

Unearthing the truth

Mining in Peru



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Executive summary

Peru implemented a series of reforms in the 1990s aimed at attracting foreign investment in the mineral sector. It was thought that increased mineral investment would stimulate economic and social development. The reforms had the initial desired effect: mineral investment increased. However, this came at the expense of campesino¹ land rights and the environment.

Claims by the mining industry and international financial institutions (IFIs), such as the World Bank, that mining investment would contribute to sustainable development in Peru, have not been borne out. In fact, poor people and their environments have suffered, while companies have seen profits rise.

Using case studies and legal, economic and environmental data and analysis, this report shows that the questionable benefits increased mining has delivered to the Peruvian economy in the last decade or so cannot justify the suffering it has inflicted on poor communities. It calls on the Peruvian government and the international community to rethink their approach to foreign investment, and to develop regulations that ensure that poor people benefit from industrial development where it takes place.

Chapter 1 documents the legal reforms undertaken by the Peruvian government to attract foreign capital. In **Chapter 2** we assess both the costs and benefits of the mining expansion. The analysis reveals that the deregulation of mining in Peru has mainly benefited the private sector and to a lesser extent the state. The high environmental and social costs have been borne by campesino communities, whose livelihoods have been jeopardised.

Chapters 3, 4 and 5 are case studies. The Tintaya copper mine discussed in **Chapter 3** has displaced communities that have lived in the area for generations. Left without their land or with contaminated water, air and soil, many people with whom Christian Aid spoke felt they were poorer today than 20 years ago, when the mine was built. The chapter focuses particularly on discussions between the local community and the company. Although such dialogue has had some positive results, it has also shown that the need for effective regulation of mining companies is more pressing than ever.

A smelter in La Oroya, along with a number of surrounding mines, has been operational for 80 years and is the subject of **Chapter 4**. This brief study links environmental pollution to devastating effects on health – especially that of children – and to economic decline among farmers in the area. It argues that minimum standards applied in the home countries of foreign companies are not adhered to when these companies operate abroad.

In Tambogrande, the subject of **Chapter 5**, a referendum saw an astonishing 94 per cent of people reject a proposed mining development. Only two per cent voted for it. Weighing up the questionable benefits and the certain costs, they have chosen a more sustainable path to development through agriculture. The study discusses why and shows that the present regulatory regime fails to protect the interests of poor communities, especially their right to withhold consent from certain forms of development. The study also illustrates, however, that organised community action can prevail.

In **Chapter 6** we look at what needs to happen if investment in mining is going to produce real benefits for the people of Peru. At the very least, pollution and human rights abuses must be prevented or punished. Local communities are organising themselves to confront the threat to their livelihoods because of the state's failure to act in their interests. The situation in Peru

therefore provides a strong case for international regulation that binds transnational companies and mandates sanctions if breached. Furthermore, the trend towards deregulation to attract foreign direct investment should be reversed, and countries should be encouraged to apply sensible conditions to foreign investment in a climate of transparency and stability.

1. Is Peruvian mining law helping poor people?

Peru is a mining country. Its territory is one of the most important mineral-producing areas in the world, possessing significant deposits of silver, tin, gold, copper, zinc, lead and iron. Smaller quantities of other metals, such as tungsten, bismuth and arsenic, are also present. Mining has historically been a pillar of the Peruvian economy and it remains a priority today. Mineral exports² make up more than half of all Peruvian exports and the mining sector accounts for six per cent of the country's gross national product (GNP). Fifteen per cent of foreign direct investment is in mining.³

In the 1990s Peru found itself in the middle of a debt crisis, owing almost US\$34 billion at its height in 1996.⁴ (In 2003, external debt repayments still consumed a quarter of Peru's budget.)⁵ It desperately needed to attract foreign exchange to meet its repayments. With help from the World Bank, Alberto Fujimori's government began to implement a series of reforms whose primary objective was to liberalise the Peruvian economy and attract international investment by creating stable and profitable investment conditions.⁶ According to a paper written for the US Geological Survey:

The promotion of domestic and foreign private investment in Peru via the privatization of Government-owned firms and the formation of joint ventures started off at a vigorous pace in 1991 and has continued, although at a slower pace. Foreign investors viewed Peru as an attractive Latin American open-market economy because the State guarantees property ownership, investments, free remittance of profits, and capital repatriation and provides equal treatment with national investors; the Peruvian Government also slashed subsidies and tariffs, freed foreign exchange and interest rates, liberalized international investment rules, simplified the tax code, established concessions for construction and operation of public infrastructure (telecommunications, roads, ports, and airports), and embarked on fiscal austerity and investment in social development and agriculture.⁷

Mining was heavily promoted as one of several productive sectors in which Peru supposedly enjoys a comparative advantage. The government clearly stated its intention to increase private investment in mining and explore the national territory more extensively.⁸

Unfortunately, while some of these reforms helped to create transparency and stability, and others sought to protect the environment, their overall effect was to shift the legal balance away from protecting vulnerable communities and promoting sustainable development, in favour of private sector interests.

In 1992 the General Mining Law was revised, firmly establishing a new role for mining in the Peruvian economy.⁹ Legal provisions that were formerly dispersed among various regulations governing areas such as taxation, labour and the environment became centralised to create transparency and administrative efficiency regarding corporate obligations. Virtually all regulatory functions that had been held by other ministries became the responsibility of the Ministry of Energy and Mines, concentrating regulatory control. Environmental authorities, for instance, now exercise very little influence over the mineral sector. Peru has no Department of the Environment.

In 1993, the Peruvian Constitution was amended to provide the legal foundation for these reforms.¹⁰ The updated Constitution promotes free competition and private property ownership, and provides investors with a number of extra guarantees. This chapter looks at some of the reforms of the 1990s and shows how the regulatory balance was shifted away from protecting the rights of poor people towards protecting the investments of large companies.

Investment

The 1991 Privatisation Law allowed private investors to become active in sectors that were formerly reserved for the state.¹¹ The Peruvian government has privatised 220 state-owned corporations since the privatisation programme began, netting US\$10.5 billion, about 17 per cent of Peru's GDP.¹² Ninety per cent of the government's mining assets were privatised.¹³ According to a 2002 poll by Latinobarómetro, a regional polling organisation, less than a third of Peruvians think privatisation has been beneficial.¹⁴

The 1991 Law to Promote Investment in the Mineral Sector declares mining to be of 'general interest' to the country and grants the sector a number of benefits. These include transparent administrative regimes; beneficial tax and currency-exchange regimes; the freedom to repatriate earnings; and unhindered access to foreign currency.¹⁵

The 1991 Regimen of Legal Stability for Foreign Investment prohibits discrimination against foreign investors, and eliminates many restrictions on property ownership by foreigners.¹⁶ The law also permits companies to enter into agreements with the government to allow fixed taxation rates and unlimited access to foreign currency.

Taxation

As part of the policy changes to promote investment in mining, the tax burden on the mining sector was reduced.¹⁷ The tax reforms included eliminating a number of taxes and adopting net earnings as the basis of taxation.

Under the new regime, mining companies may also enter into agreements with the Peruvian government that guarantee fixed taxation rates. These agreements are negotiated for periods of ten to 15 years, ensuring that the company is exempt from rises in taxation rates during that period. Companies can also benefit from tax breaks for earnings that are reinvested or that are invested in public-service infrastructure.¹⁸

The role of the international financial institutions (IFIs)

Financial markets were hesitant to touch the mineral sector during the 1980s. International financial institutions played a crucial role in the global expansion of mining in this period and by the mid-1990s (a period known as 'the mining boom'), multiple financiers, both private and public, took an interest in the industry.

The World Bank Group has strongly supported the mining sector by:

- pushing for legal reforms that facilitate mining investment¹⁹
- supporting and directly financing large mining projects. Beginning in 1993, the mineral sector became one of the principal recipients of World Bank financing. The Bank has financed 27 mining projects in Latin America at a cost of US\$990 million. World Bank financing brings many benefits. One of the most important is the facilitation of further private-sector financing
- mine ownership. The World Bank has interests in several mining projects through the International Finance Corporation (IFC). For example, the IFC holds five per cent of the shares in the Yanacocha mine in Cajamarca, and 20 per cent of the shares in the Quellaveco mine in Arequipa.

In response to intense criticism over its involvement in extractive industries, the World Bank established the Extractive Industries Review (EIR) in 2001. Its purpose was to consider whether the World Bank's involvement in extractive industries was consistent with its objective of alleviating poverty through sustainable development.

The EIR's final report, which was released in December 2003, identifies serious concerns about extractive industries and raises important questions about the World Bank's role in their promotion.²⁰ It identifies three main preconditions for World Bank intervention to promote the expansion of the extractive sectors in a given country.

1. Pro-poor public and corporate governance

Pro-poor governance is defined by the report as transparent, based on the rule of law and respectful of labour standards and human rights, including those of indigenous peoples. It should include effective environmental and social protection, and the meaningful and fully informed participation of communities in decisions about projects that affect them. These communities should also enjoy a fair share of the revenues generated by mining.

