institutions of law and order, there is little evidence of change that might be seen as empowerment. The Delegation heard often the view that the public prosecutors' office in Huancabamba has been more occupied with filing law suits against civil society actors and community members rather than in support of their claims, and so it lacks legitimacy with these actors. The claim that the institutions of justice and order favour mining companies is one that is made in a number of cases in Peru, and was voiced to us also by an expert at the Ombudsperson's office. In Rio Blanco, the perception appears to be the deeper because of demonstrators' experience with the police during the conflict. Relations with the local media are little better - it too lacks legitimacy (with all parties). For one church worker in Huancabamba,⁹⁹ the radio is a "spokesperson of the mine" and "everyone who speaks against the mine is attacked."

8.37 That said, some relationships between the local population and external institutions have improved in a way that gives the population more voice and access to additional sources of power. Furthermore, one of these institutions belongs to the central state - the Ombudsperson's Office. This office became involved in this case in response to a complaint from the local population. It proceeded to prepare a report that brought together local concerns.¹⁰⁰ While in no way a representative of populations in Piura (this is not its role), the Delegation came to the conclusion that it has served as an impartial and technically competent conduit for reasoned views on the dynamics of the conflict in Rio Blanco. Most importantly, it responded to requests from local organisations to look into the case in ways that no other central government or line agency has done in this conflict. It did what a state is supposed to do - respond to the concerns of its citizens.

8.38 The other obvious dimension of empowerment through access to external organisations has been that via the *Frente* and the Majaz Support Group. These vehicles have given national visibility to the local population concerned about the mine in a way that they would

otherwise not have enjoyed, as well as access to resources (mostly human, far less financial). Of course, not all the local population looks favourably on the work of these organisations - it would be difficult to explain the attack on the *Frente's* seminar on March 12th, 2006, without recognizing that a sizeable part of the population supports the mine. Indeed, in this sense the links with the mine itself are a source of empowerment for that part of the population that supports the mine - the links afford, for this group, access to resources they would otherwise not have.

8.39 The difficulty - and here we go back to an earlier theme of this subsection - is that these external links have had the effect of deepening divisions within the local population. Thus while subgroups within the population may have been strengthened as a result of the links, the capacity of the population as a whole to act collectively is weakened.

8.40 Many of Sen's concerns for the freedoms that for him constitute development are already present in these simple dimensions of empowerment, security and opportunity and so it is not necessary to add much here except make some broader observations. Sen suggests that the freedoms that define development come in large measure from a consolidation of democracy, constituted by a strengthening of civil society, the public sphere and of the state. In the provinces affected by the Rio Blanco Project, it would be very difficult to argue that civil society and the public sphere have been strengthened since the involvement of Monterrico Metals in the zone. The combination of a press that has little legitimacy, parallel organisations at communal and provincial levels, and the repeated tendency of public debate to transition quickly into violent confrontation suggest a fractured civil society, a weak public sphere and a state unwilling or unable to control conflict.

8.41 It would be even harder to suggest that the state has been strengthened in the area. On the one hand, the state has little presence in its role as a body that can guide, foster and monitor development. Indeed, in the exploration phase of mineral projects the central state deliberately leaves the management of community relationships and the elaboration of development plans to the private sector. Furthermore, its means of doing so by-pass and largely ignore whatever development plans the local state has elaborated. The one way in which the state *has* made itself more present in the zone since 2003 has been in the form of police and special operations forces. This seems only to have further weakened the legitimacy of the state. It is viewed by many as defending a foreign company against local citizens, and using force to do so. It is also viewed as closing ranks to avoid any prosecution of these special forces in those cases where violence has been used.

⁸⁶ This is an issue in many countries. In the course of this Delegation we have had the sense that for parts of the UK government in Peru, the rights of UK registered companies

count for more than the rights of citizens concerned about the behaviour of British companies in Peru.

⁸⁷ It is far easier for companies to use tax codes and accounting practices to reduce tax burdens; royalties, based as they are on volume of production, are a far more transparent a payment.

⁸⁸ The arrival of large numbers of non-local workers has been associated in other cases in Peru with the rise of problems of nightlife noise, prostitution, alcohol consumption, HIV/AIDS etc.

⁸⁹ Gustavo Gorriti (a highly respected national journalist) wrote on these issues for the case of Cajamarca.

⁹⁰ In this instance, the company will justifiably say "damned if you do, damned if you don't" - there is no easy solution to the fact that all the local (male) population anticipates benefits but there are nowhere near enough jobs for all of them.

⁹¹ The quotation is from an undated letter from Monterrico's CEO to the Peru Support Group.

⁹² We use this source for two reasons. Antonio Brack is a respected national ecologist; and the programme was produced in close coordination with, and through the collaboration of, Monterrico Metals/Minera Majaz in Peru.

⁹³ This is to prevent corruption and growth in recurrent local government expenditure.

⁹⁴ See news reports in *El Comercio* and *La Republica* for November 20th, 21st and 22nd, 2006.

⁹⁵ The original text is: "Las alcaldías se han convertido en un botín, al que todos quieren acceder, en especial en Cajamarca, una región que en los últimos años ha aumentado sus presupuesto municipales por encima del millón de soles, producto de los ingresos por concepto del canon minero." The writer works for the NGO SER, a well respected NGO working on democratic governance and water supply issues. SER has been an important beneficiary of DfID resources over recent years.

⁹⁶ For an exception see Camino, 2006, who notes these potential problems.

⁹⁷ The 1995 military conflict between Ecuador and Peru remains fresh in many minds - and has been passed on to younger adults. In that conflict, Ecuador emerged better positioned than Perú.

⁹⁸ We cannot know the extent to which this did in fact occur. We did, though, meet people currently working one of the 15-day work cycles for the mine who normally lived on the coast. It is also the case that Minera Majaz has developed links with associations of migrants from Ayabaca and Huancabamba who now live in the coast.

⁹⁹ Who works within a parochial team where the priest is mildly supportive of the mine.

¹⁰⁰ Monterrico Metals does not share this view. At a meeting it requested with the Ombudsperson's office following the start of the investigation, senior company staff voiced the view that the Ombudsperson's team was talking mostly to people opposed to the mine. At a later part of the discussion, a social scientist accompanying the company representative referred to those opposing the mine as "delinquents."

Chapter 9

The Rio Blanco Project and the environment

Resident Knowledge of Potential Mining Problems

9.1 Local populations consistently exhibited a pervading lack of knowledge about the potential problems caused by mining activities. Mis-information was abundant. Many people informed us that numerous problems had already been caused by mining activities at Rio Blanco, including: human health effects; dead and dying farm animals; poisoned fish; contaminated surface and drinking waters. These problems are not possible because the mine is not yet operating. To date, the only mining activity has been exploratory drilling. We attribute these perceived problems from supposed mining activity at Rio Blanco in part to: previous mining activities in Peru in which fishkills, pollution, mercury spills etc. have occurred;¹⁰¹ lack of scientific education by most of the local population; the absence of any source of reliable information available to local populations; and mis-information deliberately disseminated by both proponents and opponents of mining activities.

9.2 We find this lack of knowledge about the potential impacts of mining activities one of the most pressing problems that needs to be solved in this conflict and in anticipation of future mining activities in Peru. *Because of this lack of knowledge, local populations lack the information base to make informed decisions about the benefits and drawbacks of mining activities.*

9.3 The lack of knowledge about potential problems caused by mining activities by local populations can be grouped into four domains;

- the spatial extent of potential mining problems
- the potential contamination from waste rock and tailings piles
- the sources of chemical contamination
- the role that native rocks can play as a source of natural acid mine drainage

Spatial extent of potential mining problems

9.4 Environmental problems caused by mining activities are generally intensive and localized, not spatially extensive. Our perception is that the local population under-estimated the potential for environmental damage down-gradient from the mining activity. People over-estimated the spatial area that may be affected.

9.5 The vast majority of mining problems result in the contamination of coupled surface water/groundwater systems down-gradient from the mine site. The Rio Blanco mining site is located on the east side of the continental divide and ultimately drains into the Amazon River and the Atlantic Ocean. The spatial footprint of mining problems was widely and wildly over-estimated by the general population. Many people were convinced that the Rio Blanco mining activity would contaminate the Rio Piura and Rio Chira rivers on the west side of the continental divide and which drain into the Pacific Ocean. There was also concern expressed that high-elevation sacred lakes such as El Shimbe in the headwaters of the Huancabamba River would be contaminated. These water bodies are tens to hundreds of kilometres from the proposed mining activity and in completely different drainage systems. There appears to be no threat of contaminated waters to these areas by discharge from the Rio Blanco mining activity.

Contamination from tailings piles and waste rock

9.6 Drainage through tailings piles and waste rock are the primary source of contamination in hard-rock mining operations. Contamination from tailings pile and waste rocks leaves a legacy of toxic contamination that can last from decades to centuries. In the Colorado Rockies, there are presently about 3,000 river miles contaminated from acid mine drainage (AMD). The sources of the AMD are mines that were worked and then abandoned 100 to 150 years ago.

9.7 We did not talk to a single resident of the area (this excludes core staff of Majaz) who was aware of the

potential damage that can be caused by AMD generated by tailings piles and waste rock. The single largest source of environmental damage from the Rio Blanco project is AMD drainage from the tailing and waste rock piles. These potential sources of environmental contamination are a gift that may keep on giving for hundreds of years in the future.

9.8 Even well-educated locals had no knowledge of the potentially devastating problems that can be caused by AMD from tailings and waste rock piles. To illustrate, let us take the example of one of the lead community facilitators for the Catholic Church in the Diocese of Chulucanas who works in the area affected by the mining dispute. He has an undergraduate degree from a well respected institution. He had no idea that tailings piles and waste rock piles are potential sources of contamination from mining activities. He had no idea that the tailings piles and waste rock can continue to leach heavy metal contamination for decades to centuries after the mining activity has stopped. A nurse who was collecting blood and urine samples for the Ministry of Health to test the effects of mining on the health of local populations was equally ignorant of the potential long-term effects that a project like Rio Blanco might potentially have.

9.9 If such a university educated person has no idea that rock extracted from mining activities is a source of AMD, then it is unsurprising that less-educated farmers have no knowledge that rocks can be a source of AMD. Locals can not make educated decisions about the benefits and drawbacks of mining activities if they are unaware of the potential problems caused by tailing and waste rock piles generated by the proposed mining activities at Rio Blanco.

Sources of chemical contamination

9.10 Most people believe that mine contamination of surface and groundwater systems comes *only* from chemicals used in the separation process, such as mercury and cyanide. This revelation took us completely by surprise.

9.11 To illustrate, the El Carmen area has 'informal' mining. Informal mining refers to mining activities conducted by the local population, usually for gold. Residents informed us there was no possible contamination from these mining activities because no chemicals are used in the separation process. Excavation and mineral processing at the informal mining sites in the El Carmen area are conducted using hand labour with occasional assistance from mechanized machines such as bulldozers. Because no chemicals are used in this process, the locals insisted it is not possible for informal mining to cause contamination of surface and ground waters. Their answer shows that they assume that the only possible source of contamination from mining could be the use of chemicals.

9.12 Residents over-estimate the potential dangers from chemicals used in the separation process. Residents are largely ignorant of the pervasive problems caused by AMD from tailings and waste rock piles.

Native rocks can be a source of natural acid mine drainage

9.13 Residents are not aware that mineralized areas can generate natural ARD (acid rock drainage). They have no knowledge that low pH's and high metal content of surface and ground waters are common in highly mineralized areas. The low pH and high metal content in surface waters caused by natural weathering processes can result in mortality of benthic invertebrates and fish in waters draining areas with high mineral content. Residents may thus be exposed to dangerous levels of naturally-occurring metals. Mines such as Rio Blanco may be blamed for environmental damage that occurs naturally.

Potential environmental problems and risks related to the mine as currently designed

Extraction and processing

9.14 The ore from the mine will be fed to a crusher that will break the rocks to a size of approximately 150 mm. This rock is fed by conveyor to a mill stock pile and then to a primary mill which reduces the rock to approximately 3 mm. This material is passed into a second mill circuit which reduces rock size even more. At this stage, the rock particles are fine enough to expose the copper and molybdenum mineral particles and allow them to be separated from the barren rock, by means of a flotation process.

9.15 Flotation involves adding frothing detergents and activators to the rock slurry and bubbling air through the slurry, whilst it passes through a series of flotation cells. The frothers and activators preferentially float the metal bearing minerals which allows them to be skimmed off and separated from the finely ground waste rock.

9.16 At the end of the process the waste rock tailings are conveyed to a tailings deposit and the concentrated copper / molybdenum-bearing minerals are pumped via a pipeline to the separation plant located at the port site. Here the bulk concentrate is treated to produce separate copper and molybdenum concentrates. The filtered molybdenum material will be dried and bagged in 1000kg bags and the filtered copper concentrate will be stored in a warehouse, ready for maritime shipment.

9.17 However, the DFS, released 5 February 2007, now states (taken from Monterrico's website):

“Monterrico has studied options for copper concentrate transportation to the port facility at great length. The current base case considers concentrate transportation by truck. However, a full feasibility study for a concentrate pipeline was also developed as an option. A future construction decision on the pipeline will be made once the process plant is operational. The use of road concentrate transportation is common place in Latin America and has formed the basis of a number of operations and feasibility studies in Peru. A transport management plan will be developed during basic engineering to optimise traffic flow and consolidate shipments wherever possible.”

9.18 The decision to base the DFS on trucking out the concentrate marks a change from previous plans as stated in Minera Majaz’s and Monterrico’s prior statements on the project (e.g Proyecto Rio Blanco, n.d.) and presentations made explaining the project to interested parties in Peru and UK (e.g. Dorman, 2006). Those statements and presentations stated that the material would be removed by a pipeline on the grounds that “A mineral pipeline is mining’s safest transport alternative” and that “it avoids risks of leakages and accidents” (Proyecto Rio Blanco, n.d.). All parties with whom we consulted on the topic assumed the concentrate would be transported by pipeline. The trucking option will avoid Monterrico and Majaz from having to engage in complex negotiations with communities through whose land the pipeline would have passed. It will place more pressure on the existing roads leading from the coast to the planned mine site (only 25km of new road are included in the DFS, while the concentrate pipeline was planned to measure some 300km).

