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# Impacts of Extractive Industries in Latin America

Analysis and Guidelines for Future Work



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## Introduction

CIDSE is a network of 16 Catholic development agencies from Europe and North America, inspired by the social teaching of the Catholic Church to work for social justice and make a preferential option for the poor. CIDSE's approach emphasises the inherent rights and dignity of every human being and works to empower the most vulnerable.

For a number of years CIDSE has been concerned about the way in which extractive industry projects are damaging the poor in Latin America. Rather than benefit from resource wealth, local people living in areas of exploitation have experienced loss of livelihoods, violent conflict, persistent human rights violations and environmental degradation. Women have a particularly heavy burden to bear as they are responsible for ensuring that their families have access to safe water and for caring for family members who become sick.

Representatives of the Catholic Church in Latin America, including individual Bishops, and national and regional Bishop's Conferences, have made the position of the Church clear: natural resources should be managed responsibly for the benefit of all. This vision has become a practical commitment; in addition to enunciating a moral stance, social action branches of the Church throughout the continent have been active in providing support to community groups confronted with the negative consequences of existing or proposed extractive projects.

Drawing on the experiences of these and other groups, this document sets out the vision of CIDSE and its partner organisations in Latin America regarding the prevailing challenges related to extractive industries on the continent. It is based on an ongoing reflection process with partner organisations from Bolivia, Colombia, Ecuador, Guatemala, Honduras and Peru within a project entitled Poverty and Extractives in the Indigenous and Peasant Environment in Latin America (EPLA). EPLA aims to learn from partners' experience of implementing advocacy work related to the impacts of extractive projects, and to strengthen these organisations and their work through exchange, mutual learning, dialogue and the promotion of alliances.

The document is a contribution to CIDSE's growing body of knowledge and publications on extractive industries. This includes a recent submission to the United Nations Special Representative on Business and Human Rights which made recommendations on how to reduce human rights violations in extractive projects; and an appeal made at the 2007 World Social Forum which made recommendations to governments, companies, international financial institutions and the United Nations concerning the impacts of oil, mining and logging on development.<sup>1</sup>

<sup>1</sup> For more information see Recommendations to reduce the risk of human rights violations and improve access to justice. Submission to the UN Special Representative on Business and Human Rights, February 2008; Prospecting for Solutions, Recommendations by members of civil society organisations to governments, companies, IFIs and the UN concerning the impacts of oil, mining and logging on development, January 2007; Transparency A Christian Concern, Catholic Social Teaching and the Case for Transparent and Accountable Practices in Extractive Industries, September 2003. All available on <http://www.cidse.org>

## 1. Extractives, the development model, and the role of the State in Latin America

### 1.1 Natural Resources and the development model in Latin America

The current development model in Latin America promotes and prioritises economic growth above other dimensions of development, notably environmental sustainability, equity, social justice and respect for human rights. The push for accelerated world economic growth has led to increasing demand for and pressure on natural resources such as minerals and other primary materials.<sup>2</sup> As a result, companies have increasingly exerted pressure on States to open up territory to feed the expansion of the world economy. This has put pressure on what are often fragile environments and vulnerable people who share their land with minerals and energy sources.

The exploitation of Latin America's natural resources has a long tradition, back to the time of the conquistadores, and has historically been a source of conflict. Chile, Peru, Bolivia and Argentina have long histories of resource exploitation, particularly of metals and minerals. In Colombia and Ecuador oil extraction has contributed to local conflicts, as has gas extraction in Bolivia. In recent years, mineral extraction has become increasingly important and a source of tension between local communities, extractive companies and governments in Guatemala and Honduras.

Latin America has seen significant growth in foreign investment in extractive industries since the early 1990s.<sup>3</sup> Most of the large mining companies are from North America, particularly Canada, but a number of oil and gas extraction companies currently operating in the region are of European origin.<sup>4</sup> International financial institutions such as the World Bank, the International Monetary Fund and the International Finance Corporation have facilitated export credits and investment guarantees to enable these companies to operate. European banks have also played a significant role in financing mining operations.