2. The establishment by the World Bank of more effective social and environmental policies

These policies should include:

- holistic environmental and social-impact assessments for proposed projects
- the establishment of no-go zones where mineral development is not permitted
- an obligation to obtain the free and informed consent of affected populations before they are resettled
- the development and application of World Bank guidelines for tailings²¹ and other waste disposal, toxic substance use and mine closure.

3. Respect for human rights

World Bank-funded projects must be designed and implemented in a manner consistent with international human rights standards.

The World Bank issued a response to the EIR in August 2004 rejecting many of its key recommendations. While it promises to take concrete steps to improve the impact of its investments and policy advice, it remains to be seen how successful these will be.

Land rights

Land rights is an area where the balance between attracting investment and ensuring that that investment benefits poor people has been significantly altered. In Peru, surface and subsurface property rights are legally distinct. The central government exercises exclusive control over subsurface resources, while the property that lies above a mineral deposit may be owned privately or by a community. This means that in order to exploit a mineral deposit, a mining company has to gain legal access to the surface property.

The 1979 Constitution was protective in nature, providing guarantees for communally held property.²² With few exceptions, campesino and indigenous land was 'inalienable', meaning that it could not be transferred to third parties. The legal reforms of the past decade, however, have made such transfers possible despite the consequences for local communities. The Constitution of 1993 repealed transfer prohibitions and paved the way for legislation that allowed third-party access to campesino property.

In 1995, the Land Law was adopted.²³ Intended to promote agriculture in Peru and concerned with land ownership and use, this statute established indigenous and campesino land rights

based on the free exchange of agricultural land on the commercial market. By treating communal property as marketable and guaranteeing access to third parties, regardless of their nationality, the Land Law continues the dangerous trend towards removing protection for campesino land. In 1996 the Land Law was further modified in favour of mining investment and against the interests of campesino communities.²⁴

The easement procedure

The Land Law endangers communal property by creating an administrative process called 'easement'.²⁵ Through easement, land can effectively be expropriated for use by companies, despite opposition from the people who live on it. But while straight expropriation is governed by a number of strict rules corresponding to the seriousness of removing people from their land, the easement procedure is not.

Although in easement title to the property is never transferred to the mining company, and the land is eventually returned to its original owners, it is often permanently damaged. Mining causes pollution, and in some cases the surface land is removed altogether to make way for an open pit. It is therefore often impossible for campesino landowners to resume farming when the mining company finally leaves.

In practice, the Ministry of Energy and Mines rarely grants easements to mining companies. More often, companies²⁶ initiate the easement process to put pressure on communities to sell their land. Communities tend to give in and sell up because they believe they will get more by selling the land than through easement. But communities often lack experience in these matters and have little access to legal advice. As a result they lose out. For example, since 1992, campesino families living near the Yanacocha mine have been forced to sell about 20,000 hectares of their land for US\$25 per hectare, about a quarter of the market price.²⁷

How does it work?

Before a mining company can apply for easement, it must try to reach agreement with the owner of the surface property. But if no agreement is reached within 30 days, the mining company can initiate the easement process.²⁸ The Ministry of Energy and Mines then calls a formal meeting to allow for further negotiations. If these fail, the company can be granted time-limited permission to use the surface property, regardless of community opposition. The Ministry decides how much that right is worth and the company pays the community accordingly.

Easement or expropriation?

The easement process is tantamount to expropriation, but it is not subject to the following strict legal provisions governing expropriation. Christian Aid believes that this legal loophole must be closed.

1. The 1993 Constitution protects the right of land ownership, and guarantees that no one will be deprived of that right, except for reasons of 'national security' or 'public necessity'.²⁹ Under Peruvian law, mining activity does not fall into either category. The General Mining Law only categorises mineral extraction as being of 'public utility' and says that a contract must be negotiated to access third-party property.³⁰
2. Even in these cases, expropriation requires the payment of fair compensation. Past experience shows that the value assigned by the government to time-limited mining rights tends to be significantly lower than the market value. According to affected communities, the compensation doesn't allow them to purchase new property of equivalent value.

3. The law governing expropriation in Peru does not permit expropriation to further the interests of an individual party. Only the state may initiate an expropriation process and a special law is required to authorise it.

Environmental regulation

A number of laws were passed in the 1990s which modified aspects of Peru's 1990 Environment Code,³¹ a law that the government felt imposed too great a burden on companies. The 1991 Law for the Growth of Private Investment³² repealed Article 8 of the Code, which required the submission of an environmental impact assessment for virtually any private or public activity.³³ Now, fewer environmental impact assessments are required and their submission is governed by legislation specific to each sector. Likewise, Article 56, which permitted the establishment of protected areas by national, regional and local governments, was repealed. Today, only the national government has the power to establish protected areas.

The 1991 Law to Promote Investment in the Mineral Sector³⁴ also modified provisions in the Environment Code that deal with the exploitation of natural resources. In particular, specific environmental obligations that were required of the mining industry were replaced with general principles. The effect of this was to weaken the Code's regulation of the mining sector.

In contrast, some legislation during this period was aimed at protecting the environment. The Law to Promote Investment in the Mineral Sector, for example, established Environmental Impact Assessments (EIAs) and Environmental Management and Mitigation Programs (Spanish acronym: PAMAs). The Regulation for Environmental Protection in Mining and Metallurgical Activity,³⁵ adopted in 1993 to minimise the environmental impact of the mining industry in Peru, further specifies that these PAMAs be developed for all operating mining and metallurgical facilities. However, these measures have had very little effect. The failure of these apparently positive regulatory instruments to adequately control the environmental impact of the mining sector is discussed in Chapter 6.

Growth in mining investment

The wide-ranging legal reforms described in this chapter greatly strengthened the position of the mining sector in the Peruvian economy. The sector expanded significantly during the 1990s.

While in 1991 mining concessions covered 2,258,000 hectares, by 1997 that figure had reached 15,597,000 hectares, an increase of over 700 per cent. By the end of 1999, mining rights had been assigned to approximately 12 per cent of Peru's territory. Metal mining had an average annual growth rate of more than eight per cent in this period. Mining exports more than doubled between 1990 and 2000, from US\$1.5 billion to US\$3.2 billion. Direct investment in the mining sector reached US\$1.6 billion in 2000 and investment commitments until 2007 total US\$11 billion, according to non-updated official figures.³⁶

Although projections for new mining investment from the Ministry of Energy and Mines remain very high, there has been a significant fall in mineral investment in recent years. This is because of external factors (lower metal prices and more conservative trends in global mining investment), as well as internal factors (proposed changes to the legal framework and uncertainty about the political and economic situation in Peru).

The expansion in mining took place both in traditional mining zones and in areas that had never been mined before. Campesino territories traditionally dedicated to agriculture and livestock rearing were heavily affected. Thirty-nine per cent of the land used for mining in Peru belongs to campesino communities. By 1994, 3,126 of the 5,680 communities in Peru (55 per cent) were in areas affected by mining activity.³⁷

The expansion was mirrored throughout the continent. In the early 1990s, Latin America was allocated barely 12 per cent of global investment in mining, but by the end of that decade, its share had almost trebled to approximately 30 per cent.³⁸

Trends in the global mining industry

Global trends during the last few decades can be broken down into three distinct stages:

- A 'crisis' period, influenced by trends during the 1980s, ended in early 1993. This period was characterised by declining production, decreased investment in many mining regions worldwide, a generalised price downswing (with the exception of copper, mineral prices reached their lowest levels in decades), mine closures and general instability.
- The years from 1993 to 1997 saw a so-called mining boom. The prices of most metals recovered, creating a favourable economic climate for mineral development. During this period Peru experienced an exploration boom which resulted in the area allocated to mining expanding six-fold. Public mining companies were privatised, large multinational mining companies, such as Barrick, Teck Cominco, Anglo American and BHP, established a presence in the country; new projects were announced and there was significant growth in production.
- The Asian crisis in 1998 sent metal prices falling and slowed new investment. The impact was felt immediately in Peru, where the exploration boom slowed considerably and several key projects were postponed, creating a climate of uncertainty that remains today. Despite this context, production of some metals continued to grow as operations established during the mining boom began production.

2. Costs and benefits of mining in Peru

Given the lengths to which the Peruvian government has gone to attract foreign investment in mining, one might expect the development benefits of such investment to be apparent. The government, along with the international financial institutions and 'socially responsible' mining companies, certainly promotes mineral investment on the basis that it leads to economic growth and reduces poverty. According to its proponents, the benefits of mining investment include increased tax revenue for the government and enhanced services, increased employment and a thriving local economy (through increased demand for goods and services) for local communities.