Dry-filtered tailings disposal

9.19 The tailings from the process plant will be dry stacked in the valley immediately adjacent to the plant and mine site. Filtered tailings disposal has considerable environmental benefits according to Monterrico, including: lower water consumption; ease of water recycling; reduction in the area of land disturbed; it also allows rehabilitation and re-vegetation of the tailings site to be undertaken progressively, rather than at mine closure. A further advantage is that the compact nature of filtered, or dry, tailings minimizes the storage volume that is required for tailings disposal.

9.20 Tailings will be deposited in the valley to the north of Henry’s Hill. The footprint of the tailings pile is estimated by the company at 4000 ha. A robust stream with an estimated discharge of 5-10 m³s⁻¹ drains the valley and will run underneath the tailings pile. Waste rock will be stored in the valley to the south of Henry’s Hill, again drained by a robust stream. The footprint of waste rock is estimated by Monterrico to be about 200 ha.

Concerns

9.21 Leaching of AMD from the mine site, tailings piles, and waste rock storage is the primary concern. The area receives 2,000 mm or more of rain annually, concentrated in a wet season. The large amount of precipitation provides the very real possibility of infiltrating rain moving through tailings and waste rock piles and transporting contaminated metals into surface and ground waters.

9.22 Reduction of infiltration causes a separate problem of surface runoff. Rainfall running along the surface of tailings and waste rock is likely to transport AMD drainage and/or contaminated sediments directly to streams.

9.23 The depth of the open-pit mine is of concern. It is likely that the depth of the open-pit mine will be below the local water table. That water will need to be pumped from the mine site. It is highly likely that this water will be contaminated with AMD. Treatment of this potential AMD is imperative.

9.24 Both the tailings and waste rock piles will overlay large streams. The current plan is to have the streams drain through a culvert underneath these piles. We remain sceptical that there will be no flow from the bottom or sides of the piles into the underlying streams. There is the possibility that these areas could leach toxic AMD into the headwaters of the Amazon River for centuries after mine closure.

9.25 The waste rock needs to be limed to increase pH to reduce the possibility that AMD is generated.

9.26 Dry-filtered tailings disposal is a relatively new and expensive technique. Monterrico is to be applauded if they do decide to utilize the dry-filtered disposal technique. The technique shows lots of promise in being superior to the more common wet tailings dam. Because the technique is relatively new, adequate monitoring is essential to show that the technique delivers on the promises that Monterrico is making about its environmental friendliness. We do have concerns because to our knowledge this will be the first time the dry-filtered method has been used in such a humid environment.

9.27 Catastrophic slumping of tailings and waste rock piles is a possibility. The high amounts of precipitation can cause water-logging and wet debris flows if there is significant infiltration of rain. Shaking by earthquakes and subsequent slope failure and flows of tailings and/or waste rock piles into water courses is a very real possibility that must be taken into account with appropriate engineering practices. A combination of wet tailings/waste rock piles and an earthquake is of particular concern.

Chapter 10

Wider issues embodied in the Rio Blanco case: governing mining for development, democracy and environmental security

10.1 The preceding discussion makes clear that while statements are made that the Rio Blanco Project will foster local development and a safe environment, there is no certainty that these cause-effect relationships will occur in practice, for reasons that are both endogenous and exogenous to the mine project itself. In many regards this same slippage between cause and effect is the problem surrounding the mining-development-democracy-environment equation in Peru as a whole. What light does the Rio Blanco case cast on the possibility of making this cause-effect relationship work in practice?

10.2 A starting point for this reflection is the simple observation that mining (like any productive activity) is a means, not an end. In our poverty and freedoms framework, we ask how far mining is a means to opportunity, security, empowerment and freedoms. These may not be the ends that a society would identify for itself, and this report could be criticized for using broadly defined ends chosen by us rather than by Peruvian society. This of course raises the question of how Peruvian society would, in practice, define such ends. Indeed, as the *Defensoría's* report implies, there is good reason to believe that in Peru such ends are not defined democratically, through the informed and active participation of all. Also, we suggest that it would be difficult to argue *against* the ends that this report has defined as desirable. Thus, we will continue to use them in this final reflection.

10.3 If mining is the means, and opportunity, security, empowerment, freedoms and environmental health are the ends, then we (and any planner) must ask:

- How clear is the causal chain from the means (mining) to these ends? How many assumptions have to be made for one to get from means to ends, and how many risks are there that the chain will fail?
- How will this causal chain be governed to increase the likelihood that it operates in practice? Are the institutions in place to ensure this good governance?

This is a critical question because synergies between economic and social development, and between these and environmental stewardship, have to be managed - they cannot be left to serendipity, spontaneous emergence or invisible hands.

Assessing the causal chains

10.4 Three main causal chains are invoked to argue that mining is the means to economic development; a further, shorter, chain is invoked to get from mining to environmental security and health.

10.5 The first chain is that which operates through labour and product markets. In this chain mining fosters economic development through: (i) purchasing goods and services locally and in Piura and (ii) through employment of mine staff. In each chain, development comes from the direct and indirect job creation effects of the mine. These chains are referred to explicitly in the project's promotional brochure (Monterrico Metals, nd), though rather less in interviews and hardly at all in other very supportive statements (Brack, 2006). This relative reticence derives, perhaps, from an awareness that in practice such chains do not work well because many of these human and physical inputs will be drawn from outside Piura.

10.6 The second chain explicitly links mining to economic development in the communities surrounding the mine. This chain operates explicitly through Minera Majaz's social development programme. Here the argument is that this programme, by supporting local enterprise and production systems, will be able to increase local incomes and employment. Likewise, social development and infrastructure investments in the project will have effects on welfare indicators through increasing people's access to services. Several assumptions (and potential risks) exist here. First, this chain assumes communities will participate in such activities and that they will not be attacked or damaged (a genuine issue given the destruction of replanting and drinking water projects in recent months).¹⁰² Second, more importantly, this requires that markets exist for the products being promoted, and that communities will be able to access

them. Third it assumes that the company will finance the social development programme at an adequate level.

10.7 The third chain is the least direct but is the most talked of. This one operates via the *canon minero*. Here the assumption is that mines will pay tax that local authorities will use to invest in development. The main assumptions and risks here relate to the capacities and orientation of public bodies to undertake this. Most local authorities clearly lack the capacity to do serious project planning, pre-investment, management and monitoring, and to identify bankable, viable economic development projects. The regional government, which will also receive much of the *canon*, has more such capacity, but its predisposition to invest in the areas immediately affected by the project is open to question. Coastal and urban bias (which is also a racial bias) has long characterized policy and public administration in Peru, and there is no reason to expect Piura to be different. At the very least, the regional government has to spread its resources over a far larger electorate. Hence, the impacts in the mine affected area of the regional government's investment of the *canon* would be limited. The primary impacts would be through the *canon* going to local authorities.

10.8 The fourth chain - from mining to a secure and healthy environment - is perhaps the shortest. In this chain, the use of clean technology is the causal link. As just noted, this seems viable, but as junior companies involved in exploration, neither Majaz nor Monterrico Metals are companies with any prior experience in using this technology (so far unused in Latin America) and also regarding the resilience of the technical design of the mine site to high magnitude, low frequency rainfall events such as those that might accompany, for instance, *El Niño* years.

10.9 The assumptions and risks in each of these chains shows just how important it will be for adequate governance mechanisms to exist so that they can manage these causal chains and help them come to fruition. How far do such governance mechanisms currently exist?

Assessing the governance mechanisms

Governance mechanisms linking mining, development and environment

10.10 Managing the synergies between mining, development and environment in Rio Blanco is the responsibility of many actors and not only Monterrico Metals. However, an important part of this responsibility does fall on Monterrico. This is so by default (because it is the economically most powerful actor in Huancabamba and Ayabaca, and the presence of cen-

tral government is very weak) and by design, because Monterrico has itself worked little with local governments, marketed itself as using state of the art technology, and presented its Rio Blanco Project as an "integrated development model" in which the company is itself a protagonist:

"this plan has as its principal objective the improvement of the economic conditions of the populations that neighbour the project" (Monterrico Metals, nd.)

10.11 The potential for synergy between mining, development and environment will therefore depend greatly on the culture, capacities and qualities of the company, in particularly the company that might develop the mine. In assessing the relationships - past, present and future - between mining and development in this area the Delegation had to form a view on these themes. This is done on the basis of revealed behaviour in the past, interviews, conversations and discussions with a small number of company staff, and observations made by key informants.

10.12 We have already commented on the past behaviour of the company. Here we discuss the implications of recent changes in the staffing of Monterrico. These are important to review, because to the extent that there have been deficiencies in the relationships between the Rio Blanco Project and the promotion of development, Monterrico Metals might state that this is part of the old Monterrico Metals and that the company has undergone a process of change since August/September 2006.

10.13 The principal change of relevance to the company's ability to foster synergies between mining and development has been the appointment of a new social development team. This began with the hiring of its Director, Virginia Montoya, announced on June 15th, 2006. The team that has been put together brings considerable experience in managing community relations programmes in extractive industries. This is encouraging. However, the Delegation came to the view that the primary task of the social team is to build the community relations necessary for the mine to proceed. Its approach to development seemed hampered by attitudes among some (though not all) staff members that in the opinion of the Delegation implied disrespect for individuals and organisations who were critical of the mine or who were deemed to be poor resource managers. One task of some company staff with Geographic Information System skills had been to construct a data base to show that deforestation in the area was the responsibility of people living there, and not of the mine. This may well be true. However, a work programme part of which is oriented towards showing that residents in Rio Blanco are the problem, not the solution, seems likely to lead to forms of development that will be top-down (company driven) and disempowering, however well intentioned.

10.14 The team has also become an important player in an effort to reach out to nationally reputed social and ecological scientists. Indeed, members not only informed us of a series of changes they were making in the company's approaches to community development, but also of their new relationships with other local and national actors in Peru. In two instances, the Delegation checked with the actors that the team said they were working with (a statement reiterated in one of the two instances by a senior staff member) to see if their view of their relationships with the company was the same as it had been described to us. In both cases it was not. Neither accepted that they were working with or had formal agreements with the company - though the Delegation had been told that this was the case. While each had been approached by the company these approaches had led to no formal agreements and in one instance, no further contact.

10.15 Just as the social team has been overhauled, there is also evidence of changes in the structure and culture of overall company management. On August 14th the company announced that the Non-Executive Chairman was retiring, the Chief Executive Officer was moving to a Non-Executive Director position, and the former British Ambassador to Peru was joining to combine these two roles as Executive Chairman (until a new CEO could be found). At the same time, a further Non-Executive Director stepped down from the Board. A new project director had also been hired in February 2006.¹⁰³ Beyond these changes of personnel, the Delegation cannot know details of changes that may have occurred in management practices and management supervision of company teams.

10.16 Notwithstanding these senior management changes, some indirect indicators of operating behaviour continue to be of concern. The presentation made on October 6th, 2006 by the project director to the Mining Journal's Copper Day (Dorman, 2006) still seems to understate considerably the problems that the company has in its relationships with the local population. The slide presented to investors on "Social Responsibility" makes no mention of the conflicts and tensions in the region, while the presenter refers only to "unfounded fears or misconceptions that some of our stakeholders in the area have had due to disinformation put forward by others." The following slide states "strong support at local and regional level." Neither the slides nor presentation make any reference to the public apology (Box 4) that Minera Majaz issued to these local authorities less than four weeks before this presentation, and which itself acknowledged that conflicts in the area have not only been due to disinformation but also due to staff behaviour.

10.17 Competency, legitimacy and trustworthiness will be important not only for Monterrico Metals and Minera Majaz to execute a successful mining project but also for it to be able to manage productive synergies

between mining and local development. Many of our interviewees, from grassroots to Ministerial level, expressed doubt on how far the company possessed these institutional qualities.

Governance mechanisms linking mining and freedoms

10.18 Central to the notion of enhanced freedom is the respect for human rights. In this spirit, The Rio Blanco Project raises a series of important questions regarding respect for the human rights of rural peoples affected by mining (and extractive industries more broadly) in Peru. Some of these issues are illustrated most clearly by the report of the *Defensoría del Pueblo* (2006a), which concludes that in Rio Blanco community members' rights have been violated in several ways.

10.19 First, the *Defensoría* concludes, they suffered violation of their rights to enjoy and control their properties as laid down by the Constitution. Minera Majaz, the *Defensoría* concludes, occupied these community lands without having the legally required permission to do so. When community assemblies made clear that they did not want Minera Majaz to be on their lands, the company did not leave.

10.20 Second, during the period of public consultation on Minera Majaz' Environmental Evaluation, citizens of Ayabaca and Huancabamba were denied the "right to informed participation" .."a faculty possessed by all citizens to intervene in issues that affect their person and their community" (*Defensoría*, 2006). The fact that announcements misnamed the district to which the Environmental Evaluation applied, that these announcements were placed only in newspapers and outlets that rural *comuneros* were highly unlikely to see, and that the MEM required that observations be made direct to Lima, all prevented citizens from exercising their right to informed participation, the *Defensoría* (2006a) concludes.

10.21 In these different instances, the *Defensoría* concludes that the MEM did not protect citizens' rights. In the first instance, it knowingly failed to protect their rights; in the second instance, the design of its procedures, and the misnaming of the district in which the exploration was going to happen, violated these rights. The report argues that while the MEM is constitutionally charged with the obligation to protect citizens' rights, it did not do so.

10.22 This then raises the question of how these rights might be better protected. One vehicle through which people have sought to protect these rights has been through social mobilization. When this strategy has been used, (i) it has had little success in reclaiming these violated rights, and (ii) it has led to several citizens having their right to life and health violated.

10.23 Another vehicle has been through the actions of the *Defensoría del Pueblo*. What this has done has been to make clear the ways in which government offices have failed to protect the rights of Peruvian citizens. The *Defensoría* is not, however, a public defender - it cannot take on legal cases. Hence, in order for the communities of Yanta and Segunda y Cajas to insist that Minera Majaz withdraw from their property and seek the legally correct form of permission to access the land they wish to mine, they would have to open formal legal proceedings through the courts. The cost of such a process is evidently beyond the capacities of any peasant community - above all ones as poor as these are. That being so, such legal action would have to be financed by an external, and most likely international or internationally-funded, organisation.