Traditionally, right-wing governments have facilitated foreign investment in the extractive sector in Latin America, often to the detriment of the rights of the poor. Over the last decade, however, states with left-wing tendencies including Bolivia, Venezuela, Paraguay, Brazil and Ecuador have sought both to assert more sovereignty and to use the benefits accruing from resource extraction to implement more pro-poor development strategies. Nevertheless, while there are subtle nuances and differences between countries, on the whole the experience of CIDSE partners is that these efforts have not resulted in greater regulation of transnational companies.

#### 1.1.1 The church calls for an alternative development model

In May 2007 the Bishops of Latin America and the Caribbean met for their Fifth General Conference. In their meeting statement the Bishops made reference to the inherent weaknesses in the current development model - including a heavy emphasis on economic growth - and called for a new, alternative model. This model would be based on a different value system which places the human being at the centre of development objectives and would promote equity and social justice; the protection, sustainable use and management of the environment and natural resources; and respect for fundamental human rights.<sup>5</sup>

#### 1.1.2 North-South compensation for the promotion of sustainable development in Latin America

The idea that the Global South should be compensated for environmental and social damage caused by development models imposed by northern countries, companies and institutions such as the International Financial Institutions (IFIs) is captured in the concept of social and ecological debt. A growing movement of people in Latin America is calling for this debt to be acknowledged and paid back.

The Ecuadorian government is using somewhat similar points to argue that the north should pay it to keep the oil underground in the Yasuni national park, whose ecological and cultural importance has been recognised by the UNESCO. The government argues that carbon emissions will be reduced if the oil is not exploited, and that compensation payments could be used for social investment purposes. European parliamentarians could play a role in supporting this initiative by applying pressure on the European Commission and Parliament to support the Ecuadorian government in this proposal.

### 1.2 The role of the State and internal frameworks

The role of the State is to protect and promote the rights of its citizens. However, in many countries in Latin America institutional and legislative frameworks are weak. This can lead to power imbalances between transnational companies and the state institutions where they operate. Consequently deals struck are often far more beneficial to the company than to the country concerned, with regards to income accruing to a country, and also to potential environmental damages and human rights abuses.

With regards to income, extractives projects have the potential to generate additional taxation. But the revenue gained can be considerably reduced by financial incentives - such as extremely low tax rates - which are designed to attract companies in the first place. Meanwhile, legislative frameworks for the protection of the environment and human rights are weak and do not adhere to international standards set out in various international laws and instruments. Even in cases where comprehensive legislation exists, institutions responsible for its implementation are often weak, inefficient and fraught with corruption. This means that existing legislation, whether advanced or deficient, is not properly enforced, making it difficult to ensure that companies are held to account and that the rights of communities are respected. These problems are linked to and exacerbated by inequality, a lack of political will, and weak democratic systems.

<sup>2</sup> It remains to be seen what impact the global financial crisis in late 2008 will have on the demand for raw materials and energy. For example, a reduction in the price of minerals is already causing unemployment in Bolivia's small scale mining centres.

<sup>3</sup> Between 1990-2001, four of the top ten target countries for mining investment in the world were in Latin America: Chile (1st position); Peru (6th); Argentina (9th) and Mexico (10th). Twelve of the largest single investments in mines were also in Latin America; two in Peru; nine in Chile and one in Argentina. See Bridge, G (2004).

<sup>4</sup> 'Mapping the bonanza: Geographies of mining investment in an era of neoliberal reform.' *The Professional Geographer*, 56(3), p 413

### Case Study: Using Judicial Mechanisms to Address Mining Impacts in Colombia

The Cerrejón coal mine in North-Eastern Colombia is owned by a consortium of three mining companies: BHP Billiton, Anglo American and Xstrata. As part of mine expansion, in August 2001 the Afro-Colombian residents of the community of Tabaco were forcibly displaced. The church and other buildings were razed to the ground, and the land incorporated into the mine.