However, an increasing number of analyses reveal a divide between those who benefit from mineral development – overwhelmingly private sector companies, and sometimes the national exchequer – and those who bear the costs: largely campesino communities. A detailed macroeconomic analysis of the impact of mining on the Peruvian economy is not within the scope of this report. This section looks briefly at the macroeconomic impact of mining, and concludes that the jury is out on whether it contributes to pro-poor growth. In this context, the impact of the industry on local communities, which is looked at next, is all-important. The section concludes that in its current form large-scale mining is not reducing poverty at a local level, and may be entrenching it.

Macroeconomic impact of mining

Along with the construction sector, mining was considered by some to be a key driver behind strong economic growth in 2002 and 2003, especially as the massive Antamina mine ramped up to full production.³⁹ In a study of 51 countries published in 2002, the World Bank argued that countries with mineral reserves had experienced stronger economic growth than non-mining countries in their regions, growing at an average of 1.6 per cent per year during the 1990s.

But an increasing number of economic experts have begun to question the contribution of mining to economic growth – let alone poverty alleviation. Michael Ross of the University of California in Los Angeles looked again at the World Bank's results and showed that if you discount China, India and Egypt, which have all grown faster than average and have large internal markets for their products, the average GNP growth is actually negative, at -1.15 per cent.⁴⁰ The Extractive Industries Review provides further evidence for a phenomenon known as 'Dutch Disease':

In some cases, structural reform processes have exacerbated macroeconomic imbalances and increased vulnerabilities. Case study examples [including Peru] include increased vulnerability to external shocks associated with significant reliance on extractive industries (EI) and fluctuating international EI commodity prices; decreased tax revenues; increased economic dependency on primary commodities (that is, manufacturing of value-added goods decreased); significant negative pressure on balance of payments from increased energy imports, largely to support the expanding mining sector; and domestic private-sector development stifled by significant concentration of foreign-controlled EI assets.

Extractive Industries Review (2004)

Even where a thriving mining sector has led to higher economic growth, this has not necessarily been associated with sustainable development and poverty reduction. There are many reasons for this, including the government's failure to capitalise on the tax income mining could generate.

Tax exemptions

According to the National Superintendent for Tax Administration (SUNAT), only 29 of the 61 companies involved in mineral exploitation in Peru paid income tax in 2000.⁴¹ Following the tax

reforms described in the previous chapter, 28 mining companies signed fixed taxation contracts with the Peruvian government between 1992 and 2001, for a total investment of more than US\$4.1 billion.⁴² According to their investment agreements and estimated production levels, some of these companies will cease to pay tax altogether, by reinvesting their Peruvian earnings in the country and benefiting from the corresponding tax breaks.

According to official statistics, total tax exemptions in Peru mean the treasury loses more than four billion soles⁴³ (approximately US\$1.16 billion) per year.⁴⁴ Peru already imposes the lowest tax rate in Latin America – taxes paid in Peru represent 12.5 per cent of GNP, while other governments in the region demand, on average, 18 per cent of GNP.⁴⁵ Mining contributes only two per cent of the state's total yearly revenue.⁴⁶

The changes in tax law in the 1990s were presumably intended to attract more investment, so that the exchequer's overall revenue would rise. Evidence from the government is difficult to extrapolate, but it appears that while mining production and exports continued to rise year on year during the 1990s, the total tax paid by the mining sector on net earnings did not keep pace.

In March 2003, regional governments in Peru called on the Ministry of Economy and Finance to eliminate fixed tax contracts and other tax exemptions. In response, Peruvian President Alejandro Toledo requested detailed information on these instruments from the Ministry of Economy and Finance. Staff at the Ministry argue that while it is impossible to eliminate all tax exemptions, they can gradually be reduced in future contracts.

Does mining reduce poverty at a local level?

It is increasingly questionable whether mining leads to economic growth at national level. But does it have a role to play in local economic development in Peru, as its proponents claim? The case studies in this report suggest not, and this is backed up by the statistics. The EIR states that:

From 1991 to 2000, the poverty reduction that took place in Peru (which was only short-term) occurred in Lima and urban Sierra, not in the rural highlands and the Amazon where the mining and hydrocarbon developments are concentrated.⁴⁷

The Peruvian government's Compensation Fund for Social Development (Foncodes) produces a national 'poverty map' that presents the relative poverty levels of the provinces and districts of Peru, according to a 'Relative Poverty Index'. Mineral production occurs in 45 of Peru's 194 provinces.⁴⁸

The 2000 poverty map showed the following results:

Poverty status	Mining provinces (per cent)	National average (per cent)
Extremely poor	11.8	6
Very poor	40.2	26
Poor	36.4	36
Regular	10.6	19
Acceptable	1	12

Without time-comparative data it is impossible to prove that mining activity actually contributes to poverty in Peru. However, these results do call into question the claim that mining has a positive impact on the quality of life in neighbouring communities. In one example, Cajamarca, site of the

huge Yanacocha gold mine since 1993, has moved from being the fourth poorest region in Peru in the 1980s to the second poorest after ten years of mining.⁴⁹ Mining has failed to alleviate poverty in Peru partly because of a lack of proper planning and analysis. According to one World Bank paper:

The WBG [World Bank Group] could be more effective in measuring the true impact of private investment in the mining sector. Currently, the WBG utilizes certain indicators (ie macro economic, labor, personal income) as the means of measuring impacts; however, these indicators are general, at best, and do not form a convincing argument supporting mining investment as a means of generating equality and wealth distribution.⁵⁰

We will now look at a number of ways in which the mining industry claims it is reducing poverty, and ask if the evidence supports its claims.

Local benefits? – Tax distribution

A percentage of the income the Peruvian government receives from the exploitation of natural resources is meant to be transferred to the municipal and regional governments, under what is known as the Mining Canon. In 2002 a new law meant that half the income tax revenue received by the central government from mining was to be distributed in the following manner:

- 20 per cent to go to the provincial municipality where the natural resource is located
- 60 per cent to be divided between the districts and provinces of the region
- 20 per cent to the regional governments.⁵¹

But this law appears to have done little to reduce poverty. Because the government collects so little in taxes, not much money is available for redistribution through the canon. Moreover, the central government consistently fails to transfer even those funds that have been collected. Between 1992 and 2001, the Peruvian government failed to distribute US\$98 million to the regions.⁵² According to a World Bank study of the gold mine in Cajamarca 'each individual in the immediate mining area... has received approximately US\$34 during the nine years of production.'⁵³

The EIR shares these concerns: 'In Peru and Indonesia, laws were created to ensure that EI revenue would be returned to local communities or the government. Due to the design of the laws and the lack of transparency, however, little revenue actually reached the communities.'⁵⁴

A number of parties, including municipal governments, mining companies and some non-governmental organisations have proposed changes to the mining canon so that:⁵⁵

- it includes all income that the government receives as a consequence of natural-resource exploitation and not just income tax. This would ensure that local communities do not just benefit from the tax accrued from mining companies' earnings
- communities that are affected by mining activity are the principal and direct beneficiaries of the canon. In addition, the distribution of the canon takes account of environmental impact (ie when an area experiences environmental damage, it receives compensation via the canon)
- it is enforced in a timely, effective manner.

Local benefits? – Jobs

Historically, the mining industry has employed significant numbers of people. As a result, despite the negative impact of mining, local people have also benefited from decent jobs while the mine

was in operation. But the introduction of new technology means that far fewer jobs are now on offer. Moreover, most of the employment that is available requires skills that local people tend not to have, so mining companies hire people from outside the region, often foreigners.

Unemployment in Peru is rising. In 2002, more than 15 per cent of young people were unemployed – up from 12.6 per cent in 1999.⁵⁶ But despite mining's large contribution to GDP (minerals and hydrocarbon accounted for 11.2 per cent of GDP in 2001)⁵⁷ only 72,170 people were economically active in the mining sector in 2002, just one per cent of the national total.⁵⁸

Evidence from the case studies in this report suggests that while mining creates a certain number of jobs, its environmental impact leads to a corresponding loss of livelihoods in the agricultural sector. While mining jobs last only as long as the mine is active, the effects of a mine on the local agricultural economy can be permanent.

Most of the people Christian Aid interviewed claimed that many of the jobs created by mining did not go to local people as promised, but went instead to more qualified personnel from outside the region. In the case of the Antamina mine, around 1,500 people were employed, of which only around 400 were recruited locally.

Local benefits? – Social services

Generally, mining centres in Peru are found in remote, mountainous areas, often more than 3,000 metres above sea level and far from basic services and markets. Prior to 1992, companies were required to provide a range of services for their workers, including the drinking water, education and healthcare, all of which also benefited neighbouring populations.

However, under the new laws, mining companies are no longer obliged to offer these services. In some cases, cash-strapped local governments or other institutions are now responsible for providing them. In La Oroya, for example, the education and health facilities available to smelter employees and the wider population were discontinued, following the privatisation of the plant in 1997.

Local benefits? – Economic stimulation

The mining industry relies on a range of goods including chemical and petroleum products, iron and steel products, food, forest products and general industrial products. The industry also contracts out a number of services, including the maintenance of machines and equipment, security, food preparation, engineering consulting, administration and accounting, transportation and construction.