10.24 It is at this point that the Rio Blanco Conflict intersects with the more general arguments and denunciations that mining companies have made about NGOs in Peru over the last several years. There is no doubt that in some cases, this pressure (coupled, in some instances, with pressure from their own governments) has led certain international NGOs to cease financing legal defence work on mining issues.¹⁰⁴ Meanwhile current moves to pass legislation in Peru that would allow government to forbid NGOs, *qua* NGOs, to work on issues not deemed congruent with national development needs has received more than tacit support from the mining sector and would allow pressure to be exercised on organisations funding legal defence work against mining companies.

10.25 So while the *Defensoría* may observe that the legally recognized and constitutionally inscribed property and governance rights of Segunda y Cajas and Yanta have been violated in Rio Blanco, it is not clear what the communities can do about this. Many a social analyst might conclude at this point that while Peruvian citizens may have rights on paper, what matters more is whether they have financial or political power to exercise those rights.

Governance options

10.26 If a mineral project does ultimately go ahead in such a context, one of the great problems facing Minera Majaz will be to persuade people that the company has indeed changed, and that the population can be assured that the relations between mining and development will be far more auspicious in years to come. At the core of this problem is the relative lack of legitimacy of those institutions that would guarantee this future relationship. These institutions include the company itself, the MEM, and the institutions of law and order. We take each in turn.

10.27 The company itself recognizes that it has to gain legitimacy, and the change of staff and expansion of its social programmes reflect efforts in this direction.

The Delegation encountered no strong evidence that expert informants - in the region and Lima - were certain that these efforts would succeed. "Such is the distrust ... that it will be very difficult to turn the relationship between Minera Majaz and the population around ... not impossible, but very very difficult..." commented an expert at the *Defensoría del Pueblo*. For the Minister of Energy and Mines "the company didn't know how to behave," he commented "the staff was not very good," though felt that this might now be changing with the staff changes since mid-2006. Other opinions in the Rio Blanco area were more blunt, and in the opinion of the Delegation many of our informants simply did not believe statements made by Minera Majaz.

10.28 While the MEM might express some reservation about the company, the Ministry suffers its own legitimacy problems among local actors. Much of this seems to be a result of the role that it assumes during the exploration process - one in which it is largely absent, leaving the management of community relations to the company itself.¹⁰⁵ The MEM is consistently seen as distant, pro-mine and generally interested in little other than increasing investment in mineral extraction. This limits any legitimacy that it may have to play a regulatory role to ensure that the company follows the environmental and social commitments contained within an approved EIA. This is a general problem in the sector, and as a result there is an advanced discussion in Peru on establishing an "independent environmental authority." That said, the MEM will still be the entity that approves the EIA (still making it judge and jury at the approval stage). Also, the entity to which the MEM will pass responsibilities for post-approval environmental monitoring, OSINERG, is not one that is well known locally.¹⁰⁶ Meanwhile, MEM would continue to be responsible for monitoring social responsibility and performance. Indeed, its internal capacity and the interest it shows in monitoring social issues appears weak, as an informed source¹⁰⁷ comments:

"obvious lack of interest and political will within the Ministry in the social issues, ... This [the Social Management Directorate] is the office where the companies are supposed to submit their annual reports summarizing their social and community initiatives, in compliance with Decreto Supremo 042-2003-EM that "*Establece Compromiso Previo como Requisito para el Desarrollo de Actividades Mineras*". However, (a) there are no set formatos or even indicators expected of them, not even guidelines for what to report, (b) the Ministry does not have the personnel or time to review and process the reports, much less provide feedback to the companies, and (c) there are no sanctions for non-reporting. They have reams of social reports from 2004 sitting around since last year..."

10.29 So the question arises, which institutions *would* have the capacity and legitimacy to monitor, promote

and where necessary enforce synergistic relationships between mining and development? One obvious answer might be civil society, though it is hard to understand why this should be a default *responsibility* of civil society if mining is being promoted by both state and the industry precisely because it is deemed to be good for development.¹⁰⁹ And, to return to Rio Blanco, even if civil society were to play this role, what mechanisms would it have to ensure these synergies? As noted earlier, levels of trust in the local judiciary/public prosecutor and the police are very low and much of this distrust is framed in terms of alleged distorting effects of the company on these institutions.¹¹⁰

10.30 The problem, then, in looking to the future is this: who has the combined legitimacy and authority to play the role of ensuring synergies between the Rio Blanco Project and local development?

10.31 Perhaps more serious still is the sense that the conflict in Rio Blanco has become so polarized that it has made it very difficult for any institution to occupy a middle ground and retain a degree of legitimacy. Yet there are institutions that want to occupy this ground, that see some role for mining in the regional economy, but also demand that any form of development involve the systematic respect for human rights and dignity, and for the sanctity of certain social and public institutions. However, the space for such actors to emerge is very limited, and so debates continue to be polarized. Those who do aim to mediate get tarnished. Arguably this is what happened to the Centre for Conflict Analysis and Resolution of the Catholic University, but even more indicative of the problem is the experience of the social pastoral team of the Dioceses of Chulucanas. The team leader notes that even when they try to promote a discussion that explores possible middle ground and points of negotiation, they are labelled as becoming 'pro-mine' - this the team of the same bishop who just in 2005 was identified on Peru's Channel 5 as being part of a web of terror in Majaz and who, during the Delegation, a member of the company still deemed to be "probably not" a terrorist.

10.32 The implication of these observations is that while the translation of mining into development, environmental security and democratization requires careful, intelligent, adaptive and above all socially legitimate governance arrangements, it is very far from clear that any of the currently existing institutions in Rio Blanco, Piura and perhaps even Peru are in a position to play such a role and satisfy such qualities. Indeed, the Delegation was struck by how often in the zone people said to us that they wanted neither the state nor the company to help them resolve their problems. They wanted to do this for themselves and wanted the state to stay away. In a still young democracy recovering from a long period of armed conflict, and with a long history of state negligence of rural indigenous and peasant populations, this is clearly a worrying and highly negative effect of the last

four years of conflict in Rio Blanco. We close the report reflecting on different ways forward in an institutional weakened and fragmented context.

¹⁰² The Delegation was informed by a teacher of a drinking water system that had been destroyed. The company had installed it in a hamlet near the site.

¹⁰³ Eager, C. 2006.

¹⁰⁴ In late 2005, Canadian Lutheran World Relief was told by the Canadian government that it had to end its funding of Peruvian NGOs that questioned forms being taken by mining development, and that did legal defence work for affected populations. This work, it was told, was a foreign relations problem for Canada. If CLWR did not end support to these NGOs, it would lose its co-financing support from the Canadian government. Peruvian NGOs receiving this support were informed of this termination in October 2005.

¹⁰⁵ According to the Minister, this is policy. The argument is that the exploration phase is one of high risk, which the exploration company is expected to bear. The incentive lies in the great potential gains that might accrue.

¹⁰⁶ OSINERG is the Supervisory Body for Investment in the Energy Sector - electricity and hydrocarbons. It regulates the sectors as a whole, ensuring they meet legal (including environmental) standards, supervises licitations for energy projects, regulates electricity prices, and since 2000 is responsible for resolving conflicts and claims against energy companies. Since 2002 it also regulates the quality of hydrocarbon products. See Tavera, 2006.

¹⁰⁷ A source the Delegation considers completely technical and reliable.

¹⁰⁸ That establishes prior consent as a requirement for the development of mining activities.

¹⁰⁹ Civil society should, of course, participate in any such governing arrangement.

¹¹⁰ This is a more general problem. At a recent (December 13th, 2006, Lima) conference on mining in Peru, organised by the national Consortium for Economic and Social Research (CIES), Javier Torres of SER noted that one area that merited much more research was the effect of mining on local judicial institutions. His sense was that these were being weakened, and become partisan, in mine affected areas.

Chapter 11

Conclusions and ways forward

General conclusions

Whether the Rio Blanco Project goes ahead or not, and how it goes ahead will go a long way in determining the nature of regional development in Piura for the next several decades

11.1 Tucked away in a thousand hectares of cloud forest of North-eastern Peru, and hugging the Ecuadorian border, the Rio Blanco Project has over the last four years become perhaps the most emblematic and significant mining conflict in Peru.¹¹¹ While conflicts over Yanacocha (which have claimed more lives than in Majaz) attract more media and high level government attention, they do so because of the financial importance of Yanacocha, not because these conflicts are going to have any significant influence on the nature of mining and regional development in the future - in that regard the most important decisions have already been taken in Cajamarca. This is not the case in Piura. *Whether* the Rio Blanco Project goes ahead or not, and *how* it goes ahead will go a long way in determining the nature of regional development in Piura for the next several decades. *Whether* the Rio Blanco Project goes ahead or not will have significant influence on how far and how rapidly MEM and the mining sector can open a new frontier of expansion in the North of Peru. One of the most important lessons of this Delegation is that the significance of the Rio Blanco Project is much more than the mine that the company hopes to develop on Henry's Hill, and which will be the subject of the Environmental Impact Assessment (EIA) to be submitted in early 2007. Indeed, Monterrico Metals itself has presented this project to investors as much more than Henry's Hill, a "project not only of a single opportunity but [one which] has the makings of a mining district" (Dorman, 2006). Such a mining district would have impacts that go far beyond those discussed for the Henry's Hill project, and if this district and other concessions adjacent to the site (though not owned by Monterrico Metals or Majaz) are indeed taken to project, this district would affect watersheds running to the Pacific as well as the Atlantic, and many more human settlements than those influenced by Henry's Hill.

11.2 The conflicts around the Rio Blanco Project have become emblematic and nationally significant in additional ways. The *Defensoría del Pueblo* has shown progressively greater interest in this conflict - culminating in the issuance of an extended report (*Defensoría del Pueblo*, 2006a) - precisely because it has come to highlight what the *Defensoría* views as chronic deficiencies in the ways in which mineral exploration is governed and regulated in Peru.¹¹² From the *Defensoría's* point of view, these deficiencies systematically undermine legally and constitutionally mandated human and citizenship rights in Peru, and - not accidentally - do so for that group of poor, rural, ethnically distinct Peruvians whose rights are already among the most vulnerable in the country. The *Defensoría* has concluded that, to date, the implementation of the Rio Blanco Project has violated community members' rights to property, their rights to determine the ways in which their property will be used, and their rights to informed participation in decisions about development. The *Defensoría* has concluded that these violations of rights derive from lack of clarity in the regulations and practices of MEM. It has also concluded that, with the information that MEM had in its hands at the time of giving the company the green light to begin large scale exploration (information that had been supplied to it by Minera Majaz), the Ministry would have known that it was violating these human rights. Informally the *Defensoría* has also told the Delegation that the MEM's recent ruling, in which it acknowledges the legality of Minera Majaz's surface rights and absolves the company from having to renew its permission to explore on community owned lands (a permission which expired on November 28th, 2006), was designed to protect the company and so again violates community rights to determine the use of the land that they own. Commenting on this ruling, a legal expert at the *Defensoría* puts it as follows

"The MEM is going against the law. Who will stop it? Legally the owners can make a petition to the Law Courts so that the judge decides whether the company can remain on the lands or not. Unfortunately this route is long and risky in Peru."

“For its part, MEM is trying to evade our report, taking advantage of the fact that the Defensoría del Pueblo has no formal power to sanction.”

“Another legal option is that the interested parties can demand annulment of the permission. But this is another lengthy administrative procedure.”
(pers. com., 10th December, 2006).

The case has therefore become emblematic of profound deficiencies in the Ministry, and of the inability of local populations to do anything about these deficiencies.

11.3 The case has therefore become emblematic of profound deficiencies in the Ministry, and of the inability of local populations to do anything about these deficiencies. It remains to be seen whether, as such, it - and above all the report of the *Defensoría* - will lead to any changes in legislation and practices in MEM. One possibility is that the Ministry will ultimately dismiss the report of the *Defensoría* - indeed, one reading would be that it *has* to do this because it will not want to create a precedent of taking the *Defensoría*'s criticisms into account and thus giving them legitimacy. If it follows this course of action, it is not at all clear what options of redress will remain open to communities. As we have noted, a legal case will be beyond the resources of the communities, and if proceedings were assumed by third parties in Peru these persons and organisations will be open to the criticism of trying to deepen social conflict and stand in the way of national development. The case is therefore emblematic because it highlights how weak the rights of mine affected communities actually are.

11.4 The case is also emblematic not only because it has been violent but also because it demonstrates more than do most other cases (excepting, perhaps, Yanacocha) why it is that mineral development in Peru is so potentially explosive. The Delegation believes it is sociologically naïve to explain the violence that has occurred in Piura as a result of agitation by radical left-wing, environmentalist third parties. Even if these parties are present in Rio Blanco, they are also present in many other locations (including mining locations) in Peru, but not all these locations become violent on the scale that has occurred in Rio Blanco. Instead the case shows - dramatically - how non-violent protest and the democratic process have completely failed local populations. Formal complaints made by the communities of Segunda y Cajas and Yanta, in which they insisted that their assemblies had not given the company permission to be on their land, led to no change or response from either the company or MEM. Municipal development plans appear to have had little effect on either MEM or the Rio Blanco Project. The forces of law and order, and the court system, have defended the interests of the company, but not those of the local population. And the local population has been kept very largely in the dark

about a project that is occurring at the ends of their valleys and which the company itself presents in national and international circles as, potentially, the largest copper mine in Peru and the second largest in Latin America.¹¹³

11.5 Looked at in the cold light of day, then, we are confronted by a situation in which: the Ministry responds to the demands and concerns of the company, not those of the local populations; the Ministry respects the concession rights of the company, but not the surface rights of the communities; the Ministry responds to the company's project plan and not the local governments' development plans; the Ministry ignores complaints submitted by the communities but decides to recognize the company's surface rights; the courts have brought legal action against members of the local population for protesting and damaging property (finding some guilty and placing them on suspended sentence), but the courts have not found anybody guilty for the killings of two peasants; the police has defended the exploration camp, against rural people; and the Ministry, to all intents and purposes, dismisses the findings of the *Defensoría del Pueblo*, arguably the most neutral actor in this whole conflict.