In 2003 a Colombian Lawyer's Association, the Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR) began to provide judicial support to the former residents of Tabaco. CCAJAR provided training on social, economic, cultural and environmental rights, and judicial tools which could be used to claim them. However, it became apparent that awareness of rights, and working to secure them at a national level, are insufficient in a context where the rule of law is extremely weak. CCAJAR then turned to international judicial mechanisms, and in 2007 submitted official complaints to the OECD contact points in Australia, the UK and Switzerland where Cerrejón's owners are headquartered. In response, an international review panel was commissioned to examine the formal complaints. The review panel found that the communities' claims were valid and provided several recommendations with regard to addressing the legacy of Tabaco and current and future issues related to other affected communities.<sup>6</sup>

CCAJAR's support for the community of Tabaco illustrates the difficulties involved in protecting and defending rights in situations where the State and the rule of law are weak. It also illustrates that when internal judicial mechanisms have been exhausted, international mechanisms can be used as a means of exerting pressure on governments and companies to address issues and concerns.

#### 1.2.1 The challenge of strengthened legislative and institutional frameworks

In order for extractive industries to be controlled effectively legal frameworks in line with international human rights and environmental standards must be put in place at national level. In addition, institutional frameworks need to be improved and strengthened. Governments must work with civil society and other domestic partners to strengthen legal frameworks and institutions and support must be provided for these efforts by international donors and relevant international institutions. Mechanisms must also be put in place to monitor the effective application of human rights and environmental laws and instruments. The participation of human rights organisations and civil society organisations in this process must be encouraged and facilitated. Regional level initiatives may be appropriate in some cases.

#### 1.2.2 Future CIDSE support with respect to legislative and judicial processes

A weakness identified by some organisations in the EPLA process was their insufficient knowledge of national and international laws to better defend and advance the rights of poor and vulnerable people affected by extractives projects. In collaboration with partners who do have this expertise, CIDSE will work to strengthen capacity in this area with the aim of promoting civil society coordination on legislative and judicial issues at national, and where possible and necessary, regional and international level.

## 2. Extractives, the environment, and economic and social well-being

### 2.1 The violation of environmental, economic, and social rights

Article 11 of the ICESCR (International Covenant on Economic, Social and Cultural rights) refers to the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. This right has particular reference to women who are more often than not in charge of ensuring adequate living standards for their families. Article 12 refers to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: the right to live in a healthy environment is implicit in this article. Signatory countries to the ICESCR have a responsibility to ensure the fulfilment of these rights. However, they are violated on a persistent basis by mining and other extractive projects in Latin America.

Growth in the mining sector in particular in Latin America has put pressure on fragile ecosystems and on communities who are located in mineral rich land. Environmental and health impacts include: water contaminated with lead, arsenic and other metals; falling water tables due to excessive use by large installations; skin problems, excessive headaches and lead poisoning of the blood; respiratory illnesses caused by excessive dust, and the destruction of vegetation due to acid rain. Mining activities have direct environmental and health impacts for men, women, and children. However, because of gender relations and roles, the burden on women is often heavier due to the fact that they are responsible for water provision for the home and for taking care of their family's health.

Economic impacts include a loss of or damage to livelihoods, including threats to food security, as a result of people being removed from their land (and reduced access to water), often with no or inadequate or tardy compensation. Labour conditions in extractive projects are frequently harsh and violate ILO labour standards. Social consequences include the onset or aggravation of existing social problems such as alcoholism, drug-addiction, delinquency, and prostitution. Companies can create and/or exploit inter-community tensions related to different opinions as to benefits and drawbacks of projects, often by differentiating compensation mechanisms and employment offers. These economic and social consequences also have a strong bearing on mental well-being.

<sup>4</sup> This includes Repsol (Spain), Shell (the Netherlands) and British Petroleum (UK).