There is evidence that mining does contribute to the local economy through its demand for these goods and services, although its contribution could be significantly larger. According to the Ministry of Energy and Mines, 58 per cent of the goods and services mining needs are provided by the local market at an approximate value of US\$800 million per year. The remainder are imported,⁵⁹ as many of the goods that a mine requires are highly technical and are not manufactured in Peru.

Local costs – Environmental impacts

The most direct cost of mining is its environmental impact, for which it is infamous. Maria Chappuis, director general of mining in the Ministry of Energy and Mines, was dismissive of the claims made by local people about contamination. She told Christian Aid that communities always complained about contamination, but that studies showed them to be wrong.⁶⁰

Our research contradicts this. In Tintaya and La Oroya, studied here, there is scientific evidence of serious pollution, backing up the testimonies of local people. Moreover, in our interviews with local communities, we found that people did not exaggerate. For example, they made it clear that animals had suffered, but crops had not been affected. Environmental degradation leads to loss in income, as communities have to cope with polluted land, as well as health problems. So, far from reducing poverty, mining appears to actually increase poverty in some regions.

Chemical use

Mining activity involves the use of chemicals to extract minerals. In La Oroya, air- and water-quality measurements reveal dangerous levels of toxic contaminants.⁶¹ Studies show that children in La Oroya have alarmingly high concentrations of lead in their blood and display signs of lead poisoning.⁶² Deteriorating health leads to reduced income, because people are unable to work as hard or for as long.

Tailings

Tailings are the rock wastes left behind following ore extraction. They often contain heavy metals, acid-forming minerals and residue from toxic chemicals used in the extraction process, including cyanide and sulphuric acid. Containing these tailings is technically difficult and the contamination of water, soil and air is frequently associated with tailings dams.

Transport of chemicals

Chemicals are not always transported or handled properly. In 2000, in the village of Choropampa, scores of residents were exposed to the potent toxin mercury when a truck from the World Bank-financed Yanacocha mine spilled its load. Between 200 and 300 people were subsequently hospitalised with mercury poisoning. According to the EIR, the company's Spill Prevention, Control and Response Plan did not even mention mercury or highlight chlorine gas as a hazardous material, although 125 tons are used in the mine every year.⁶³ The residents, who show symptoms consistent with long-term mercury poisoning, have never been properly compensated, nor have they received adequate medical treatment.⁶⁴

Physical damage

Mining is by nature a highly disruptive activity. It requires large tracts of land and consumes significant quantities of water. In addition, the construction of a mine and its supporting infrastructure requires the destruction of any vegetative covering. Modern mining prefers open-pit techniques to underground mines, leading to longer-lasting damage.

Local costs – Loss of land

The arrival of a mining company can lead to loss of land through seizure, forced sale or pollution. Communities can either be forcibly relocated to make way for mine development, or choose to move to escape the adverse environmental effects of a mine. With less land, people are less able to raise animals and plant crops.

The people of Espinar have suffered reduced herds and flocks since losing much of their land to the Tintaya mine. Rather than making money by selling crops, they now buy crops, leaving them less to spend on other things. The few jobs the mine has created for local people are more than negated by the resulting reduced agricultural employment. The picture would be bleaker still if social and environmental costs were taken into account.

Local costs – Social impacts

Mine construction and operation always involve the arrival of outsiders. This routinely generates tension within communities and threatens traditional practices, especially when the affected communities are indigenous. As the Mayor of Tambogrande, a community studied later in this paper, puts it: 'Since Manhattan arrived, the peaceful nature of this town has changed. We are a peaceful town and always have been, but unfortunately this company's presence has triggered violence.'⁶⁵

It is not uncommon for prostitution, alcoholism, domestic violence, family breakdown and health problems to increase in communities that coexist with mining. Reports from Cajamarca suggest that girls as young as 14 are involved in a 'booming prostitution trade' fuelled by the mine.⁶⁶

Conclusion

This brief analysis poses serious questions to those who seek to paint mining investment as a route to sustainable development. It suggests that the questionable benefits at both national and local levels, which often accrue to the already well-off, are easily outweighed by the high costs borne by the poor. Rather than reducing poverty, the evidence suggests that mining may be entrenching it.

Furthermore, things now appear to be getting worse. New technology means that far fewer people are employed by the mining sector today than 20 or even ten years ago. And the legal changes over the last decade or more, while successful in attracting foreign investment in mining, have not led to improvements in the lives of the rural poor who have to live near mines. Social services have been lost, and tax revenue reduced and not properly distributed.

As the case studies show, many of those affected by mines believe their standard of living has deteriorated significantly since the early 1990s. Campesino populations affected by mining activity in Peru rightly question whether their interests are being taken into account in the push for more mining.

3. Will dialogue provide the answer in Tintaya?

Nothing good has come from the mine. It would be better if it had never come.
Ernesto Umasi, community leader, Alto Huancané⁶⁷

The province of Espinar is located in southern Peru near Cusco, the ancient capital of the Incas. The region, which is 4,000 metres above sea level, is overwhelmingly a farming region and has been for centuries, with most families owning cows, llamas, sheep and alpacas which graze the open spaces. Potatoes, oats and cinchona⁶⁸ are the main crops.

Beneath the farming land lies great mineral wealth. During the 1980s, the Peruvian government developed a copper mine here and the Tintaya State Mining Company was formed. In 1994, as part of the privatisation process described in Chapter 1, the state company was sold to an American consortium for US\$215.7 million and the cancellation of US\$55 million of Peru's external debt. A short time later, this consortium was absorbed by the Australian company Broken Hill Proprietary (BHP). Then, in 2001, BHP merged with the British company Billiton, creating one of the most important mining companies in the world.⁶⁹ Today, a subsidiary of this company, BHP Billiton Tintaya, operates the mine.

The limited benefits the mine has brought to some have been outweighed by the calamitous effect it has had on many others, including those who live within metres of the mine or tailings dams,⁷⁰ and many more whose communities are within a few miles. Local people have seen the land on which they have lived for centuries taken and polluted.

An innovative roundtable consisting of community leaders, BHP Billiton and NGOs has been trying to resolve conflict. The Dialogue Roundtable has been an important step in the right direction, and in December 2004 a major success emerged as hundreds of displaced people were provided with replacement land. The efforts of local people, supporting NGOs (including the international NGO Oxfam) and company employees have led to real progress out of a situation of little hope. But much irreversible damage has already been done.

This section starts by setting out the problems faced by the people of Tintaya. It then asks whether dialogue is the answer. It concludes that while dialogue can ameliorate some of the most devastating effects of mining, it is ultimately just one part of a solution that must involve better regulation at both national and international levels.

Lost livelihoods

After 20 years of exploration and production Espinar is still one of the poorest provinces in Peru. Many in the campesino communities say they are actually poorer than before the mine came because of land loss, environmental pollution and poor health.

Communities have lost land...

In the case of Espinar, we're talking about communities that have been left without land, with environmental impacts, and with strong social impacts. There are dramatic cases such as the community of Tintaya Marquiri whose land was expropriated by the state and which was practically obligated to sell the little land that remained.

Miguel Palacin, president of CONACAMI, a national mining network⁷¹

Five communities that are close to the site of the Tintaya mine have lost land: Tintaya Marquiri, Alto and Bajo Huancané, Huano Huano and Alto Huarca. An investigation by CooperAcción, a Peruvian NGO, undertaken at the request of these communities, states that in most cases the land was either expropriated or sold under duress.⁷² However the land was lost, the effects of the loss have been devastating, both economically and culturally. Carmelo Saico Taipe, of the Huano Huano community, shares his experience:

My sons would not have left this area if the mine hadn't come. They would have stayed and studied and ended up with better education and better wages. The land sale has caused tension in the family and the community – we talk about it a lot and sometimes fight amongst ourselves. My sons say: 'Dad, why did you sell our land?'

The principal conclusions of the analysis of the Tintaya Marquiri community follow below.⁷³

Tintaya Marquiri

In 1981, the Peruvian government approved a resolution expropriating 2,368 hectares of land belonging to the community of Tintaya Marquiri, because the community lived directly on top of the area on which the state wanted to drill. In 1996 BHP Billiton initiated a process which saw the community under pressure to sell an additional 1,263 hectares of its land.

Over 20 years later they were still waiting to be relocated to land where they could settle and rebuild their lives. Finally, at the end of 2004, replacement land was purchased – one of the great successes of the Dialogue Roundtable. In their temporary settlement, over 50 per cent of the community have been without toilets and sewage connections, and 30 per cent of households have included children who have not attended school. These figures compare with 24 per cent and four per cent nationally.⁷⁴

An analysis by CooperAcción identifies irregularities in the 'easement' process initiated by the company in 1996. Before submitting an application for an easement to the Ministry of Energy and Mines, mining companies are obliged to approach the communities which live on the land they want to develop and to try to negotiate an agreement. But in the case of Tintaya Marquiri, according to CooperAcción, the company did no such thing. Instead, it applied for an easement weeks before starting negotiations with the community. It later emerged that these negotiations had been far from adequate: according to a survey taken in 1999, 74 per cent of the residents of Tintaya Marquiri did not even know that any land negotiations had taken place.