11.6 In a national context which, as Dante Vera of the Grupo Norte commented to this Delegation, is prone to violence, such a context is clearly dangerous. To the Delegation, it is not difficult to see how such a context could ultimately lead local activists and residents to conclude that their options for pursuing their interests were very limited and how the resort to violence seemed to offer their most effective option. The Delegation in no way condones violence (members having themselves lost friends and colleagues to such violence), but we believe that before dismissing it, it is important to understand it. We encountered little effort to understand the violence that has so far occurred in Rio Blanco. This, we contend, is ill-advised anywhere, but above all in the Peruvian context. It was not an accident that mining conflicts became such an effective rallying cry in the recent presidential elections, and the simple fact of Ollanta Humala's failure to win the Presidency and the apparent implosion of his Nationalist movement does not mean that the grievances it mobilized have gone away.¹¹⁴ In Rio Blanco, the structural sources of conflict have not been affected by the company's apology, and - more importantly - the memory of these sources of conflict continues to be very real to very many of the people with whom the Delegation talked. In this sense Rio Blanco is a case of the more general observation of the World Bank (2005) that mining projects must acknowledge that in the local population of mine affected areas "there still exist deep roots of resentment" and "a lack of trust with profound historical roots".

11.7 The Delegation concludes that, unless managed in a way which takes all these sources of grievance into account, and that is determined *above all else*,

to prove that the democratic process works as much for ordinary, poor and indigenous people as it does for a foreign owned mining company, there is a very real danger that the project will elicit further violence and/or the deepening of authoritarian political practices in Huancabamba and Ayabaca. There is certainly a desire for each of these (violence and authoritarianism) among some of the important stakeholders in this conflict - it is vital that the project does not play into their hands. If it fails to be sociologically intelligent in these different ways, then - though it *may* generate economic opportunities - it will fail on all our other criteria of development as laid out in Parts 1 and 7. Empowerment will be compromised, freedoms will be compromised and security will be compromised.

Specific conclusions

11.8 The above presents conclusions related to the fourth charge of the Delegation - i.e. to comment on the broader issues raised by the Rio Blanco Project. Chapters 7 through 9 have presented our conclusions to our three other more specific tasks. Here we reiterate these in brief.

11.9 On our first task, to form a view on the accuracy of interventions made during the debate that occurred at Portcullis House on March 21st, 2006, our conclusion must be that neither company representatives nor the activist view presented were entirely accurate representations of the situation in Rio Blanco.

11.10 The Delegation concludes that as currently designed the actual and potential environmental impacts of the mine will not be as great as suggested by Nicanor Alvarado. If there are impacts on water quality these are more likely to affect water draining to the Amazon basin through Jaén and San Ignacio, having little effect on the quantity or quality of water draining to Piura. For this reason it would seem appropriate that these two provinces of Cajamarca participate in any discussions and decisions on the future of the mine and we note that Majaz September 2006 apology was also directed at these provinces. However, our background in hydrological sciences leads us to the view that we are not convinced that the design of the tailings piles and of arrangements for channelling water under the tailings are as failsafe as the company claims. We note that following the presentation of the draft DFS in December 2006, one of the issues requiring more work relates to the tailings piles.

11.11 Likewise, the impacts on land cover will not be as great as claimed by Alvarado, though impacts on wildlife will be (and likely have already been) more severe because of noise and other disturbance effects.

11.12 At the Portcullis House meeting and subsequently Monterrico and Minera Majaz denied allegations

of support for violence made by Alvarado. Later Minera Majaz accepted that prior to its apology of Sept 2006 conflicts had arisen between staff and the community and that staff associated with these conflicts had been permanently separated from the company. In our opinion it would appear that there had been failure of management in overseeing its staff.

11.13 The Ombudsperson's Office (*Defensoria del Pueblo*, 2006) has issued a report evaluating the evidence that the company did not enjoy legally adequate permission from the communities of Yanta and Segunda y Cajas to be operating on their land. There is also evidence of communities retracting any permission that may have been given by some of their leaders. There is a difference of view on this issue. The Ombudsperson's office (*ibid*, 2006) has concluded that the presence of Minera Majaz on these community lands is not grounded in law. Parts of MEM have the opposite view, as does Minera Majaz itself (as expressed in its announcement of January 22nd, Box 5).

11.14 Finally, the Delegation concludes that Alvarado's presentation in March 2006 was representative of a substantial opinion in the communities to be affected by the project, but not of the totality of that opinion.

11.15 Our second charge was to consider the relationships between the Rio Blanco Project and development processes in the project's area of influence. Our conclusions are that to date the presence of Minera Majaz has not increased economic opportunity, and has been accompanied by increased levels of human insecurity and reduced levels of empowerment. The economic benefits of the exploration process have been limited to occasional employment and a few community projects. If the mine were to go ahead, the main economic benefit would be through the *canon minero* and royalties, each of which could be significant (though we express certain caveats about the revenue that each of these instruments will generate in practice). Employment benefits would be concentrated mostly in the phase of mine construction. How far a mine would have multiplier effects in the local economy will depend greatly on company policy and practice, though ECLAC research in Cajamarca suggests that such effects are limited because of the very nature of the investments and economic activities involved in mining. Minera Majaz's proposed community development programme is not sufficiently elaborated to form a view on its likely economic effects, though as currently constituted it looks little different from other community development programmes in the Andes whose economic performance has been very disappointing (Eguren, 2005).

11.16 The generalized feeling among our interviewees is that, since 2002/3, levels of insecurity, vulnerability and conflict have increased in the region. This is so not only in relations between the company and local

populations but also within this population and within families. There is ample evidence demonstrating this conflict and tension. If a mine project were to go ahead without these tensions being addressed and resolved beforehand, and in the absence of a design allowing constant monitoring and response to emergent tensions, then such a mine project would be accompanied by further human insecurity.

11.17 Since 2002, the capacity of the population to act collectively at a regional level appears to have weakened, the scope for rational and technical public debates on local development appears to have been reduced, and the state has little legitimacy and local acceptance. In all these senses, the exploration process has been accompanied by declines in levels of empowerment. As in the case of insecurity, if empowerment is not planned for in any future mining project, then the Delegation concludes that these trends will continue.

11.18 On balance then, the development effects of Minera Majaz's presence have to date not been positive, and looking to the future - in the current social environment in the area - there is no guarantee that they will become substantially better except for the injection of *canon* and royalty payments.

11.19 Thirdly, the Delegation was asked to consider the effects of the project on environmental quality and security. We have already addressed this in the comments on Alvarado's claims regarding Rio Blanco's environmental impacts. Overall, the environmental impacts of the mine as currently designed may be manageable. We feel, however, that there are two essential pre-requisites if the environmental effects of this single project are to be limited in the ways that the company proposes. First, given that this is such a complex project, the EIA must be conducted to the highest standards (as also recommended at a more general level by the World Bank, 2005). Given that our request to meet the consultants conducting the EIA yielded no fruit we cannot comment on the quality of the design of their work. However, we note with concern the general deficiencies of EIA processes in Peru that were recorded by the World Bank (2005). Second, in order to ensure the adequate implementation of environmental control measures, these would have to be carefully and independently monitored. Current arrangements in Peru neither mandate nor apparently allow such a monitoring arrangement (World Bank, 2005). The recent creation of OSINERGMIN puts at least some distance between post-project monitoring and the MEM but also appears to suffer from potential conflicts of interest in its implementation.

11.20 Our largest environmental concerns about the project relate to its likely knock-on effects. Presentations by the company package the project as part of what is likely to be a far larger mining district; and other concessions are already held in areas adjacent to the project. If the company is correct in suggesting that this will lead to

a far larger mining development in the region, environmental impacts will be considerably greater¹¹⁵ and will in all likelihood risk affecting water quality and quantity draining west into Piura. We cannot assess these likely effects as there is no design against which to assess them. There is reason to believe, however, that they could be real and potentially significant.

11.21 These conclusions on the relationships between Rio Blanco, development and environment suggest that if this project and the mining district of which it is potentially a part (Dorman, 2006) are to have positive effects on well-being, security, economy, environment, state legitimacy and civic life, then there is a great deal of prior work that needs to be done in order to make this possible. This work will require significant investment (of time as much as resources) in rebuilding relationships between Minera Majaz and the population, in building adequate institutional arrangements, and in developing the knowledge base that would allow a careful and strategically planned placement of Rio Blanco within a Piura-wide development and natural resource management strategy.

11.22 The transformations likely to be ushered in by the Rio Blanco Project have the potential to be massive. They should be considered strategically, with calm, with time, and on the basis of much more (and more legitimate) information than currently exists. This is a decision that ought to be taken with care and humility and for which the time cycle, information base and consultation processes of an EIA are quite simply inadequate.

Ways forward

11.23 While it is not within the remit of the Delegation to make recommendations for the future, anticipations of the future are a central part of the current conflict around Majaz. Given this, the report comments on proposals regarding how this future be managed. The emphasis here is on the types of proposal that are currently abroad in this conflict and their relative coherence and on options that might be considered in the future. We categorize these proposals in three main domains.

- a) Proposals regarding how the decision on the future of the Rio Blanco Project should be made
- b) Proposals regarding how to generate the information for making such a decision; and
- c) Proposals regarding how the Project should be governed, if it were to go ahead

Making a decision on the future of Rio Blanco

11.24 The MEM, and Peruvian law, stipulates how decisions on mining projects are taken. In essence, this process requires that the company submit feasibility and environmental impact assessments to the MEM. The MEM then decides to approve these statements, or not

(though it has not yet blocked a project on the basis of its environmental impact assessment). In addition, the law stipulates that in order to use community lands, the company must gain two-thirds community support (as the then CEO of MM also notes in his undated letter to the PSG). While much of the current conflict revolves around the argument that Minera Majaz needed this two-thirds support for the exploration phase, the MEM's response to the *Defensoría del Pueblo* makes clear that this level of support, expressed in a community assembly, is necessary before the exploitation project can go ahead. The Company also recognizes this.¹¹⁶ The assumption is that this two-thirds support would have to come from both the communities of Segunda y Cajas and Yanta. In discussion, however, a senior staff member of Minera Majaz noted that he felt that participation should perhaps be limited to the members of Segunda y Cajas plus two or three other district mayors. Even though the mine would be on Yanta's land, it was so far from human settlement in Yanta that it was not clear to him that Yanta's members should have a say on the future of the mine. More recently the company has argued that the mine site will in fact not be on Yanta's land (a point that other researchers in the area dispute).¹¹⁷

11.25 In essence, then, one set of proposals - from the company - aims to limit to a minimum who should participate in a decision on whether the mine should go ahead. The MEM has a similar line - for this is policy - except that the sense from their response to the Defensoría (dated October 1st 2006) is that Yanta would also have to approve use of their lands with a two-thirds majority.

11.26 The counter proposal, forwarded by the *Frente por el Desarrollo Sostenible de la Frontera Norte del Perú*, argues that this decision should be made through a popular referendum involving a far wider population, drawn from the provinces of Huancabamba, Ayabaca, San Ignacio and Jaén. This proposal draws its inspiration from the case of Tambogrande, also in Piura (and subsequently from those of Esquel in Argentina and San Marcos in Guatemala). The argument underlying this proposal is that the areas that will be affected by a mineral development project go well beyond Segunda y Cajas and Yanta, and also include Jaén and San Ignacio, located downstream of the waters that will drain from the mine site. The challenge facing this proposal is that it is not immediately clear *who* in these four provinces would participate - or put another way, what would be the criteria for defining more specifically who the affected populations are and who should therefore vote in a referendum.

11.27 In between these two proposals - or perhaps more accurately, existing parallel to that of the *Frente* - is the argument that any decision must be consistent with the four provincial governments' already existing land use plans (themselves elaborated through processes

with different degrees of public participation). Given that these plans do not include mining, then - representatives of the local authorities argue - mining should not be allowed within their jurisdictions.

11.28 These proposals draw on different principles to give them legitimacy. The former is grounded in principles of law and forms of representative democracy that give a determining role to central government. The latter is grounded in principles both of direct democracy and forms of representative democracy that give an important role to local government. The argument used to discredit the former option is that it is less democratic and more subject to authoritarian decision making and to capture by alliances between the state, business and elites; the argument used to discredit the latter is that it is not recognized in law, and could be subject to manipulation through campaigning and gerrymandering by any of the actors involved (i.e. through controlling the boundaries of who votes in order to skew results).

11.29 Whatever the case, and while endorsing the narrower, legally prescribed proposal, the Vice-Minister and Minister of MEM noted to the Delegation that if the company is unable to establish a relationship with the population the resulting protest would "mean that mining was not viable" in Rio Blanco. A senior company representative endorsed a similar position - if fifty percent of the population were against the mine, it would not be possible to go ahead he said.

11.30 In the current context of Rio Blanco, there are at least two attractions to a referendum. First, the evidence is not persuasive that there is any further scope for dialogue on the future of the Rio Blanco Project. The polarization among the actors and their unwillingness to try to create spaces for *genuine* dialogue among them was a serious concern among members of this Delegation. Genuine dialogue, we argue, depends on actors coming together to establish networks of trust and listen to each other in order to understand and negotiate their differences within an economy of care (cf. Borneman 2003). Caring about the 'other' by showing a willingness to listen to his/her views opens up a way to promote an ethical approach to mining; one that allows debates on mining to move beyond the impasse in which actors in the Rio Blanco project currently find themselves. Diez (2006), a respected academic anthropologist who also liaised with the work of the Catholic Universities' Centre for Conflict Analysis and Resolution, likewise concludes that none of the actors involved in ostensible efforts at dialogue really wants dialogue - none of them is willing to change their opinions. And indeed, when the Delegation spoke with some of the actors, members of the *Frente* were clear that they could not envisage changing their view that the mine should not go ahead, just as every act of the company shows that it cannot envisage a future that does not involve an operating mine. Forcing more roundtables in such a context will do little more than generate further conflict and frustration.

11.31 The second attraction of a referendum is that it would provide a clear statement on the balance of opinion on the mine that all actors - whether in favour or against the mine - would then have to live with and be bound by. It is probably also the least manipulable way of generating information on community views - for while efforts at manipulation would occur (in exactly the same forms as they do in local and provincial elections), at the point when the X is marked on the ballot, the voter is in isolation, and anonymous.