<sup>5</sup> See statement from the Fifth General Conference of Bishops from Latin America and the Caribbean, especially Chapters 66; 473 and 474. Available on <http://www.celam.org/Misioncontinental/Documentos/Ingles.pdf>

<sup>6</sup> See Leach, Garry Review Panel Calls on Cerrejón Mine to Collectively Relocate Displaced Communities, available on <http://arsn.ca/arsn12.htm> for more details (accessed 28th November 2008)

### Case Study: Environmental Contamination in La Oroya, Peru

La Oroya is the site of a metallurgical complex in the Peruvian Andes. Residents of La Oroya have been subject to toxic emissions from the plant since it was established in 1922. In 1997, the plant was taken over by the Missouri-based Doe Run Corporation.

In 1999 the Peruvian health ministry (MINSA) found blood lead levels among local children to be dangerously high, averaging 33.6 micrograms/deciliter for children between the ages 6 months to ten years, three times the WHO limit of 10 micrograms/deciliter.<sup>7</sup> Lead poisoning affects the central nervous system, bones, liver and brain. It causes learning difficulties and stunted growth.

For 2006 and 2007 US Environmental think tank the Blacksmith Institute ranked La Oroya in the top ten most contaminated places in the world. In 2007 ground and water tests in the area surrounding the plant found the presence of cadmium, lead, mercury, antimony and arsenic which exceeded international standards. The level of arsenic was 393 times the safe level.<sup>8</sup> According to the Blacksmiths institute, Doe Run has made some investments in the operating plant, but the legacy issues still need to be addressed.<sup>9</sup>

## 2.2 Impact assessments, monitoring, and the protection of zones rich in biodiversity

Governments have the responsibility to ensure that independent environmental, social and human rights impact assessments are carried out prior to the commencement of any extractive activity and that the results of these studies are published at an early stage and in a form that is accessible and comprehensive to local populations. During the extractive process, governments should carry out on-going monitoring of environmental and health impacts and ensure that the company complies with national and international standards and norms. Monitoring must also extend to post-mine closure given that the impacts of mineral contamination are long-lasting.

In most cases companies are responsible for drawing up their own Environmental Management Plan. It is the responsibility of national governments to ensure that these plans adhere to international standards, that they are implemented in a timely manner, and that their provisions regarding environmental protection are binding.

For impact assessments to be scientifically valid, correct and appropriate, environmental and health data must be available prior to the commencement of the extractive activity so that pre-, during, and post- activity comparisons can be made. It is the responsibility of relevant government entities to ensure that this data is available.

The protection of zones which are especially rich in biodiversity safeguards both the environment and the rights of people living in these areas, often indigenous people. The Ecuadorian government's proposal not to exploit oil in an area rich in biodiversity merits support, as long as mechanisms are put in place to ensure that any compensation paid is invested responsibly as promised.

International financial institutions which have provided export credits or other financing to extractive companies have a role to play in ensuring that these companies adhere to international mechanisms relating to human rights, the environment and labour rights, including the OECD guidelines for multinational enterprise,<sup>10</sup> the ILO Core Labour Standards<sup>11</sup> and the Extractive Industries Transparency Initiative<sup>12</sup> reporting criteria. Northern governments where parent companies are located also have a role to play in this.

### 2.2.1 The absence of impact assessments and monitoring: opportunities for civil society

Given that ex-ante studies are absent in most cases and genuine monitoring of impact is neglected at all stages of the extractive process, community groups and organizations supporting them have carried out their own studies in order to hold companies to account for environmental and health impacts and force governments to take action in defence of their interests. In the La Oroya case, CEAS, the Peruvian Bishop's Social Action Programme, worked with staff from the University of Saint Louis in the USA, who provided technical support for the water contamination impact assessment, both in gathering samples and analysing the results. This is a good example of forming alliances at different levels with different actors in order to better protect the rights of vulnerable communities.

## 2.3. Environmental rights as human rights

Historically, human rights have tended to be understood in the context of political and civil rights, and organizations working for the promotion and protection of human rights also focused their work on this area. However, in today's context, and particularly with the pressing challenges of climate change, there is a need for increased recognition of environmental rights as human rights and increased attention paid to the protection and defence of these rights.