As the easement application moved ahead, the community came under pressure to sell its land. Knowing that the company would probably receive an easement, the community decided to sell its land, aware that this was the lesser of two evils. At least they made slightly more money.

The analysis further states that the 1996 land sale failed to comply with the law governing the sale of community land (the Land Law, 1995) in the following four ways:

1. The community never expressed an interest in selling its land.
2. The community representatives who negotiated the sale lacked legal authority and community approval.
3. The community was not aware of the terms of the negotiations and had not approved them.
4. Any negotiations that did take place were not genuine. For example, the company unilaterally established land values. They were not discussed with the community.

The results of the analyses of other communities are similar. In Alto Huancané, the signatures on the agreement are illegible and are not accompanied by proper identification. In Huano Huano, the company reportedly brought an easement document to a community meeting, putting immense pressure on the community assembly to sell land rather than lose out completely.⁷⁵ 'BHP has promised alternative land but we are still waiting. We hope we will get some better land soon; otherwise we might as well all just disappear quietly,' says Carmelo Saico Taipe.

...their environment is polluted...

An analysis, conducted by CooperAcción in 2000, provided scientific evidence supporting the testimonies of many community members that rivers, springs and pasture have been polluted by the Tintaya Mine.⁷⁶ These resources are used in livestock rearing, the economic backbone of the communities, as well as everyday household activities.

Water

The principal problem for our community has been the contamination of the Huinumayo River. Tailings entered the river, damaging it. In addition, the river has dried up – we've been left without water for our animals and for human consumption. There's simply no water.
*Gavina Cuti, Alto Huancané*⁷⁷

High concentrations of contaminants, principally metals, were discovered in water sources in the communities that neighbour the mining operations. None of the water sources that were analysed were safe for human consumption. They posed a serious risk to local people. Moreover, the physical and chemical characteristics of this water mean that it has limited use for agriculture and livestock rearing.⁷⁸ In a 1999 survey of residents of Tintaya Marquiri, 50 per cent thought that water conditions had got worse and blamed the company.⁷⁹

Soil

The report showed that areas near the village of Alto Huancané that have been inundated with tailings are highly contaminated – with all that implies for pasture land, plant life and neighbouring populations.⁸⁰ In recent interviews some community members report a deterioration in the quality of plants and therefore worse pasture for the animals.⁸¹ In 1999, 42 per cent of Tintaya Marquiri residents believed that the quality of farmland had deteriorated in the last few years.⁸²

Air

Interviews undertaken by Christian Aid reveal the impact on human health of living near a tailings dam. Christian Aid met the Coutenounka family cutting oats just 20-30 metres away from the Tintaya mine's massive tailings dam. After part of their land was expropriated by the state, the family's home and remaining fields border the dam. The tailings dam is a huge lake, surrounded by low walls of powdery white stone.

Standing on the site of his grandmother's old house, now part of the dam, Victor Coutenounka explains:

When the wind blows, the dust from the dam comes with it. We can feel it in our lungs and it smells bad. In the dry season you can even see it covering the ground. The company has taken analyses of our blood three or four times but we have never been shown the results, despite asking. We haven't heard back and the tests were taken a year ago. You really notice the contaminated air when you first get back from the coast. But after a week you get used to it and stop noticing.

His father Florentino adds: 'The children of this community are thinner, our bones hurt and we are generally weaker. The company says there is no contamination. But we know we have bits of copper inside us.'

Thirty-year-old Victor spends most of his time on the coast now, because the land there is better and the atmosphere is better for his children. 'I don't want my children risking their health by living here. They are better off on the coast. If there was no mine I would definitely stay and bring up my family here,' he says.

...and their incomes reduced.

Proponents of mining claim it has a positive impact on the local economy. Many of the communities in Espinar say the opposite is true. Not only have they seen no benefits from the mine, they say they are actually worse off than they were before it was built. Loss of land and the pollution of land, rivers and air have made them poorer and less healthy.

We are left without land and we don't have anywhere to go. It was bad luck that our land lies on top of a mineral deposit – the wealth has done nothing for us. Today there are more than 120 families that have nothing and that live on the little piece of land that we're left with.⁸³
Justino Quispe, former community president of Tintaya Marquiri

Before the mine I had my own animals and sowed crops – potatoes, onions and cinchona. It was better then. The water was clean; you could go and fish for trout. Now there is no trout in the rivers. My husband used to go and get gold from the river and sell it in Cusco – we wanted for nothing before the mine. Now we don't have enough to eat – our standard of living is far lower.
Catalina Saico, Tintaya Marquiri

Our seeds don't grow as well. We have less land and so less animals. Our horses and cows are sick more frequently... People don't want our cows so much as they are considered contaminated. Their value has fallen. Their flesh is ugly.
Florentino Cutenounka, Alto Huancané

We have lost land, and our rivers and springs have been contaminated. We are communities that raise livestock – we live from this. Since the mine arrived, our animals have been affected. Community members have fewer livestock than before. We are poorer now.
Francisco Cordova, Huano Huano community⁸⁴

A socio-economic analysis undertaken by CooperAcción in 1999 revealed that the vast majority of the campesino communities in Espinar were so poor that they could not satisfy their basic needs. The communities of Espinar had a greater incidence of poor-quality housing than communities in other regions, with only 20.8 per cent of homes in Tintaya Maquiri having running water. They also had no access to adequate health services.⁸⁵

Jobs

Some people from the area have secure jobs at the Tintaya mine. But for the vast majority the employment that was one of the mine's biggest selling points has failed to materialise.

They say the local people do not have the skills, in which case they should train us. People from Puno and Arequipa work in the mine, but not us, despite 20 years of promises. I go to the mine every day asking for work.
Victor Cutenounka, Alto Huancané

No-one works in the mine. People in my community want work there but there is none. Only four young people from the community work for mining subcontractors... The mine did promise work, even to my very old father (a cleaning job), but nothing came of it.
Carmelo Saico Taipe, Huano Huano

When asked in 1999 whether they wished their children to grow up in the area, 53 per cent of Tintaya Marquiri residents said no, with a further 34 per cent being unsure.

The Dialogue Roundtable

Beginning in 1998, the communities in Espinar have been effectively organising themselves by enhancing the skills of their leaders, and elaborating local development plans. With the support of NGOs such as CooperAcción, they have also created new organisational structures that have begun to focus on violations of land, environmental and human rights.

In November 1999 Espinar community representatives were among approximately 1,000 delegates from across Peru who participated in the First National Congress of Communities Affected by Mining in Lima. The Congress saw the creation of the National Coordinator of Communities Affected by Mining (CONACAMI) and a number of Regional Coordinators (CORECAMIs). By working at the regional level, isolated communities are able to exchange information and experiences. Esteban Chacón, campesino leader in Espinar, points out that:

Before the existence of the Regional Coordinator, each community negotiated separately with the mining company and tried to resolve their particular conflicts. The negotiations took place in unfair conditions that prejudiced the communities and without doubt, benefited the company. The company viewed us as being weak and divided. Also, they brought their engineers and lawyers and we didn't have resources to hire our own professional advisors. In this type of negotiation, we have almost always lost.⁸⁶

The work of the communities to defend their interests culminated in December 2001 with the creation of a Dialogue Roundtable, under the oversight of Oxfam Australia's Mining Ombudsman, and including representatives of BHP Billiton, the communities, CONACAMI, CORECAMI, Oxfam America and CooperAcción.⁸⁷ By joining the Roundtable the company acknowledged the problems associated with its operations, although it continues to refute many of the allegations made by the communities.

It is worth noting that those involved in the Dialogue have chosen not to invite the Peruvian government to the Roundtable. This reflects the lack of trust and confidence that the various participants have in the government – as well as the communities' perception that the government is biased in favour of the company.

At its first working session in Lima in February 2002 the Dialogue Roundtable process was defined as:

Voluntary and collaborative, based in dialogue and free participation, open to diverse interests that seek to find solutions to existing problems, as well as opportunities to develop the area that is influenced by the operations of BHP Billiton Tintaya.⁸⁸

At the meeting, Francisco Cordova, then President of CORECAMI Cusco, said: 'The communities are willing to enter into dialogue – but with the goal of finding a solution. Many times we have had dialogue but we never arrived at solutions. We want that to change.'

Four commissions, which include the participation of Roundtable members, have been set up to address land, human rights, the environment and sustainable development. How have they fared?

The Land Commission

A Land Commission has been assessing the land-sale negotiations that took place between the communities and the company. It has agreed that communities that have lost land should be granted equivalent land by the company, plus 25-50 per cent, depending on its quality, should be relocated to the replacement land and should receive support from the company for the development of these areas.