11.32 And finally, there is perhaps also a Piura wide attraction to a referendum. In a carefully argued and reasoned contribution to the planning needs of Piura's regional government, a team of respected researchers conclude that once and for all Piura needs to know what it thinks about mining, in order to know if and how to include mining as part of a regional development strategy (Dulanto, 2006). They say (p. 10), "we need to establish what the decision of Piura's residents is going to be vis-à-vis metal mining, since the region's future development will be greatly influenced by this, considering that potentially more than 400 thousand hectares are under concession for varying types of mineral." Without resolving whether its residents want or do not want mining, the regional government will never really be clear on how to plan development because the rise of large scale mining would change so many of the parameters on which a regional development strategy would be based (it would influence, for instance, government revenue, demands on government expenditure, water resource management issues, infrastructural demands, and population issues). A referendum on mining not just in Rio Blanco, but in the department, would help clear the air.

Generating an information base upon which to make such a decision and who should participate

11.33 However the decision is made, still pending is the question of who should participate in making it and on what knowledge base the decision would be made. Given the potential scale of the effects (positive and negative) that a mining district centred on Rio Blanco might have, then this participation should be broad and should include not only populations contiguous with the Rio Blanco site, but also others downstream. At a minimum - and given Majaz's and Monterrico Metals' own insistence that the waters draining from the site are those that pass through Jaén and San Ignacio - then populations of these two provinces presumably ought to participate. A case can also be made that those in Moropón might also participate, given that a larger mining district might have implications for their irrigation supplies.

11.34 For such a consultation/referendum to have value, however, people would have to base their voting decisions on what they perceive to be good quality infor-

mation, and arrive at their own reasoned view on the basis of this information (this is, after all, part of what citizenship is). There are two problems here. First, there is a problem of the *quantity* of information available to the local population: we have noted the chronic lack of information in the zone, a problem that also occurs far more widely according to the World Bank (2005). Second there is a problem of the *quality* of information available. In the current situation many social actors express little faith in the quality of information produced by the company. Some are also dubious about the quality of information distributed by activist civil society groups, and certainly both Majaz and the MEM have little faith in information emanating from such sources. The general belief is that different stakeholders produce that information which is congruent with their political position. Under such conditions, it will be difficult that a final decision on the project might be taken on the basis of rational and critical technical debate.

11.35 Ideally independent and credible information would already exist and would have been codified in well researched land use plans and systems of territorial ordering (*ordenamiento territorial*) at local and regional levels. Unfortunately this ordering is not yet in place. Indeed one of the lessons of the Rio Blanco case regards the urgency with which a system of territorial ordering must be completed in Peru so that it can serve as a basis from which to make informed decisions on mining and other projects.

11.36 In the absence of such *ordenamiento territorial* what will be required to produce information of adequate quality and quantity, such that all stakeholders would accept it as a legitimate basis from which to make decisions in an eventual referendum?

11.37 First, is the question of time. It would take time to produce such information - but we have already suggested that given the magnitude of the transformations that might derive from a decision to proceed with Rio Blanco, taking such time seems eminently sensible. Second is the question of who would produce such information. Without getting into specifics, this information would have to be produced by an independent third party. Universities and think tanks - singly or in consortium - that combine skills in socio-economic research, regional development, extractive industries and water resources - would be obvious candidates here. Third is the question of what information would need to be produced. Much of it should consist of careful analysis of the coherence of information and arguments already produced by stakeholders in the conflict. The different stakeholders ought also have the right to suggest a domain in which new information would be valuable. The information generated would have to be produced in a way that was rigorous but also intelligible, participatory and accessible to the local population.

11.38 With the information generated, it would then be important to do intensive explanation and diffusion of this information in the areas affected by the project. This workshop and diffusion work would also have to be the task of this independent party. It would be important that neither the company nor the *Frente de Defensa* participate directly in this process. This would mean returning to the idea that underlay the work of the Centre for Conflict Analysis and Resolution (CARC). This time, however, the diffusion and discussion work would be implemented by a completely independent actor and would be funded independently.

11.39 Having a body of independently generated new information would have value not only for the local population. It would also be valuable for local government, civil society and activist organisations, Minera Majaz, and the MEM. It would force each of these to think more creatively and analytically about what is happening in Rio Blanco, and the relationship between these processes, the region and the country. This seems very important to us for the Delegation had the sense that all actors in this conflict have fixed positions that they rehearse on repeated occasions without reflecting on them and changing them.¹¹⁸ This is understandable - it is part of the dynamic of conflict. However, such fixing on positions, and such resistance to thinking more deeply and more critically, only has the effect of further solidifying the lines of division within the conflict. In one way or another all the actors involved share some responsibility for the continuing stalemate in this conflict.

How should a mineral development project be governed?

11.40 We closed Chapter 10 observing that it is not clear that any of the institutions currently involved in the Rio Blanco Project has the necessary legitimacy to be able to perform the role of implementing, governing, monitoring and regulating a mining and development project, should it go ahead. This, as we noted, is one of the most serious *pasivos sociales* (negative social impacts) of the exploration phase of the Rio Blanco Project.¹¹⁹ In such a context, are there possible governance arrangements that might make the project viable, and engender sufficient trust for the project to proceed without generating a continuing series of new conflicts? We remain agnostic on this and share the view of many of our expert interviewees - both pro and anti mine, and from each of the mining industry, state and civil society - that the last three years and the behaviour of the company (as recognized in its apology) have very possibly undermined the social viability of a mining project in Rio Blanco, for a considerable period of time hence.

11.41 That said, the following closing comments outline ideas on possible elements of governance and monitoring arrangements that might add some viability to the project. The simple message is that for this project to

stand a chance of being viable, it has to be the *very best* mining project in Peru, in terms of transparency, accountability, dialogue and participation. Its room for manoeuvre is very narrow. We first comment on options for governing the relationship between the mining project and the environment. Then we close with a discussion of options for governing the relationship between the mining project, development and democracy.

Governing and monitoring the links between mining and the environment

11.42 A well-designed and executed monitoring plan for water quantity and quality is critical to foster dialogue, consensus, trust, and transparency between the mine and the community. Any monitoring conducted must be conducted in a transparent, publicly available, and inclusive manner, and would need to last for decades. The monitoring plan should have the capacity to adapt to changes in mine operations as the mine grows, closes old operations, and potentially explores new areas. Any monitoring plan must have a formal, independent, external verification programme. We cannot emphasize this point enough.

Any monitoring plan must have a formal, independent, external verification programme. We cannot emphasize this point enough.

11.43 In this section we outline principles that can be used to help design a participatory, cooperative monitoring plan, select appropriate locations, guide sampling frequency at these sites, help determine the analytes to sample, select methods to collect those samples and the methodology of analysis for each analyte.¹²⁰ Importantly, this section also provides a framework for analyzing and interpreting future data.

Successful monitoring plans for mines in Peru

11.44 The monitoring plan that we propose is based on successful models already in place in Peru. Examples that we draw from include monitoring plans designed for Antamina and Yanacocha projects in Peru. In all cases, the monitoring plans were enacted after complaints were formally filed against mining companies by concerned municipalities and citizens in response to perceived contamination problems caused by the mining activities. We differ from those projects in suggesting that the monitoring plans be employed prior and during mining activities, rather than after there have been complaints against the mining companies. We also differ on insisting that these monitoring activities be verified from the outset by independent, external organisations neither linked nor perceived to be linked to mining interests.¹²¹ Initiating a comprehensive monitoring project prior to the operation of the

mine and through the life of the mine into the decommissioning phase of the mine has numerous advantages:

- Baseline information on water quantity and quality before the onset of mining activity provides data on natural conditions
- Comparison of current conditions of water quantity and quality to baseline information provides a quantitative assessment on the contribution of mining activity to current conditions.
- Often, changes in groundwater quality and quantity can be observed in monitoring wells before changes occur in stream water quantity and quality, providing an 'early-warning system' so that remediation activities can be initiated prior to impacts on surface waters and/or down-gradient groundwater aquifers.

Communication plan

11.45 Information on water quantity and quality should be communicated regularly to the public through a comprehensive communication plan.

11.46 A web site that includes a detailed map of the area around the mine should be used as a basis for permanent display of data. The data types displayed should be all the data collected as part of the monitoring plan, along with available historical data. Locations of sampling sites should be linked to raw data and also to graphs and other interpretive products that illustrate water quality and quantity patterns with time. The graphs should also compare the measured concentrations of analytes relative to standards.

Mine closure plans

11.47 Mines remain a source of pollution and contamination for decades to centuries after closure. A mine closure plan is critical to insure that acceptable water quality and quantity are maintained into the foreseeable future. Closure plans developed by Rio Blanco should define objectives, procedures, and possibly long-term, post-mining measures necessary to maintain acceptable water quality and quantity. Many countries require a monetary bond be posted as a contingency to fix problems that occur after the mine has ceased operations and is closed. The mine closure plan should specifically address long-term impacts from tailings piles, waste rock dumps, and open-pits. Often, acidic lakes with high amounts of toxic metals form as abandoned pits fill with water. Mine closure plans should be developed and made public now, well in advance of the actual closure of the mine.¹²²

Monitoring activities

11.48 Monitoring should occur in six separate domains (see Annex 2 for more details):

- a) Climate
- b) Air Quality
- c) Surface Water Quantity
- d) Surface Water Quality
- e) Erosion Control
- f) Groundwater

Governing and monitoring the links between mining, development and democracy

11.49 If establishing a system to monitor the environmental impacts of the project is complex and will require the involvement of actors who are as independent and technically competent as possible, a system for governing the (potential, hoped for) synergies between mining, development and democracy is probably yet more complex. At times, senior staff members of Minera Majaz appear to suggest that the *Defensoría del Pueblo* should play this role (El Comercio/Bristow, 2006). Others suggest (and the Delegation tends to agree) that this would not be appropriate as it would irretrievably weaken the *Defensoría's* position of independence. The *Defensoría's* role is to defend rights, not to mediate or manage social conflict.

11.50 A more general option for monitoring these relationships would be to establish a mining commission (both nationally and for the specific case of Rio Blanco). This would be ultimately independent from government, reflect the diverse interests of stakeholders in mining in Peru (including the state) and operate according to the human rights, democracy and development, with a particular view towards protecting disempowered citizens and the environment. This proposal is one that is already circulating in Peru, and seems a very sensible way forward. Nor would it be an isolated experience. Indeed it would sit alongside currently existing, and recent commissions - such as the National Labour Commission, the National Council on Education and Health, and the Truth and Reconciliation Commission. Each has been created as advisory bodies, with varying levels of independent authority, and composed of members drawn from diverse backgrounds (some with majority state presence, others not). There is much to be learnt from these experiences for imagining how to establish multi-stakeholder mechanisms for governing the mining sector, and specific projects within it.

11.51 An additional option for the monitoring, but not managing, component of this governance arrangement might be to involve all or some members of the consortium involved in the Environmental Industries Transparency Initiative.¹²³ Many of these organizations, and the group as a whole, already have established

Box 6

Independent monitoring and strategic use of natural resource revenues in Chad

One striking example of an attempt at innovative transparency reforms is in Chad. Chad is one of the world's poorest countries and faces a high conflict risk, due to its low income and unequal division of resources: while political and military power is held by tribes from the north, oil and agricultural land is occupied by tribal peoples in the south.

Although oil was found in Chad in the early 1950s, the country only recently attracted sufficient investment to exploit it. Following extensive negotiations with the World Bank, the Chadian government adopted the Petroleum Revenue Management Law of 1999. It specifies that all of the

country's oil revenues must be initially deposited in an offshore escrow account; that the account be annually subjected to an independent audit; that the funds be spent according to a strict formula that allocates 80 percent to education, health care, social services, rural development, infrastructure, and environmental and water resource management; that five percent of the royalties go to local communities in the oil-producing region; and that the revenue-allocation process be supervised by a board that includes both government officials and representatives of labour and human rights NGOs.

This agreement, though innovative and praised by many, has more recently brought another lesson. For if one lesson is that independent mechanisms for revenue management can be arrived at (especially in the presence of a strong third party insisting on this), another lesson

is that their sustained independence has to be constantly monitored and supervised, and that the third party has to remain strong. For in the Chad case, the government has more recently reneged on the arrangements to spend a high proportion of oil revenue on social programmes. The World Bank ultimately gave in to these Chadian demands, and the government began using petroleum revenues for military and other non-developmental spending.

The lesson here is that - as argued also in Annex 3 - arrangements such as these have to be designed for the long term, and those designing have to be determined to sustain them in the long term (albeit with adaptation along the way).

Source: Ross, 2006, Background paper for the World Development Report, 2006

track records in monitoring and insisting on transparency in the declaration and use of revenue generated by mining, and are widely respected. The more general point is that some mechanism would have to be found to promote constant monitoring of, and transparency in, all financial aspects of the project. This mechanism would have to be as independent and technically competent as possible. It is worth noting that such arrangements are possible, even in the most difficult of environments, but that achieving and sustaining them requires constant vigilance and determination (see Box 6).

11.52 It seems to the Delegation that the management of the relationships between mining and development must pass through local and regional government authorities. Otherwise the project would be working against the process of (and legislation for) decentralization that has been ongoing in Peru over the last few years. This requires that Minera Majaz or any other operating company would have to deal with local governments even if they didn't like them. It would also require systematic investment - over many years - in building capacities in local government in order that it becomes better able to plan and foster development and use *canon* resources well.

11.53 Indeed, the Rio Blanco case raises a series of more general challenges to the state. The delegation formed the view that the state has very limited legitimacy

in the project area. Whether in its form as the Ministry of the Interior, the Ministry of Energy and Mines, or the Ministry of Justice and their local manifestations, it is viewed as partisan and often incompetent. All instances of the state need to recognize that mining and mining conflicts are one of the most visible and important ways in which the state makes itself present in rural highland Peru. What happens around mining therefore goes a long way in determining levels of state legitimacy and acceptance in everyday social life. It is not simply the act of occupying space from Lima that will help re-integrate a still post-conflict fractured Peru; it is *how* that space is occupied that matters. This does not mean that the Ministry of Energy and Mines should become a Defensoría del Pueblo, nor that local judges should always find against mining companies and in favour of communities; but it does mean that these entities must make themselves present in ways that show themselves to be more responsive and accessible to citizens than very many people in Rio Blanco currently think that they are. Otherwise the fragile governability of rural Peru will remain fragile for decades to come.