<sup>7</sup> See 'The World's Worst Polluted Places, The Top Ten of the Dirty Thirty. A Project of the Blacksmith Institute, September 2007 available on <http://www.blacksmithinstitute.org/wwpp2007/finalReport2007.pdf> Accessed on 4th Nov 2008

<sup>8</sup> Statistics from Comisión Episcopal de Acción Social (CEAS), Iglesia, Salud Pública y Gestión Ambiental: La experiencia de La Oroya y la Cuenca del Mantaro, April 2008

<sup>9</sup> Ibid.

<sup>10</sup> See <http://www.oecd.org>

<sup>11</sup> See <http://www.ilo.org>

<sup>12</sup> See <http://www.eitransparency.org>

### 3. Free, prior and informed consent and roundtable discussions

Indigenous peoples have a traditional, spiritual connection to land which can make the impact of extractive projects particularly devastating to their culture and way of life, in addition to the violation of other rights (environmental, health and well-being as outlined in the previous section). Often this holistic understanding of indigenous communities is neither understood nor respected by companies undertaking extractive projects, which presents particular challenges in dealing with their potential or actual negative impacts.

The particular needs and rights of indigenous people are addressed in ILO Convention 169 on Indigenous and Tribal Peoples which recognises 'The right of indigenous peoples to participate through their traditional organisations in all government decisions affecting them.' This Convention has been ratified by all of the countries addressed in this report, and means that communities have a legal right to take part in decision-making on extractive projects.

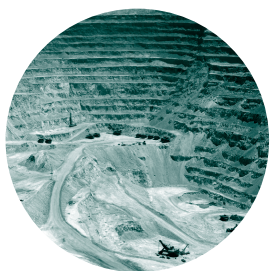
The World Bank addressed this issue in its 2003 report on Extractive Industries.<sup>13</sup> This report recommended that mining projects should go ahead only if indigenous communities who had sufficient information about any particular project agreed without undue pressure or interference from companies - *free, prior and informed consent*. This principle was also to be applied to other communities directly affected by mining. However, under pressure from the mining industry and governments, the wording of the World Bank recommendation was changed from *consent to consultation*. Nevertheless, the right to free, prior and informed consent is also affirmed in Article 32 of the UN Declaration on the Rights of Indigenous Peoples.

#### Case Study: Community Consultation in Guatemala

In June 2005 the people of Sipakapa undertook an historical community consultation process in which 95% of those voting rejected the expansion of mining activities into their region.<sup>14</sup> In 2003, the Guatemalan State had awarded the Canadian company Glamis Gold<sup>15</sup> a large concession to undertake mining activities. The mining project was funded by the World Bank. In violation of ILO Convention 169, the local community was not consulted in any meaningful way regarding the awarding of the concession, nor the commencement of mining activities. In response, Sipakapa residents set up their own consultation process, which adhered to national and international law, and was undertaken with the permission of municipal authorities. The process was well-organised and voluntary. The result was an emphatic 'No!' to mining activities in the Sipakapa region.

In 2007 Guatemala's Constitutional Court ruled that consultation processes are legal, but not binding. Nevertheless, the Sipakapa consultation process is significant for a number of reasons:

1. It was the first time that a Guatemalan indigenous community stood up to both the Guatemalan State and the World Bank in rejecting a mining project on their land.
2. It was an empowering process: the indigenous population learned that it is both legal and legitimate for them to defend their rights. According to the Guatemalan Peace & Ecological Pastoral Commission (COPAE) which accompanied the community throughout the process, nothing can happen now at the municipal level without prior consultation. Local authorities learned that there is a need to respect human rights and democratic decision-making.
3. It has become a tool which has been used by community groups to defend their rights in another 20 municipalities in four different regional departments.
4. Even though not legally binding, community groups continue to use this tool. It is seen as a way for communities to draw attention to their objections to decisions the State makes on their behalf. It is also a means for indigenous groups to recapture and strengthen the exchange of ideas and discussions which has always been a part of indigenous decision-making processes.