In 2004, two parcels of land totalling more than 3,000 hectares were acquired for the relocation of a number of families from Tintaya Marquiri. This complements more than 1,000 hectares that were purchased before the Roundtable was set up. Tintaya Marquiri originally lost a little over 3,600 hectares. Other families and other communities are still in the process of identifying potential replacement land.

Speaking in April 2004, before the December 2004 agreement, Carmelo Saico Taipe was hopeful but realistic. 'The Roundtable hasn't achieved any solutions yet [for the Huano Huano community], although it is our best bet for getting back our land. If we don't get our land back I foresee conflicts,' he said.

The Human Rights Commission

A series of allegations of abuse of human rights have been levelled against BHP, including sexual abuse by company subcontractors, and violence during forced removals of people from their land. So far, only four of 34 cases of alleged human rights violations have been dealt with, although a number have been dismissed because they couldn't be substantiated.

The Instituto de Defensa Legal, an NGO contracted by the Human Rights Commission to investigate the cases of alleged human rights abuses, has recommended that BHP Billiton should be more vigilant about its employees' welfare. It has also advised that the Roundtable should offer educational opportunities and legal orientation for company workers and community members to avoid future accusations of human rights violations.

The Human Rights Commission has also helped in the case of Catalina Saico, whose husband died while working for a company that was contracted by the mine in October 1995. While not a human rights abuse in the normal sense, her story illustrates the importance of the dialogue process, and its limitations. 'He went to work as usual one morning. He was working on the construction of a bridge. He was giving directions to a tractor but it failed to follow his instructions and it went right through him,' she said.

Almost ten years later and after a lengthy and distressing legal process, no-one has accepted responsibility for the death of Catalina's husband. She believes that the company was responsible, because it owned the land and machinery – but the Peruvian courts ruled that the death was an accident. At one stage, Catalina accepted 10,000 soles (about US\$3,000), in exchange for not pursuing the case. Out of this she had to pay a lawyer and share the remainder with her husband's six sons.

In April 2004 Catalina's case was resolved by the Roundtable. Catalina has received a house in the town of Espinar worth 13,000 soles (US\$4,000) and 700 soles (US\$200) per year to put her son, Edwin, through school. The company does not accept responsibility for the death of her husband, and calls its payment 'an act of humanity'.

Without the Roundtable, Catalina might still be waiting for compensation. But despite the support she received from NGO members of the Roundtable throughout the negotiations, she feels unhappy with the process. 'Yes I have been helped. But I was pressured to sign papers I couldn't read. I was told by the notary that if I didn't sign I would end up with nothing,' she said.⁸⁹

The Environment Commission

The Environment Commission is implementing evaluation and monitoring plans, is in the process of compiling baseline health data for local residents and their livestock, and has agreed to develop early warning systems in the case of spills or other possible environmental accidents. Drinking water is being provided to those communities that need it.

Francisco Cordova, who is still close to the Roundtable process, says that progress has been made: 'The Roundtable has had good impacts – contamination is down. But we need better evaluations of air pollution and subterranean water.'

However, other community members are yet to see any improvements:

We have been in dialogue with Tintaya for three years. They keep saying they will do things but we have seen nothing. The environment certainly has not been sorted out.

Victor Cutenounka

People have been given new land and there is movement on human rights abuses. But regarding our environment all we get is promises, nothing else.

Ernesto Umasi

The Sustainable Development Commission

This commission is in charge of evaluating social and economic development proposals. The company has pledged to donate a total of US\$900,000 over three years to a new development fund for the communities. The fund will be controlled by the Dialogue Roundtable and resources will be used to support development projects identified by the communities in their strategic development plans. All members of the Dialogue Roundtable have committed themselves to seeking additional funding for the sustainable development of the five communities.

Francisco Cordova is hoping the company will finance a project he has been working on to get irrigation to 80 families in the Huano Huano community. He explained:

The irrigation scheme will provide each family with four hectares of good pasture. You can keep 12 cows on four hectares. If each cow produced 60 litres of milk per day at a price of 80 centimos (23 US cents) per litre each family could make 48 soles (US\$14) per day. This is about long-term development for our children and grandchildren.

Is dialogue working?

In 1999, before the Roundtable was set up, an overwhelming majority – 83 per cent – of Tintaya Marquiri residents, said that the mining company did not comply with agreements, while the rest didn't know. Only five per cent of the people questioned said that talking with the company might help resolve disputes.⁹⁰ Today, those statistics might not be so stark. The Dialogue Roundtable represents an important attempt on the part of its members, including BHP Billiton, to create an effective mechanism for resolving the many conflicts that have arisen in the Espinar province. It is one of the most important conflict resolution initiatives in Peru.

Taking part in such an initiative has been a new experience for the communities of Espinar. They

have had to organise themselves better, identify allies and formally document their complaints. For example, at the moment each community is in the process of naming Environmental Delegates to participate in an Environmental Watchdog Committee. As Ingrid McDonald, Oxfam's Mining Ombudsman, puts it: 'They are taking control of their destiny.'⁹¹

Their hard work, and that of the NGOs that support them, has led to concrete improvements in their lives. The company too has shown good faith in some of its attempts to remedy damage. Its recognition of the different community organisations (national, regional and local) as legitimate, representative actors is certainly a step forward. All those interested in resolving mining conflicts should study the initiative and the impressive agreement signed in December 2004, which cements the right of communities to withhold their consent from developments with which they disagree.⁹²

Despite this important breakthrough there is still a high degree of scepticism in the community. The process has been slow and concrete benefits are, in most cases, yet to materialise. Only four out of about 30 human rights cases have been dealt with – and this has taken two years. Many in the communities are not optimistic that environmental pollution will be dealt with effectively.

Speaking in April 2004, one of the community founders of the Roundtable expressed disappointment about a perceived lack of genuine commitment from the company:

I was a founder of the Roundtable process. But now I am really disillusioned. We are falling into a trap. The company has money and manages people, forming its own leadership. Many fall for what is on offer – such as money, jobs, even just a lunch. Leaders fall. Power is the key. The table has failed. The company always gets its own way.⁹³

This view is typical of the impatience felt by many in Tintaya. Even where progress has been made, such as in reducing pollution and resolving human rights cases, people either do not see it yet, or believe they are compromising more than they should be.

The most obvious barrier to real progress is the inherent power imbalance. One of the participants in the dialogue is a large mining company with considerable financial and professional resources. Despite the efforts of the communities and their allies, significant inequities persist in the negotiation process. Many community members are concerned that their representatives are effectively being bought off by the company.

At the Roundtable, the community representatives are manipulated and managed by the mine. They sometimes work for the mine so can't stand up for the community. Tintaya stops everyone working together by dividing us. They take us out one at a time. We argue amongst ourselves about prices and things.

Florentino Cutenounka, Alto Huancané

Even more fundamentally, although there is a Sustainable Development Commission with a pot of money to spend, much of the Roundtable's work is taken up by trying to remedy injuries done to local people – including forced land loss, pollution and human rights abuses. This is not development, but amelioration of negative impacts and, hopefully, prevention of further loss. It fails to address the underlying conditions that create mining conflicts in Peru, such as the lack of full legal recognition of community rights, and a government tempted to fill its own coffers at the expense of powerless communities.

The anger and mistrust resulting from 20 years of mistreatment was never going to evaporate overnight, and it would be wrong to judge the Roundtable too harshly for its slow progress. Things are certainly better today than they were two years ago. In the absence of a decisive

intervention by the government, the Roundtable is still the only hope for progress, and is therefore the focus of much community energy.

The unwillingness and/or inability of the government to intervene in existing mining conflicts and to work to prevent future conflicts, is indefensible. If the government adopted effective policies to regulate mining and to protect the communities affected by it, initiatives such as the Espinar Dialogue Roundtable would be even more successful. The application of international legal standards, backed up by sanctions, would make it harder for companies to do damage and would empower communities attempting to remedy and compensate for it.

In 2003, further conflict with a number of previously uninvolved Tintaya communities was generated by the construction of a new tailings containment area by BHP Billiton. This unilateral move by the company has outraged communities and NGOs involved in the Dialogue process. It illustrates where the power continues to lie in Tintaya, despite the strides made by the Roundtable, and demonstrates the urgent need for better regulation.

4. Environmental crisis in La Oroya

In the 1920s, the American Cerro de Pasco Copper Corporation built a large polymetallic smelter high up in the Andes, about three hours' drive from Peru's capital, Lima, triggering an influx of people hoping to find work.⁹⁴ Eighty years on, the city of La Oroya stands right next to the complex, whose tall chimneys pump out smoke onto the hillsides.

The smelter has provided jobs for many people over the last eight decades. As with a number of mines in the Yauli area, it has undoubtedly stimulated the local economy. But at what cost?