11.54 One of the more serious dangers in the relationship between mining and development in general and in Piura in particular is that the resources which any future mining might generate - from the *canon*, royalties and in the company's own development programme - will not be used strategically. The greatest temptation - to the

company and to elected authorities alike - will be to use such resources to influence voting and support, and dissipate conflict in the short term. This has certainly been a pattern in other mining projects in Peru. While there can be no fail-safe means of avoiding this, the reality of the problem implies: (i) that the use of all resources should be in line with participatively elaborated provincial land use and development plans; ii) that the company should not have any say in resource allocation within the development project it proposes as part of the integrated development model for the Rio Blanco; and (iii) that the use of resources is monitored independently.

11.55 Only if these conditions are met will this be a development project that is also a *democracy deepening* project - or in Sen's terms, a *development* project that is also a *freedom enhancing* project. These two observations would, in turn, mean that the future of development (and mining) in the area would have to be conducted as a function of these land use plans, and that the development project component of Rio Blanco would be implemented by a third party organisation, using resources placed in a foundation over which the company would have no say at all.

11.56 Wise, transparent use of resources generated by any future mine is all the more important in the light of the conclusion of a recent study commissioned by the World Bank and enquiring into the relationships between mineral wealth, equity and conflict. In a wide ranging review of natural resource conflicts worldwide, the study concludes that the three most important factors in reducing and even evading conflict have been: financial transparency (see above); respect for human rights and refusal on the part of companies to bring in military forces; and the conduct of on-going multi-stakeholder dialogue (Ross, 2006). Each of these factors is considerably more important than profit sharing per se in reducing conflict. The lesson for Rio Blanco is that the transfer of the canon and royalties will not, per se, be adequate for ensuring reduced conflict and local development.

The lesson for Rio Blanco is that the transfer of the canon and royalties will not, per se, be adequate for ensuring reduced conflict and local development.

11.57 The other lesson of the study is the importance of on-going dialogue around mineral development. Like Diez (2006), we have noted that dialogue in Rio Blanco seems to have stalled and that there are serious questions about the willingness of all stakeholders to engage in genuine dialogue. It is in that light that a referendum - following the prior generation and dissemination of legitimate information - appears as a way to move forward. However, dialogue cannot be postponed for long. Ross's review demonstrates that such dialogue is critical prior to any mineral development in order to establish agreed upon *ex ante* ground rules regarding the behav-

our of different stakeholders and the use of resources. It is, he concludes, far more difficult to establish these rules after the mine is operating, or after conflicts have emerged. However, initial arrangements may become outmoded as local development priorities change, as the mine identifies new deposits, or as people who were children at the time of initial accords become adults and conclude that earlier accords do not meet their needs. For this reason, dialogue has to be sustained over the complete life cycle of a mineral project, and agreements about resource sharing, resource use and other themes must be subject to revision. In the absence of these conditions, the review concludes that conflict is likely to re-emerge (see Annex 3 for a longer discussion). Indeed, Ross traces armed conflicts in other parts of the world to the disaffections of such young adults who feel that existing arrangements with resource extraction companies do not address their needs. Given that Rio Blanco is characterized by five of the six 'structural risk factors' that Ross (2006) identifies as most associated with the emergence of violent conflict around mineral extraction,¹²⁵ attending to these needs for transparency and sustained dialogue is particularly critical.

11.58 While environmental monitoring can be done in the light of internationally recognized environmental and water quality standards, the same cannot be said for the monitoring of social, political and economic impacts. While monitoring could and should be done in accord with indicators such as the UNDP's human development index and other established indicators for human and civil rights, it should above all be done in accord with indicators and objectives elaborated through the provincial, participative development planning processes envisaged above. Above all, neither MEM nor the company should have *any* say at all in determining the indicators and objectives against which the development and democracy effects of mining would be monitored. Only then is there a hope that the development catalyzed through resources generated from mining could ensure, as Monterrico Metals' (nd) own documents say it ought: "that the poor and extremely poor are principal actors in the solution of their needs and wants."

neither MEM nor the company should have any say at all in determining the indicators and objectives against which the development and democracy effects of mining would be monitored

¹¹¹ This since the Tambogrande conflict came to an end.

¹¹² Findings which resonate with those of the World Bank, 2005.

¹¹³ See also La Ventana Indiscreta (2006).

¹¹⁴ It merits note that during campaigning prior to the first

round of voting in the presidential elections, Alan García of APRA was also critical of mining company behaviour, and indeed argued that the future of the Rio Blanco Project should be determined locally. When on October 6th, 2006 Monterrico Metals noted to investors that Alan García (by then President) had stated his support for the project, it was not noted that this had not been his position six months beforehand.

¹¹⁵ One of the difficulties of evaluating the effects of environmental stress is that effects are non-linearly related to the stress: that is, for low level stress the environment might accommodate but at higher levels critical points might occur and very large damaging effects emerge suddenly. Thus environmental effects might well not scale linearly in going from a single mine to a mining district.

¹¹⁶ See the CEO's undated letter to the Peru Support Group and, with fewer specifics, Andrew Bristow's interview in *El Comercio*, Peru's main newspaper (*El Comercio/Bristow*, 2006).

¹¹⁷ These researchers - Cesar Astuhuaman and Raul Zevallos - have been critical of the mine project. Both are completing doctorates at present, and before Astuhuaman held a position directing archaeological projects in the North of Peru for the government's National Institute of Culture.

¹¹⁸ Some of the notable exceptions here might be the Defensoria, where one notes careful, analytical efforts to get a handle on these dynamics, CIPCA Piura and one or another researcher.

¹¹⁹ It might be argued that to the extent that this is so, it is because of the local social and political context, and not because of the mine. We doubt this interpretation, and even if it were the case, it can legitimately be argued that the mine should have understood this context before entering, in order to avoid any further weakening of democracy. If the situation has worsened the mine was the catalyst.

¹²⁰ It is taken as given that the monitoring would be 'best practice' and thus would need to upgrade in line with changes in international best practice in instrumentation and techniques (always ensuring data comparability of course).

¹²¹ This is a lesson from Yanacocha where monitoring and roundtable activities linked to the CAO of the IFC were - however technically competent they may have been - identified by various local actors as associated with an organisation that was, in the final instance, a part owner of the mine. This greatly reduced their credibility and their ability to defuse conflict.

¹²² Mine closure plans also need to take into account how to maintain the infrastructure once the mining company has gone and support and maintain employment/ job opportunities once the mine closes.

¹²³ The EITI involves: Cooperación - Acción Solidaria para el Desarrollo; Oxfam America; Centro Labor - Asociación Civil Centro de Cultura Popular Labor; CEDEP - Grupo Propuesta Ciudadana; CBC - Centro de Estudios Regionales Andinos "Bartolomé de las Casas"; CIPCA - Centro de Investigación y Promoción del Campesinado; Asociación Civil Labor - Ilo; Grupo Andes - Grupo para la Promoción del Desarrollo de los Andes; INNOVAPUCP - Pontificia Universidad Católica del Perú - Centro de Consultoría y Servicios Integrados; Care Peru; Forum Solidaridad Peru; PROETICA Consejo Nacional Para La Etica Publica; CAD - Ciudadanos Al Dia.

¹²⁴ Ross (2006) identifies the following as structural risk factors - that is, conditions of those regions affected by mineral extraction that turn violent and conflictive: poverty; mountainous terrain; location in national peripheries; prior regional identity; absence and weakness of democratic institutions; and unlootable, deep shaft minerals

Part III Annexes

Annex 1

Bibliography (selective)

Amanzo, J., Acosta, R., Aguilar, C., Eckhardt, K., Baldeón, S. and Pequeño, T. 2003 *Evaluación biológica rápida del Santuario Nacional Tabaconas-Namballe y zonas aledañas*. Informe WWF-OPP: QM 91. Lima: WWF/INRENA

Apel, K 1996 *De la hacienda a la comunidad: la sierra de Piura 1934-1990*. Lima. IEP.

Arias, L.A. 2006 "Revenue management from a municipal perspective: *Issues and Challenges*. Presentation and handout prepared for International Finance Corporation seminar on *Extractive Industries in Latin America: business opportunities and challenges*, Lima, November 3rd, 2006.

BBC, 2006 "Los 10 lugares más contaminados" BBC World 19th October 2006

Borneman, J. 2003 'Why Reconciliation? A Response to Critics.' *Public Culture* 15(1): 199-208

Brack Egg, A. 2006 "Proyecto Río Blanco. Preocupación ambiental y conciliación" *La Buena Tierra*. Documentary shown on national television on October 8th, 2006.

Bridge, G. 2005 Mapping the Bonanza: Geographies of Mining Investment in an Era of Neoliberal Reform *The Professional Geographer*, 56(3) 2004, pages 406-421

Bury, Jeffrey. 2004 Livelihoods in transition: transnational gold mining operations and local change in Cajamarca, Peru. *Geographic Journal* 170(1): pp. 78-91.

Camino, A. 2006 "Intentando una innovación institucional para promover una cultura de desarrollo sostenible en el contexto de la minería." In *Industrias Extractivas. Transparencia y Desarrollo Sostenible*. Grupo Propuesta Ciudadana, Revenue Watch y Vigilia Perú (eds.). Propuesta Ciudadana. Lima.

Carney, Diana ed. 1998 *Sustainable rural livelihoods*. What contribution can we make? London. Department for International Development.

Chambers, Robert. 1987 *Sustainable livelihoods, envi-*

ronment and development. Putting poor rural people first. Discussion Paper 240. Brighton. Institute of Development Studies.

Chambers, Robert and Conway, Gordon. 1992 *Sustainable rural livelihoods: practical concepts for the 21st century*. IDS Discussion Paper 296. Brighton: Institute of Development Studies.

Christian Aid, 2007 *A rich seam: who benefits from rising commodity prices?* London, Christian Aid

Chronic Poverty Research Centre 2005 *Chronic Poverty Report 2004-05*. London and Manchester. CPRC.

Cooperación, 2006 *Informe de conflictos mineros: los casos de Majaz, Las Bambas, Tintaya y La Oroya*. Lima. Cooperación.

Correa, H. 2006 Personal Communication, Piura, October 5th, 2006

Correa, H. 2006a "Piura, actividad económica, desarrollo y ambiente" Presentation to Escuela de Postgrado, Universidad Nacional de Piura, Piura.

CVR, 2004 *Hatun Willanakuy*. Lima. Comisión de la Verdad y Reconciliación

De Echave, J. 2006 Personal communication to Delegation. October 2006, Lima.

De La Cadena, M. 1995 "Women Are More 'Indian'," in *Ethnicity Markets and Migration in the Andes: At the Crossroads of History and Anthropology*. Edited by B. Larson, O. Harris, and E. Tandeter. Durham: Duke University.

Defensoría del Pueblo, 2006 *Oficio No. 0178-2006-DP/ASPMA*. Lima. Defensoría del Pueblo.

Defensoría del Pueblo, 2006a *Informe No. 001 - 2006/ASPMA-MA*. Lima. Defensoría del Pueblo.

Del Pino, P. 1998 'Family, Culture and 'Revolution': Everyday Life with Sendero Luminoso. In *Shining and*

- Other Paths: War and Society in Peru, 1980-1995.* Edited by S. Stern. Durham: Duke University Press.
- DfID, 2006 *Eliminating World Poverty: Making Governance Work for the Poor.* White Paper on International Development. London. Department for International Development.
- Diez, A. 2006 (forthcoming) "Ronderos y Alcaldes en el conflicto minero de Rio Blanco en Piura, Perú" in J. Bengoa (ed.) *Movimientos sociales y desarrollo territorial rural en América Latina.* Santiago. Editorial Catalonia.
- Dirven, M. 2006 "Acción conjunta en los clusters: entre la teoría y los estudios de caso." Unidad de Desarrollo Agrícola, División de Desarrollo Productivo y Empresarial, CEPAL. Santiago.
- Dorman, M. 2006 "The Rio Blanco Copper Project." Presentation to the Mining Journal's 20:20 Investor Series Copper Day, October 6th, 2006. The Lincoln Centre, London, UK.
- Dulanto, G., Oliden, J., Correa, H., Revesz, B. and Abramonte, M. 2006 *Aportes para el Gobierno Regional 2007-2010, Region Piura.* Piura and Lima. CIES/CIPCA
- Eager, C. 2006 "Chief Executive's Statement" May 15th, 2006 as part of Monterrico Metals announcement of "Preliminary Results for the year ended 31 December 2005" www.londonstockexchange.com viewed on May 31st, 2006.
- El Comercio 2005 "Juniors con ambiciones" *El Comercio, Día 1*, September 12th, 2005
- El Comercio/Bristow 2006 "Majaz, no seremos otro Tambogrande." *El Comercio* accessed from El Comercio website on November 7th, 2006 (interview given in September 2006).
- El Comercio/del Castillo 2007 "El gobierno ha serenado un país que estaba convulsionado." *El Comercio*, 14 de enero, 2007, p. 2.
- El Comercio/Padilla 2006 "Nos anticiparemos a los conflictos" *El Comercio* accessed from El Comercio website on November 7th, 2006.
- El Tiempo 2007 " Permisos presentados por minera majaz no son válidos -aludidos en comunicado oficial " *El Tiempo* January 23rd, 2007, page 6.
- Financial Times, 2006 "Roof caves in for mining groups in Peru" *Financial Times*, August 31 2006
- Foncodes, 2006 *Nuevo mapa de pobreza.* Lima.
- García, Alan. 2005 *Sierra Exportadora: Empleo, Modernidad y Justicia en los Andes.* Lima.
- Gorriti, G. 2004 Yanacocha: el campo y la mina *Ideele* 166: 12-25
- Guarango, 2006 *Tambogrande. Mangos, Murder, Mining.* A documentary produced by Ernesto Caballos and Stephanie Boyd. Lima. Guarango.
- IEE, Ospina, P., Larrea, C., Arboleda, M., Santillana, A. 2006 *En Las Fisuras del Poder. Movimiento Indígena, Cambio Social y Gobiernos Locales.* Quito: Instituto de Estudios Ecuatorianos.
- La República 2007 "Majaz actuó con ilegalidad" *La Republica* January 17th, 2007, p. 12
- La Torre Alvarado, Ricardo 2006 *Huancabamba. Monografía actualizada.* Huancabamba. Prensa Graf EIRL.
- Long, N. and Roberts, B. (eds.) 1984 *Miners, peasants and entrepreneurs. Regional development in the central highlands of Peru.* Cambridge. Cambridge University Press.
- Long, N. and Roberts, B. (eds.) 1978 *Peasant Cooperation and Capitalist Expansion in central Peru.* Austin. University of Texas Press.
- MEM, 2006 *Informe No 018-2006-MEM-AAM/JBA.* Lima. Ministry of Energy and Mines.
- Monterrico Metals, nd *Proyecto Rio Blanco. Modelo Integral de Desarrollo.* Lima. Monterrico Metals.
- Monterrico Metals, 2005 *Annual Report, 2005.* London. Monterrico Metals.
- Paredes, D.C., P. 2006 "Elecciones: Fiesta Democrática o Lucha de Poder?" <http://www.ser.org.pe/noticias/noticias.php?op=MuestraNoticiaCompleta&id=218&mes=11&ano=2006&band=0> accessed on November 22nd, 2006.
- Poole, D. 1994 "Introduction: Anthropological Perspectives on Violence and Culture- a View from the Peruvian High Provinces," in *Unruly Order: Violence, Power and Cultural Identity in the High Provinces of Southern Peru.* Edited by D. Poole. Boulder, Colorado; Oxford: Westview Press.
- Propuesta Ciudadana, 2006 *Vigilancia de las Industrias Extractivas. Reporte Nacional No. 4, Peru 2006.* Lima. Propuesta Ciudadana.
- PSG 2005 *Mining in Peru.* Update Extra, Bulletin of the Peru Support Group. London. Peru Support Group.
- Portugal Menodoza, C. 2005 *Gobernanza En El Acceso*

De La Actividad Minera A Los Recursos Naturales Locales: El Caso Tambogrande. Grupo Chorlavi. Santiago.