<sup>13</sup> See Striking a Better Balance, The World Bank Group and Extractive Industries, Volume 1, December 2003, p21 cited in Unearth Justice, Counting the Cost of Gold, CAFOD, 2006, p27

<sup>14</sup> 2,564 people took part in the Consultation. 2,448 of these said 'No' to mining; 35 said 'Yes'; 5 votes were void, 1 was blank, 35 people decided not to give an opinion.

<sup>15</sup> Glamis Gold subsequently became Goldcorp.

### 3.1 The need for binding conclusions

The issue of extractive companies obtaining consent, or a social licence to operate is highly contentious. Community consultations which have taken place in relation to projects in Guatemala, Peru and Honduras have all concluded that their social and environmental costs are too high. However, the results of these consultations have not been binding.

Thus, the challenge remains to ensure that the results of community consultations are respected. In some cases this will mean ensuring that existing law is implemented while in others it requires changes to be made to national law. International bodies which finance extractive projects must take the results of community consultations into account in decision making about funding of projects, and the World Bank should enforce the implementation of the original recommendations in its Extractives Industries report.

### 3.2 Roundtable discussions

Roundtable discussions between representatives from extractive industries, civil society and government bodies have taken place in countries which host extractive operations and in home countries. These have the potential to improve understanding and relations between the different actors. According to the *Asociación Servicio Educativos Rurales* (SER) this was the case with a dialogue process which they helped to establish between different stakeholders at Yanacocha in Peru, the site of Latin America's largest gold mine. Discussions took place over a year-long period between 2005-2006, and some concrete progress was made in designing a local development plan for the Cajamarca area, and in participatory environmental monitoring, even though the dialogue process eventually broke down.

Roundtable discussions can also serve to establish mechanisms to ensure compliance of national and international human rights and environmental standards.

#### Case Study: Canadian Roundtables on Corporate Social Responsibility

In 2005, Canada's all party Standing Committee on Foreign Affairs and International Trade recommended that Canada should introduce accountability mechanisms for Canadian extractive companies in their overseas operations. In response, the government launched the National Roundtables on CSR in June of 2006, holding public open forums in five cities across Canada, and closed door sessions with an Advisory Group made up of the industry, civil society, experts and the government. After several months of deliberations, in which the goal was to produce a series of consensus recommendations for Canadian companies to improve their CSR performance in their overseas operations, the Advisory Group published its landmark report in March 2007. The report contained 27 recommendations, including the establishment of a Canadian standard based on international human rights principles for Canadian companies' overseas operations and an ombudsperson to verify allegations of failure to comply with the standard. The ombudsperson would investigate complaints and report back to a tripartite Compliance Review Committee, made up of the extractives industry, civil society and the government. This committee could make recommendations on how to resolve the case, and could recommend, in the worst cases, that Canadian political and financial support be withdrawn from the offending company. Such a consensus between civil society organized in the Canadian Network on Corporate Accountability, and the extractives industry was unprecedented.

To date, December 2008, there has been no official response from the government to the report, despite the fact that at the G8 in Germany in June 2007, Prime Minister Stephen Harper announced that adoption of the recommendations would "place Canada among the most active G8 countries in advancing international guidelines and principles on Corporate Social Responsibility" in the extractive sector. UN Secretary General Special Representative on Human Rights, Transnational Corporations and Other Business Enterprises, John Ruggie, has also applauded the Roundtables as a process of "deliberative democracy".

While it is clear that some progressive sectors in the extractives industry and the Canadian government want to see the recommendations of the report implemented, it has been opposed by a hard-line sector within the industry, which most probably explains the government's lack of response thus far.

### 3.3 Future CIDSE support with respect to community consultations

Community groups and organizations working with them need support in understanding the principles behind processes of consultation, the judicial implications, legitimacy concerns, the timing and methodology for carrying out the process and identification of potential allies. These may or may not include regional and municipal governments. However, where local level governments are supportive of the communities and share their concerns about the potential impact of extractive projects, consultation processes are likely to be easier to organise and have greater legitimacy for national level government entities and actors. A specific outcome of the EPLA process has been the identification of the need for a manual of guidelines on community consultations as a support tool for communities, organizations and other local actors interested in carrying out such a process. CIDSE and partners who have experience in this field will work together to produce this manual.