Today, the region is one of the most contaminated areas of Peru. Both towns and the countryside have been affected by mining activities: rivers are visibly polluted, farmlands have been rendered unusable and the air quality is so bad that there have been extremely serious cases of lead poisoning. Doe Run, the American owners of the smelter, continue to make profits, but the 36,000 residents of La Oroya remain overwhelmingly poor. The Peruvian government is either unable or unwilling to improve the situation. Doe Run has chosen not to respond to the specific issues highlighted in this case study.

Health damage

According to its website, 'Doe Run Peru is working towards achieving the development of its activities in harmony with a healthy environment to contribute to the region's and the country's sustainable development.'⁹⁵ Unfortunately, conditions in La Oroya don't conform to this rosy image of environmental stewardship.

The smelter in La Oroya releases a toxic mixture of contaminants that includes lead, arsenic, cadmium and sulphur dioxide, all of which have proven adverse health effects.⁹⁶ Enormous mounds of jet-black slag lie just outside the smelter complex, exposed to the elements. Resident Wilmer Eliseo Macha describes the situation:

The living conditions in La Oroya, the environmental conditions, are difficult. For example, we live in a camp that's 300 metres from the refinery, the smelter, the chimneys, the smoke and the contamination – just 300 or 400 metres. One can clearly feel the gases that the chimneys release. There are moments when the gases fall and they burn your throat and your nose. That happens.

Christian Aid supports a consortium of three Peruvian non-governmental organisations which has set up an association of environmental delegates, who serve as local environmental watchdogs for the community.⁹⁷ The delegates' environmental monitoring unequivocally demonstrates that La Oroya's air, soil and water are seriously polluted.

Measurements of air quality taken in the region were compared to national standards, including maximum permissible limits (MPL)⁹⁸ and national ambient air-quality standards (NAQS).⁹⁹ Where there were no national standards, international standards were used – such as those established by the World Health Organisation (WHO).

The findings reveal that air contaminant levels measured at various points in La Oroya exceed these standards – sometimes greatly. Several measurements during 2002 from the neighbourhood of Old La Oroya, immediately adjacent to the smelter, are astonishing and very disturbing:

- Lead levels exceeded the MPL by over 1,000 per cent and the NAQS by over 300 per cent.
- Cadmium levels exceeded WHO standards by almost 4,000 per cent.
- Sulphur dioxide concentrations were 500 times that of the NAQS.¹⁰⁰

The consortium has also undertaken studies to assess the degree of lead poisoning among La Oroya's residents. The studies have focused on children and expectant mothers – two groups which are particularly vulnerable to the toxic effects of lead exposure.¹⁰¹ Given the high atmospheric lead levels discovered through monitoring, the blood-test results are not surprising. A 2000 study showed that the average blood lead level for children was over four times the World Health Organisation's guideline (of 10µg/dl).¹⁰² Such concentrations have a serious impact on physical development. Similar concentrations were found in expectant mothers. Both groups showed symptoms associated with lead poisoning. A similar study carried out in 1999 by the Peruvian Ministry of Health had shown similar results. Of the 346 children tested, only 0.9 per cent had blood-lead levels that were below 10µg/dL.¹⁰³

Rosa Lazaro Villanera's family has lived in La Oroya for 20 years. Her eldest daughter, ten year-old Carol, explained how it felt to have 16 micrograms of lead per decilitre of blood: 'I get headaches, then pain in my shoulder, then in my hands until my whole arm goes to sleep. I feel pain all the time.'

She also gets stomach-aches and therefore eats less than she should. Other families had to move their children out of the area after they repeatedly lost consciousness.¹⁰⁴ Rosa explains what it is like to live near the smelter: 'When the smoke comes out, you feel it in the throat and it affects the eyes. You feel different, a burning in the eyes... We have thought about moving, but we own a house here and wouldn't have one elsewhere. The kids are in school.'

Doe Run responded to Christian Aid's requests for an interview by sending brochures setting out the positive impact it is having in La Oroya. The brochures document Doe Run's claims to be handling dangerous substances carefully, 'promoting a culture of health and hygiene', and supporting social development projects. While Christian Aid welcomes all attempts by Doe Run to mitigate its negative impact, our analysis shows that the problems persist.

Economic decay

Although some benefit from jobs at the smelter and surrounding mines, most people are still dependent on agriculture. They say that, because of environmental degradation, they are actually poorer today than they would have been if mining had never come to the region. Campesino Andrés Nolasco Jiménez explains:

We planted barley and now I'm collecting it. But it's dry, it's no good – it's only good for big animals. The small animals won't eat it. The people that still work in their fields do it as a complementary activity, nothing more – they have to work in the mine, if they can, or as a vendor or in transport. They can no longer work exclusively in their fields like our grandparents did before there was the smelter and the concentrator.¹⁰⁵

Other farmers complain that their animals are also suffering the effects of lead poisoning and other contamination. While the company and the state enjoy the profits of mining, the same cannot be said of local people. Janio Gora is one of them:

[If] you take a look at mining activity, it becomes clear that it has been an important factor in the national economy – but the benefits have only been received by small groups – before it was the Cerro de Pasco Corporation and now it's other groups that benefit from mining. In contrast, the communities in the area receive nothing. This needs to change.¹⁰⁶

According to Ena Rojas, urban director at Cenca, a local development NGO in La Oroya, half the population of the town live in extreme poverty, despite the claims of the glossy magazines produced by Doe Run.

Privatisation has made life even more difficult for local people. Of 72,000, only 3,500 work in the mine – down from 7,000 in 1997. One thousand of these are on short-term contracts. In the past, the state-owned smelter had to provide health and education for employees and other residents. That's no longer the case. It's now optional for the company to provide social benefits. The people of La Oroya are not holding their breath.

The impact of privatisation

In 1974, the La Oroya complex was nationalised by the Peruvian government, only to be privatised again in the 90s. In 1997 it was purchased by Doe Run Peru, a subsidiary of Doe Run. Doe Run is owned by Renco Group, the holding company of American multimillionaire Ira Rennet. According to the Environmental Protection Agency (EPA), it has one of the worst pollution records in the US. In 2001, the US Department of Justice brought a US\$900 million lawsuit against Renco on behalf of EPA for multiple environmental infractions allegedly committed by Renco's Magnesium Corporation of America.¹⁰⁷

When it bought the smelter in 1997, Doe Run promised to spend US\$174 million on cleaning it up, as part of its Environmental Management and Mitigation Programs (PAMA). To date it has spent just US\$30 million. The company also agreed to improve the sulphuric acid plant. This kind of plant can have a devastating effect on health, but the project has barely begun – only four per cent of the amount promised has been spent.¹⁰⁸

Government figures show that in the last seven years, a large increase in production at the smelter has made contamination worse. According to Rosa Lazaro Villanera: 'Before you couldn't see the smoke but now it is everywhere. The mine... should make sure we have treatments. At the moment we get nothing – when we don't have work we can't buy medicines.'

A study by the Inter-American Association for Environmental Defense and the Peruvian Society of Environmental Law examined air-contaminant levels in La Oroya, to see whether Doe Run's PAMA has made a difference. The study found that four years after Doe Run purchased the smelter, atmospheric concentrations of important contaminants such as sulphur dioxide, cadmium and arsenic had significantly increased.¹⁰⁹ The study concludes that there is an environmental health emergency in La Oroya and that the grossly inadequate Doe Run PAMA requires immediate re-evaluation.¹¹⁰ Lead production has increased by more than 30 per cent since 1997.¹¹¹

A government sub-committee investigating the effectiveness of PAMAs confirms that emission levels at the La Oroya smelter continue to exceed limits. With just over three years left until the PAMA expires, a member of the sub-committee expressed scepticism that Doe Run would comply with the PAMA by the 2006 deadline.¹¹²

The state is either unable, or unwilling, to force the company to fulfil its obligations. It has only fined Doe Run twice – each time a derisory US\$9,000 – for failing to provide accurate information on time. The company has not even provided a plan to show how it intends to fulfil its obligations under the PAMA.¹¹³

Doe Run has requested and received modifications to its PAMA, claiming that it is losing money and cannot afford improvements. It has used this argument before. In Herculaneum, Missouri, Doe Run operates the largest lead-smelting complex in the US. In 2001 the state health department revealed that residents of Herculaneum had blood-lead levels in excess of established limits. Despite its protests that it could not afford to do so, Doe Run was ordered to relocate some families and to reduce its lead emissions.¹¹⁴ Doe Run will not do the same for Peruvian families until forced to do so by the Peruvian government – for as it says itself, it could not operate without government support.¹¹⁵ Esther Hinistroza, who has worked for a Christian Aid partner in the town

for many years, says: 'In Missouri there is less contamination now. Why is there still contamination here? It hurts us to think of this. It is an insult.'

A warning to others

By increasing production, Doe Run is making more money at the expense of more pollution, and people's health and livelihoods are suffering – costs that do not feature in the accounts. The legal system in Peru is manifestly failing to protect its citizens.