Revesz, B. and A. Diez 2006 "El triángulo sin cúpula (o los actores desregulados en los conflictos mineros)" pp. 49-88 in E. Toche. (ed.), *Perú Hoy, nuevos rostros en la escena nacional.* Desco. Lima.

Ross, M. 2006 *Mineral Wealth, Conflict, and Equitable Development.* Background paper for the World Development Report, 2006. Washington D.C. World Bank.

Semana Económica 2005 "Habrá Solución? Reflexiones alrededor del conflicto de Minera Majaz." *Semana Económica*, 11 September, 2005, p. 26

Sen, A. 1999 *Development as Freedom.* New York. Anchor Books.

Starn, O. 1999 *Nightwatch: the politics of protest in the Andes.* Durham. Duke University Press.

Starn, O., C. I. Degregori, P. Del Pino, and J. Coronel. 1996. (eds.) *Rondas Campesinas Y La Derrota De Sendero Luminoso.* Lima: IEP.

Távora, J.I. 2006 "La regulación del poder del mercado y la transición a la democracia." pp. 211-236 in J. Crabtree (ed.) *Construir instituciones: democracia, desarrollo y desigualdad en el Perú desde 1980.* Lima. PUCP/Universidad del Pacífico/IEP.

Taylor, L. 1998 'Counter-Insurgency Strategy: The PCP-Sendero Luminoso and the Civil War in Peru, 1980-1996.' *Bulletin of Latin American Research* 17:35-58.

La Ventana Indiscreta 2006 Report on Majaz. Lima. 30th November, 2006

World Bank, 2006 *Equity and Development. World Development Report 2006.* Washington. World Bank.

World Bank, 2005 *Riqueza y Sostenibilidad: Dimensiones Sociales y Ambientales de la Minería en el Perú.* Lima, World Bank - Unidad de Gestión del País-Perú, Desarrollo Ambiental y Social Sostenible, Región Latinoamérica y El Caribe.

World Bank, 2000 *Attacking Poverty. World Development Report 2000/2001.* Washington. World Bank.

Annex 2

Detailed suggestions on environmental monitoring options

Monitoring should occur in six separate domains:

- Climate
- Air Quality
- Surface Water Quantity
- Surface Water Quality
- Erosion Control
- Groundwater

Climate

Weather affects all mining operations. Rainfall potentially transports contaminants from the mining site to down-gradient farms and towns. Wind may transport contaminated aerosols over many kilometres to downwind sites. Climate stations should be located at the mine site and at several down-gradient and downwind sites of interest. Instruments need to be located in areas that are not influenced by structures (houses), vegetation, etc. A good manual of on-site requirements is provided by the National Atmospheric Deposition Program at <http://nadp.sws.uiuc.edu/QA/>. Ideally this information would be collected in real time and posted on a web site. An example is at <http://culter.colorado.edu/exec/met-page/albmetpage.cgi>.

Recommended instrumentation includes: (1) continuous precipitation collector (Belfort is a popular supplier) for total rainfall; (2) tipping bucket precipitation collector for storm magnitude; (3) shielded air temperature; (4) shielded relative humidity; (5) wind speed; (6) wind direction. Instruments should sample about every second and means recorded and reported at 10 or 15 minute intervals.

Air quality

Mining activities have the potential to perturb air quality in the surrounding area. Open-pit mining generates large amounts of dust for several reasons: removal of protective vegetative cover, disturbance by mining equipment, milling of ore into small-diameter particles that are easily transported by wind, etc.

Impacts on air quality from the Rio Blanco Project are of

concern for several reasons. First, deposition of dust and other aerosols generated by mining activities on coffee plants may cause local producers of organic coffee to lose their certification. Certified organic coffee is the major cash export for surrounding communities. Loss of the organic certification would cause economic harm.

Secondly, the Rio Blanco Project proposes to extract minerals using the froth-flotation process. This process involves extensive use of xylol as a frothing agent. Little is known about the health effects of xylol. What is known is that xylol is easily volatilized. Inhalation of xylol may cause cough, dizziness, headache. It can be re-absorbed through the skin, causing a burning sensation. Ingestion is often accompanied by abdominal pain, nausea, vomiting, diarrhoea, dizziness, headache, and finally shock or collapse. Finely dispersed particles of xylol form explosive mixtures in air. Release of xylol into the environment has an unknown potential to affect downwind ecosystems, farming activities, and human health.

Recommended instrumentation includes: (1) PM-10 monitor; (2) monitoring of lead, arsenic and/or other toxic metals of interests in dryfall; and (3) xylol or a surrogate for xylol or its decomposition products.

Water quantity

The primary objective of the water quantity study is to quantify potential effects of the mine operations and facilities on surface water flow and flow from springs. A second reason is to collect information to model water flow through and over the tailing piles and waste rock piles. Specific parameters that should be measured or estimated include:

- a) Discharge (flow from springs and in rivers)
- b) Precipitation (rainfall)
- c) Evapotranspiration (ET)
- d) Infiltration (rainfall that soaks into the ground)
- e) Overland (surface) flow (water that runs off the surface of the land)

Hydrologic models (there are many) are a good way to

integrate these measurements, estimate hard-to-measure parameters such as ET, and evaluate groundwater discharges to streams and springs (particularly in the dry season when there is less rainfall).

Recommended instrumentation and sites. Discharge should be measured continuously at the most important sites. These should include at least the streams draining the valleys where tailings and waste rock will be stored and the Rio Blanco river below the mine site. Discharge is usually measured in constructed features such as weirs and flumes. A less expensive method for continuous measurements of discharge is pressure transducers that are placed on the stream bottom. In both methods a stage-discharge relationship needs to be developed for the specific locations using manual measurements of flow. More distributed measurements of discharge should be made manually about monthly at all sites of concern. Springs that may be affected by mining operations need to be identified and sampled. Infiltration rates to the subsurface are estimated by collecting soil cores and testing them to learn how the soils in the study area store water and how water moves through them. These samples should be tested for (1) organic content; (2) moisture retention properties (e.g., how much water a soil can hold before water flows freely from the soil); and (3) permeability (how well the soil transmits water). Soil cores should be collected periodically from the tailings pile and the same measurements conducted to understand how much water may be infiltrating the tailings pile and also flowing over the surface of the tailings pile.

Water quality

The water quality investigation should be designed to determine whether mining activities have changed the quality of water in streams and canals that flow from the Rio Blanco mining area such that the water may be unsafe for domestic and agricultural (livestock and irrigation) uses or aquatic life. Questions about the safety of water use for drinking and cooking, skin contact, agricultural use, and as aquatic habitat, can only be answered by comparing the chemicals (analytes) in sampled water to water quality standards.

Water quality standards. We recommend standards established by the World Health Organisation (WHO), the U.S. Environmental Protection Agency (EPA), and Environment Canada. We recommend the WHO, U.S. EPA, and Environment Canada standards because they all incorporate toxicological data on human health risks and risks to biota, and they all are set to be protective of human health or the health of other biota. It is worth noting that the Peru Water Law standards have little or no documentation regarding derivation or application. Unlike other water standards that we recommend, the Peru Water Law drinking water and aquatic life standards do not appear to establish maximum acceptable concentrations for health or safety. Instead, for example,

the drinking water standards refer to the treatment required to make the water potable. For aquatic life, the Peruvian standards do not provide information on interpreting those standards, and many of the standards are not useable without guidance. The water quality standards that we recommend have been used at Yanacocha and other mining areas in Peru.

Sampling locations and frequency. Water quality should be measured at all locations where water quantity is measured. Water quality should be measured daily to weekly in all surface waters that drain the mine site, including the streams that drain the valleys where the tailings and waste rock will be stored, any surface flow from processing facilities, water treatment facilities (e.g. pumping of groundwater from the open-pit, sewage plant), and the Rio Blanco river below the mine site. Water samples should be collected monthly to quarterly at sites that may be at risk from mining activities. These distributed sites should number at least 40. It is essential to sample springs down-gradient from the mine site.

Potential analytes. There are numerous chemicals (analytes) that water can be sampled for. Here we provide some suggestions for analytes. However, these suggestions are not comprehensive and may need to be modified for the Rio Blanco mine. We recommend measuring the following analytes on all water samples: (1) Alkalinity, pH, and specific conductance on unfiltered water samples. (2) Major cations (calcium, magnesium, sodium, and potassium), anions (chloride, sulphate), and reactive silicon (Si) on filtered samples. (3) Total (unfiltered) and dissolved (filtered) metals, including antimony, arsenic, barium, beryllium, boron, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium, silver, thallium, zinc. Fecal coliform is a common water quality analyte. We recommend not including fecal coliform in normal water sampling because: (a) it is not generated by mining activity; and (b) processing and handling requirements are much more difficult and time-consuming than for the other analytes.

An aquatic assessment should be conducted at the same sites. Sampling frequency should be reduced to quarterly from daily to weekly sites and reduced to annually at monthly to quarterly sites. The primary organisms of interest are fishes, amphibians and benthic invertebrates (insects on the bed of the stream). Basic information should include population sizes, species composition, and species diversity. Sub-samples should be analyzed for toxic metal content.

Baseline water quality. Baseline conditions are the water quality conditions that exist in streams, lakes, and springs in the absence of the Rio Blanco mine. The natural quality of water is affected by the chemical composition and chemical and physical weathering of bedrock and soils. As mentioned earlier, in areas where rocks are highly altered and naturally mineralized, such as in the Rio Blanco area, chemical weathering can produce

water with naturally elevated concentrations of metals and naturally low pH, called acid rock drainage. It is essential to collect information on baseline water quality to define the range of natural variability in waters draining the mine site. Collection of baseline information provides the ability to separate water quality problems caused by mining activity from natural processes. Baseline samples should be collected at the sites identified above *before* mining activity starts. Control streams in nearby watersheds with no mining activity should also be monitored throughout and after the mining activities to establish baseline conditions during the mining operations. Analytes and sampling frequency should be the same as above.

Erosion control and sediment management

Construction of roads, pits, leach pads, and processing facilities involves moving topsoil and subsoil, which are stockpiled for future use in reclamation. Disturbed areas, stockpiles of soil, tailings piles, and waste rock piles at the mine are all highly susceptible to erosion and are potential sources of runoff and sediment loading to surface waters. At Yanacocha, they observed that unfiltered water samples were high in metals and that metals were low in filtered water samples. Those results showed that erosion of sediments from the mine transported toxic metals to surface waters.

Recommended measurements for water samples: (1) total dissolved solids; (2) turbidity; (3) total metals; (4) total organic carbon; (5) oil and grease. Sampling frequency and location should be the same as for water quality above.

Groundwater

Mine facilities such as waste rock dumps and heap leach pads can reduce the amount of groundwater recharge and degrade water quality. Groundwater discharge is often an important contributor to stream flow, with the relative portion of groundwater contribution to stream flow often changing seasonally. In some situations, changes in groundwater quantity and quality can be observed before changes in stream water quality and quantity. Monitoring of groundwater quantity and/or quality can be an indicator of possible future conditions in surface waters and springs, as illustrated by Antamina mining operations. We are particularly concerned that the open-pit will fill with acidic groundwater that will need to be pumped away from the mining operations.

Recommendation: it is important to install groundwater monitoring wells and to monitor water levels and water quality within the wells as an indicator of possible future conditions of water quantity and quality down gradient from the wells. Monitoring wells for water quantity should be numerous enough and spatially distributed so as to

calculate groundwater velocities and discharge to down-gradient areas. Groundwater wells should be installed in down-gradient areas where water quantity or quality may potentially be changed by mining activities. Only a subset of wells need to be sampled for water quality, which are more expensive to install. Water quality analytes should be the same as for surface waters.

Annex 3

On the importance of continued multi-stakeholder dialogue over the life of a natural resource extraction project

Pouring money into a disaffected region, and offering high levels of transparency, may not be enough to avoid conflict; it is certainly not enough to create equitable development. A credible, ongoing dialogue among stakeholders can also help.

One reason that dialogues might be useful is that they may encourage local communities to forge *ex ante* guidelines for dividing up the rents that will flow to their region. When such agreements are in place, it can reduce the chance that one group or another will eventually feel disadvantaged. Once a cycle of violence and retribution begins, it can be extraordinarily difficult to stop. This makes *ex ante* agreements, and working dialogues, valuable.

A second reason is that local communities care about many other aspects of mineral development besides rents, including environmental pollution, the loss or degradation of their lands, the absence of jobs, and the social and economic consequences of migration to their region. Typically these concerns are far easier, and cheaper, to address before mineral development begins than after it is underway.