## 4. The criminalisation of social protest

### 4.1 The violation of civil and political rights

In recent years, partner organisations of CIDSE members have suffered the consequences of an increasing tendency to criminalise protests or objections to large-scale extractive projects. This tendency reflects a growing weakness of the current development model. Dominant economic and social actors who benefit from this model are feeling increased threat to the status quo and now see coercive means as the only means of maintaining it and protecting their interests.

State bodies and extractive companies use a variety of means to criminalise protest, starting with the approval and application of new laws which make social protest more difficult, and the subsequent use of these laws to justify the use of military force. The interception of information from emails and other communications, the intimidation and threatening of social leaders, NGOs and human rights defenders and the infiltration of community groups as a means of provoking violence (and a violent response), are other strategies used. Private security firms often have a role to play in implementing these different strategies. The media is also an influential force, and has the potential to delegitimise social protest and provoke a violent response to it; or, on the other hand, to bear witness to human rights violations and encourage support for legitimate struggles.

#### Case Study: ‘Terror’ in Rural Ecuador

In November 2007 the community of Dayuma blocked a road as a means of pressurising the government to address their concerns about an adjacent oil installation. These concerns included the need for safe drinking water, and for environmental damage caused by the oil installation to be addressed. As a result of the road blockage some of the oil wells shut down temporarily and oil production reduced. A state of emergency was declared and the President ordered the armed forces to capture those responsible for the protest.

At 8 in the morning on November 30th an armed contingent broke into houses in Dayuma, throwing tear gas inside and breaking down windows and doors. 26 men were forcibly removed and were subsequently beaten and tortured before being taken to jail and accused of organised terrorism. It subsequently emerged that these men had not even taken part in the road blockage. The Dayuma case became a national scandal. A Commission was set up to investigate what happened and the subsequent report publically apologised for the excesses committed during the men’s detention.

Throughout the Dayuma and other similar cases the Ecuadorian NGO Acción Ecológica provided accompaniment to the communities concerned. They publicised what was happening and provided moral support. They also lobbied members of the National Assembly for an amnesty for all those who had been criminalised for defending nature and the rights of their communities. In March 2008 an amnesty was declared. Meanwhile the communities concerns regarding water provision and environmental damage remain unaddressed.

Internationally recognised rights violated as a result of this increasingly repressive trend include the right to freedom of opinion and expression under Article 19 of the ICCPR (International Covenant on Civil and Political rights) and the right to liberty and security of person under Article 9 of the ICCPR.

CIDSE reaffirms the political, civil, legal and ethical right of communities to protest against extractive projects which are considered damaging to their economic, social, environmental, and cultural rights as enshrined in international law. The trend towards the criminalisation of social protest needs to be recognised by international institutions which have mechanisms in place to protect rights and by processes set up to monitor business conduct. The former would include the UN through its Universal Periodic Review of human rights in different countries, and the EU when it evaluates the use and impact of its Guidelines on the Protection of Human Rights Defenders.<sup>16</sup> The latter would include the work of the UN Secretary General’s Special Representative on Human Rights, Transnational Corporations and Other Business Enterprises, John Ruggie. The criminalization of social protest and related human rights violations should also be placed on the agenda for dialogue between the European Union and Latin American states at future EU-Latin American Summits.

#### 4.2 Community and civil society response

Community organisations and NGOs within the EPLA process have developed a number of strategies to respond to the criminalisation of social protest. One of the most effective responses has been to work in alliance with other organisations, at a national and international level. Such alliances can serve many purposes. Firstly, there is strength in numbers and working in alliance can reduce the risk or danger faced by any one organisation. Secondly, organisations have different competencies and strengths which complement each other. In Guatemala, for example, a human rights organisation has been providing specific legal advice and investigative capacity to an environmental organisation. Thirdly, complementarity between local, national and international efforts can have greater impact in bringing about change. International organisations can support local and national efforts by raising awareness and mobilising support at international level. Their role may include lobbying northern governments of countries where companies are headquartered to ensure that companies adhere to international laws and standards, as well as lobbying the companies themselves in order to minimise the threat of, or actual violations.