A dialogue should not end with a comprehensive agreement, however; it is equally important to have an ongoing forum for resolving problems as they arrive. Mineral-based development always creates problems that local communities cannot anticipate, particularly if the area is poor and isolated. In the Indonesian state of West Papua, for example, Freeport McMoran crafted a 1974 agreement with the indigenous Amungme peoples - a preliterate culture - that offered them schools, clinics, and markets in exchange for mining rights. Yet within several years, local peoples were engaged in violent confrontations with Freeport: despite placing their thumbprints on the contract, they were wholly unprepared for the consequences of mineral development, which transformed the landscape and raised the local population more than one hundred-fold. A credible, ongoing multi-stakeholder dialogue - instead of a "once and for all" pact, in which one side was grievously uninformed - might have given communities a constructive way to address these issues as they arise.

Well-crafted agreements can also become outdated over the course of a mining project, due to generational changes among local peoples. Between 1968 and 1988, Papua New Guinea's Panguna copper mine - operated by Bougainville Copper Limited [BCL], which was jointly owned by Rio Tinto and the Papuan government - brought major disruptions to the lives of the people of Bougainville. The mine was located in a region that was unusually poor and remote even by Papuan standards: many locals had had little prior contact with the cash economy. The mine's social, economic, and environmental impact was pronounced and the company provided compensation payments to locals for land it leased or damaged. It also made substantial efforts to contribute to the Bougainville economy: it instituted training and scholarship programs, which by 1980 produced a workforce that was eighty percent Papuan and thirty percent Bougainvillean; and it helped establish a wide range of local business ventures, some of which proved successful [Wesley-Smith and Ogan 1992]. The development of the mine also led to the construction of roads, expanded access to education and health, and a sharp rise in the cash economy. By the late 1980s, BCL stated that the Panguna operation directly or indirectly provided incomes to 30,000 of Bougainville's 150,000 people [Carruthers 1990].

Yet community support - or at least, acquiescence - to the project ultimately deteriorated as provisions in the original contract became outdated. When the original lease was signed in 1967, BCL agreed to a compensation package for local landowners; it was later revised many times in favour of the landowners, the local community, and the regional government. By the late 1980s, this arrangement had come under attack by a new generation of Bougainvilleans, who claimed it was unfair for two reasons. First, only primary landholders received BCL compensation, while those who held subsidiary rights - a common practice under traditional tenure systems - received little or nothing [Wesley-Smith and Ogan, 1992]. Second, there were now intergenerational problems: the money for land compensation went to 850 primary landholders and family heads, but their children - who had come of age during the mining lease - had less direct access to these funds. Since many of the island's traditional cultures had strong egalitarian norms, even

small degrees of inequality provoked strong reactions.

After several years of non-violent disputes over these issues, a small group of frustrated young men formed the Bougainville Revolutionary Army in late 1988 and launched a series of attacks on BCL property. By May 1989 they had forced the Panguna mine to close. The ensuing conflict lasted until 1997 and may have claimed over 10,000 lives.

Some mining firms have used dialogues to find innovative ways to head off conflicts. In the Las Cristinas area in southern Venezuela, Placer Dome has allocated part of its concession to local, artesian miners, and helped train them in mining techniques and business management. In the Philippines, WMC has helped indigenous communities gain official recognition from the government, so they can obtain royalty payments and legal protection for their ancestral lands.

Source: This is a direct quotation from Ross, 2006, a background paper prepared for the World Bank's *World Development Report 2006*.

Annex 4

Team member bio-sketches

Anthony Bebbington

I am a Professor of Nature, Society and Development in the School of Environment and Development at the University of Manchester. My main research interests are rural development, poverty reduction and the interaction between livelihoods and environment in Latin America, with a particular interest in the Andean countries. I have also been particularly interested in the roles that civil society organisations play in development and democratisation. I have approached the relationships between rural development, civil society and poverty reduction while working for quite different types of organisation: the academy, think tanks, and the World Bank. My research interest in mining comes from my larger concerns for rural development and was sparked by the work of several of my PhD and Master's students. This research is currently supported by an Economic and Social Research Council Professorial Fellowship ((RES-051-27-0191).

Michael Connarty

I am a politician who has served as an elected Member for twenty-nine years. For 13 of those years I served on a District Council which was responsible for deciding on outline and detailed land use planning applications. I also served on the executive of the Convention of Scottish Local Authorities which was the body which made recommendations on such matters to the government.

My elected position as a Member of the UK Parliament since 1992, representing a constituency (Linlithgow and East Falkirk) containing the petro-chemical and chemical industry at Grangemouth has given me continuous experience of conflicts arising from potentially damaging industry and adjacent communities. My work as Secretary of the British Offshore Oil and Gas Industry (All Party) Group and Secretary of the All Party Group for the Nuclear Industry has hopefully added to my relevant experience. As Chair of the All Party Group for Peru, I was pleased to participate in the Delegation.

Wendy Coxshall

I was invited to participate in this independent commission on mining in Peru based on the Rio Blanco project for the following reasons: I am British, an anthropologist, and had conducted ethnographic research in Peru. As an anthropologist my knowledge and skills complemented those of the other four delegates. My role in this commission was to focus on 'social conflicts'. My understanding of the Rio Blanco mining project is informed both by my experiences during the 8-day

visit to Peru as a member of this Delegation and also by my research on political violence and contemporary reconstruction and reconciliation processes in Peru. My own research and the recent investigations carried out by the Peruvian Truth and Reconciliation Commission on political violence in Peru have insights on governance, the promotion of democratic consolidation, and (re)conciliation processes among actors involved in mining and development in Peru.

Hugh O'Shaughnessy

I am a journalist and have devoted most of my working life to visiting and writing about Latin America and the Caribbean, principally with *The Financial Times* (1960-1985) and *The Observer* (1970-1995). I have also written for a number of other media including *The Economist*, BBC Radio, BBC Television and *The Irish Times*. I have written various books including "Latin Americans" (BBC Books), "Grenada: Revolution, Invasion and Aftermath" (Hamish Hamilton, London and Dodd Mead, New York) and "Pinochet: the Politics of Torture" (Latin America Bureau, London and New York University Press) and have received awards for my work in Britain and the United States.

Mark Williams

I am a Fellow of the Institute of Arctic and Alpine Research and a Professor of Geography at the University of Colorado. I am also the Principal Investigator for the Niwot Ridge Long Term Ecological Research sites, a high altitude site within of a network of US National Science Foundation funded sites studying multi-decadal ecological, hydrological and climatological dynamics. My main research interests are the processes that determine the hydrochemistry and biogeochemistry of mountain watersheds, which includes developing new techniques to determine source waters and hydrologic pathways and residence time in mountain watersheds, and applying these insights to acid mine drainage and remediation situations. Acid mine drainage and other problems related to mining activities are particularly problematic in mountain areas. High-elevation mining sites are often characterized by thin soils, steep gradients, and fracture flow where monitoring wells and Darcy's Law provide only limited help in understanding how contamination may flow through hydrologic systems. I have extensive experience working on mine-related activities in mountain catchments with the US Environmental Protection Agency. The commission asked me to contribute my scientific and applied knowledge to this problem.

Annex 5

People and organisations consulted during the delegation and in the course of report preparation

This list does not contain those interviewees who requested anonymity, those interviewed in the course of other research, nor most of the email consultations that team members used.

- Javier Aroca, Coordinator of Extractive Industries Programme, Oxfam America, Peru
- Nicanor Alvarado Carasco, Vicariate for the Environment, Jaen
- Karin Apel, Ibis-Peru, Director and researcher in Piura
- Andrew Bristow, Minera Majaz, Operational Manager, Rio Blanco
- Marlene Castillo, Piura Vida y Agro
- Ricardo Castillo, Radio Cutivalú, Piura
- Luis Chiroque Farfan, Social team for the Diocese of Chulucanas, Coordinator
- Humberto Correa, Universidad Nacional de Piura, and advisor to the Regional Government of Piura
- Alejandro Diez, Professor of Anthropology, Catholic University of Peru
- Guillermo Dulanto Rishing, Universidad de Piura, Head of the Research Department, and now Head of Economic Development, Regional Government of Piura
- Jose de Echave, Cooperación, Director
- Maria Eugenia Fernán, Defensora del Pueblo-Callao, formerly Defensora in Piura
- Santiago Fujimori, Member of Peruvian Congress and Chair of Congressional Committee on Mining and Energy
- Oscar Guzmán, Minera Majaz, Member of Social Development Team
- Javier Jahncke, Fundación EcuMénica para el Desarrollo y la Paz, FEDEPAZ
- Jose Luis Lopez Follegatti, Labor, and Chair of Grupo de Dialogo Minero
- Beatriz Merino, Defensora del Pueblo
- Carlos Monge, Propuesta Ciudadana
- Virginia Montoya, Minera Majaz, Head of social programme
- Catherine Nettleton, British Ambassador to Peru
- Alicia Obanto, Defensoría del Pueblo
- Julio Oliden Milla, CIPCA, Piura
- Rosario Padilla, Vice-Minister, Ministry of Energy and Mines
- Richard Ralph, Monterrico Metals, CEO and Chair of Board
- Father Bruno Revesz, CIPCA, Piura
- Marcival Rojas, Minera Majaz, Social programme Manager
- Fernando Romero, Oxfam GB-Peru
- Martin Scurrah, formerly Director, South America Programme, Oxfam America
- Bishop Daniel Turley of Chulucanas
- Juan Valdivia, Minister, Ministry of Energy and Mines
- Andres Vargas Luna, Piura Vida y Agro and former Senator of Peru
- Vito Verna, Defensoría del Pueblo, Environmental Programme

Group Meetings

- Association of Dairy producers of Huancabamba. Meeting with approximately 8 dairy producers
- CONACAMI. Meeting with community leaders from the Majaz area who were delegates at the CONACAMI Annual Conference. In attendance at the meeting were community members from both Ayabaca and Huancabamba, including the Presidents of the Rondas of Huancabamba and Ayabaca (Pascual Rosales Huamau), a representative of the Young Ecologists of Huancabamba and a representative from Tambogrande from Factor Tierra (although she was asked by others to leave the meeting).
- Cencecio Jiménez Peña (President of Yanta) - Rosa Sebastián Lazo Vicente (Ayabaca)

- Audilio García (Huancabamba)
- Celide Alberca (Head of Female Rondas in Huancabamba)
- El Carmen de la Frontera Community Members. Approx 40 people attended this meeting, including representatives of CEPICAFE, a local organisation of organic coffee producers
 - Participating caserios: Cerro Negro, Pan de Azucar, Corazon Jesus, Habas Pita, Huachun, El Carmen and Morochuco
- El Frente de Desarrollo Sostenible del Norte (The Northern Front for Sustainable Development)
 - Carlos Martinez Solano, President and Mayor of San Ignacio
 - Mayor of Ayabaca
 - Captain of the National Police of San Ignacio
 - Wilson Ibañez, Presidente of the 'Frente' of Huancabamba
 - Mayor of Huancabamba
 - Young ecologists of Huancabamba
 - Augusto Regalado Campana, Lawyer supporting Segunda y Cajas and Yanta communities
 - Presidente of the Frente of Tambogrande
 - Representative from the Tropico Seco Ecological Association
 - VIMA - Father Francisco Miguiro and Nicanor Alvarado Carrasco
- El Grupo de Dialogo Minero (National Discussion group on mining)
 - Chair, Jose Luis Lopez Follegatti
 - Doris Balvín, Canadian Lutheran World Relief
 - Dante Vera, Representative of the 'Grupo Norte', a consortium of mining companies with investments in Cajamarca region
 - Member of La Oroya Health Committee
 - Marival Montoya
 - Ada Barrenechea Martel, Barrenechea and Rosemberg Associates
 - Raul Rojas Vera, Peruvian College of Engineers
 - others
- Huancabamba Parish's team for Justice and Peace
 - Father Esteban, Parish Priest
 - Approximately 15 team members, including the auxiliary priest
- Local Authorities, including:
 - Councillor of Huancabamba
 - Councillor of Chulucanas
 - Mayors of several towns
- The Majaz Support Group. A meeting of approximately 15 persons with representatives from:
 - Red Muqui
 - CONACAMI
 - APRODEH
 - Oxfam GB
 - 11.11.11 Belgium
 - Piura Agro y Vida
 - Vicaria del Medio Ambiente de Jaen (VIMA)
- Defense Front of Huancabamba
- Community of Yanta, President
- FEDEPAZ, Javier Janke
- Cooperacion
- CNDDHH
- Monterrico Metals Social Development Team. A meeting with members of the team, including some noted above.
- Namballe community members
- Pan de Azucar community members. Approx 30 community members attended this meeting, including the President of the Segunda y Cajas Community
- Segunda y Cajas Community members. Approx. 200 community members attended this meeting

Mining and Development in Peru

Published by the Peru Support Group

The Peru Support Group (PSG) was established in 1983 to campaign for and strengthen the rights of Peruvian people - particularly those from the poorest sectors - to become effective actors in the development of their country. The PSG raises awareness in the UK through research and policy analysis, public education and advocacy.

Mining has become the recent focus of our work because it encompasses many of the themes that we have taken up in recent years - poverty rights and people development; promoting democracy and good governance; and corporate responsibility. These were identified by the PSG in 2004 as the most pressing issues in Peru.

The PSG published its first report on mining in 2005 ('Mining and Poverty in Peru'). As the issue of mining became increasingly a flashpoint for conflict in Peru, with the polarisation of the debate over mining, and as it continued to be a large sector in the Peruvian economy, with many UK companies participating, it became clear that there was a role for the PSG to play as a broker and information gatherer.

With the publication of this report we hope to illuminate the many issues at play within the debate over mining, and particularly to look at a proposed UK mining project in the far North of Peru.

The PSG is grateful to the members of the Delegation for freely contributing their time and expertise in the elaboration of this report for the PSG. While each member has contributed particularly in his/her own fields of expertise, and to the report in general, the PSG would particularly like to thank Professor Anthony Bebbington for his time and work in the creation of this report.

The PSG would also like to thank those who sponsor its work and in doing so contributed to covering the expenses for the Delegation in the field and for the publication of the report. The PSG would particularly like to thank CAFOD, Christian Aid, Oxfam GB (Peru Office), Outreach Peru (Worth Abbey) and Progressio. Finally, our thanks to those persons and organisations in Peru who met and assisted the delegation during their visit.

Eric Avebury
President

Tim Thorp
Treasurer

Sophie Paton
Coordinator



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