Given the influential role of the media, it is important that it uses its influence to maximize support for legitimate struggles and the protection and promotion of human rights. Consequently, it is important for community groups and organizations supporting them to identify actual and potential allies within the media and work with them to garner support for their struggle and to minimize the damage caused by “unfriendly” media.

#### 4.3 Future CIDSE support to secure the right to protest

The EPLA process has identified the need to increase and strengthen relationships between actors at the local, national and international levels in order to better protect the rights of communities, social leaders, organizations, and human rights defenders. Alert networks can be an important tool to facilitate the speedy transmission of information at different levels regarding threats and violations so that supportive action can be taken quickly. CIDSE will work both to ensure that the human rights of those who wish to protest extractive developments are protected, and to ensure that efficient alert networks are in place.

<sup>16</sup> For a copy of the EU Guidelines for the Protection of Human Rights Defenders in Spanish see <http://consilium.europa.eu/uedocs/cmsUpload/web10056re01.es04.pdf>

## Conclusions

This document has highlighted that the exploitation of natural resources has had grave economic, social, and environmental consequences in Latin America, including the violation of human rights enshrined in international law.

Partner organisations participating in the EPLA project have identified a number of key concerns:

- A worrying number of cases where extractive projects have caused and continue to cause severe environmental damage and damage to the health of surrounding communities.
- The lack of meaningful consultation with communities who share their land with mineral or other natural resources, and the absence of binding mechanisms to ensure that communities' wishes are respected.
- An increasing tendency to criminalise opposition to extractive projects.
- Organisations' insufficient knowledge of national and international laws and mechanisms to better defend and advance the rights of poor and vulnerable people affected by extractives projects.

Case studies have been used to illustrate the depth of the problems and how communities are responding to them. Strategies employed include the use of national and international judicial mechanisms to protect communities' rights; communities taking control of consultation processes; roundtable discussions in host and home countries of extractive industries, and working in alliance with organisations with complementary skills at the local, regional, national and international level. Common to all these strategies is a close working relationship and mutual respect between the communities concerned and NGOs providing support.

This document has also set out CIDSE's vision regarding these concerns and has indicated a number of areas where the international community including IFIs, the UN and EU, extractive companies and governments in the north and south have a responsibility to act.

In particular, it is of primary importance that these institutions assume their pertinent responsibilities regarding the respect for international instruments protecting civil and political, environmental, economic and social rights. In the area of civil and political rights, the increasing tendency to criminalise social protest should be recognised by international institutions with mechanisms in place to protect rights and by processes set up to monitor business conduct. The results of community consultations regarding extractive projects should be respected, and bodies which finance projects should take these results into account in decision-making regarding funding. In the area of environmental, economic and social rights, legal frameworks in line with international human rights and environmental standards must be put in place, and institutional frameworks need to be improved and strengthened. In some cases, support will be needed in order for this to happen effectively. This may require additional finance from international donors, and will need willingness on the part of national governments to work with the international community, civil society organisations and other domestic partners to support the process. Such frameworks should include provision for independent environmental, social and human rights impact assessments prior to the commencement of any extractive activity, the results of which should be made available in a comprehensible format to local populations.

CIDSE members will continue to play a role in ensuring that these changes happen. This will include developing a lobbying strategy to ensure that human rights are on the agenda of dialogue between the European Union and Latin America; continuing to monitor how international institutions, extractive companies and governments in the north and south assume their pertinent responsibilities regarding the protection and respect of rights; producing a manual regarding community consultations in collaboration with partners and providing support so that civil society organisations have knowledge of national and international laws which can be used to defend and advance the rights of those affected by extractive projects.

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