As communities across Peru consider their response to the possibility of mining operations in their vicinity, the experience of La Oroya should serve as a health warning: do not mistake mining for development. It demonstrates the need for tighter regulation of foreign investment in mining, and internationally binding rules for companies operating abroad.

5. Democracy in Tambogrande

If the people of Tambogrande don't want to move there obviously won't be a mine. Nobody is going to make anybody move here. That's not on the cards.
*Graham Clow, president of Manhattan Minerals in 2001*¹⁶

The first Prudencio Pulachi heard of Canadian mining company Manhattan Minerals was when he walked past some new offices being built. Pulachi owns a smallholding of ten hectares a couple of kilometres outside Tambogrande, in the lush and beautiful San Lorenzo valley. Transformed from a near-desert 40 years ago by a brilliant irrigation project, it is now the centre of a mining conflict that has become emblematic of two different approaches to development in the early 21st century.

Senor Pulachi is happy with what he has:

I came here 34 years ago when the state was selling this land at a very reasonable price – I paid for my lot over a period of 20 years. I sell my mangoes to the BountyFresh company. They pay well and it means I have money in the bank which sees us all through the year...

You get, say, 15 soles per box and, bearing in mind that my plants are still small and are growing, 30 boxes per plant. I get about 600 boxes per year, or 9,000 soles [around US\$2,500]. Ten people work for me during the mango season. When mangoes are out of season I concentrate on my plums, which we send to Lima to be eaten fresh, and on my limes, which grow all year round...

Each year in the last four, our production has grown. So economically we are getting better and better off. The mine would ruin everything.

Tambogrande is the major town in one of the most productive agricultural valleys of the Peruvian coast. As well as having valuable natural resources above the ground, the town and orchards are situated directly above a large gold deposit. The deposit includes 900,000 ounces of gold, ten million ounces of silver and 1.5 billion pounds of copper.¹⁷

A mining project has been proposed that would require the displacement of approximately 9,000 people from the district's urban zone and the diversion of one of the region's most important rivers. Experts have concluded that the chemical composition of the mineral deposit means the entire valley is at risk of being contaminated by the mine.¹⁸

Shockingly, barely any consultation with local people has taken place. Tambograndinos have been refused the right to decide their own future, but have decided it anyway. Because of good organisation, support from international and national NGOs, and simple determination, the community has successfully outmanoeuvred the power of transnational capital and a supportive Peruvian government. But many other communities in Peru and elsewhere have not been so lucky.

The story of Tambogrande demonstrates how little the views of local people appear to matter in the world of large-scale mining. This section shows that internationally accepted standards of consent are vital if the concerns of the poor are to be heard and taken into account. Manhattan Minerals has chosen not to respond to the specific issues raised in this case study, as it is currently in arbitration with the Peruvian government.

Agricultura si! Minería no!

Many people don't understand why we defend these lands with such force and single-mindedness. They don't know, or they've forgotten, that our fathers arrived here when this was just a desert. With hard work we managed to transform the desert into a valley that produces mangoes, limes, rice and a diversity of other products. Moreover, this land provides a lot of people with work. Its products are exported overseas and are also sold to markets all over Peru. For these reasons we identify ourselves with this valley and we are willing to defend it. It was created with our labour and the labour of our parents. We want to leave it to our children.
*Francisco Ojeda, mayor of Tambogrande*¹¹⁹

Forty years ago, the San Lorenzo irrigation project converted the district of Tambogrande into one of the most important agricultural areas in Peru. It was financed by the World Bank, the Inter-American Development Bank, and the Peruvian and US governments. Many people believe it is precisely the type of project that the international financial institutions should still be funding. The achievements of the irrigation project are particularly significant in Peru, a country with one of the lowest proportions of cultivated land in Latin America. The region of Tambogrande boasts 8.2 per cent of Peru's cultivable land.¹²⁰

The contribution of the San Lorenzo valley to Peru's national economy is significant, with its total economic value estimated at US\$2.2 billion:

- Agricultural activity provides direct employment to approximately 15,000 workers.¹²¹
- Annual foodstuff production is 400,000 metric tonnes.
- Tambogrande produces 40 per cent of Peru's limes and 38 per cent of its mangoes.
- Annual mango exports from the valley generate US\$20 million.¹²²

The arrival of mining in Tambogrande

Manhattan Minerals is a small Canadian company that has never managed a major mineral operation, in Canada or overseas, and does not currently own a productive mine. Manhattan's future depends largely on the success of its plans in Tambogrande. In May 1999, the Peruvian government granted mining concessions totalling 10,000 hectares to Manhattan, and the option to acquire a 75 per cent ownership share in the project if it proceeds, leaving the government with the remaining 25 per cent.¹²³ Manhattan began exploration immediately.

The arrival of Manhattan in Tambogrande in 1999 raised concern among local people. They knew about the unprecedented expansion of the mineral sector in Peru and, as they conducted their own research into mining, they became increasingly concerned that their district would be next on the list. Their main fears were that if the mine went ahead, thousands of people would have to be relocated and that mining would affect the region's primary economic activity – agriculture – through its impact on the environment.

The environmental and economic impact of mining in Tambogrande

According to the president of the Front for the Defence of Tambogrande: 'One hundred thousand people live in Tambogrande and the Valley of San Lorenzo. We all live directly off the land – animals and crops. If we were contaminated by mercury, oxides or other chemicals it would be disastrous.'

Experts believe that Tambogrande's export-oriented agricultural sector would be gravely affected if the mining project was developed.¹²⁴ A number of studies predict that open-pit mining in Tambogrande will contaminate air, soil and water (both surface and subsurface).¹²⁵ Certain parts of the Tambogrande mineral deposit contain between 85 per cent and 99 per cent iron sulphide, which has resulted in devastating environmental contamination in mines around the world.¹²⁶

According to Enrique Trinidad, a manager in a local mango packaging plant, exports would certainly suffer. 'Of course prices will fall. Countries in the North are very sensitive to quality of food and anything to do with a mine will be disastrous,' he says.

It is highly likely that a mine would cause water contamination and because mines consume significant amounts of water, a mine in Tambogrande would further reduce the region's already scarce water resources – with serious repercussions for local agriculture. The planned diversion of the Piura River is of particular concern.¹²⁷

The district of Tambogrande is directly affected by the El Niño phenomenon, which causes water levels to rise significantly. The region also experiences some of the highest temperatures and strongest winds registered in Peru. So on top of the usual environmental concerns, there is a high risk that contamination from the mine will spread, damaging crops and dry forests, as well as other ecosystems and populations in the region.

Mines cannot live alongside agriculture – the conditions here will not allow it. We are near the equator so have very high temperatures in the summer. And we are in the middle of the El Niño phenomenon which is uncontrollable by humans. It could destroy all the tailings dams and everything to do with the mine. So not just Tambogrande but [the nearby city of] Piura would also be contaminated.

Local farmer

The impact of environmental degradation on the local economy cannot be over-stressed – 65 per cent of the region's population works in the agricultural sector. Local people have adopted the 'precautionary principle' – where there is the risk of grave damage, better not to take the risk, especially when the benefits are questionable.

The José Ignacio Tabara Pasapera community

Despite the success of the irrigation of the San Lorenzo valley, there are still thousands of people living in communities that have not been irrigated and are very short of water. Yet even most of those living in this *Bosque Seco*, or Dry Wood, on the left bank of the Piura River, where Manhattan has another concession, are opposed to the prospect of mining.

Alejandro Muñoz Calderon, 47, lives in the community of José Ignacio Tabara Pasapera, on the left bank. His community is made up of about 7,000 people living in 17 little villages. His village is about four kilometres from a proposed mine site.

Despite attempts by the pro-mining lobby to portray the area as little more than a desert, Muñoz Calderon says they live well, although they are poor. He has cows, sheep, goats, pigs and mules, and grows vegetables. When it doesn't rain much, they grow less and have to walk about three kilometres to get water. But despite the hardship, they are against the mine. Muñoz Calderon says:

The main reason [we are against mining] is contamination. We have seen it in other places. I went to Cajamarca and I've seen a river where there used to be fresh water and fish. Now the water's turned pink and has hardly any fish. There is no agriculture in Cajamarca. The two cannot coexist, despite what Manhattan tells us. We also worry about health problems affecting humans, animals and plants... Although we are poor we are getting along well, bit by bit. At least there is no contamination.

Marina Changa Espinoza, headmistress of the community's education centre, agrees: 'There are great needs here and the mine says it can bring help. But whatever technology they have, even the latest technology, there will be contamination. We have seen numerous examples of problems.'

Despite the serious shortage of water in the area, local people regard offers of help from Manhattan with suspicion. Muñoz Calderon says:

We need to walk three kilometres to get water. But our community is fine, even without rain. If there is a dry year we suffer, but we know the next year will be better... Manhattan offered to provide us with taps but we would prefer to suffer so that our children get good land... We do want taps and irrigation but from the state, not the company. That would be a good form of development.

Local farmer Luis Alberto Lescano, 23, is sceptical about the promise of jobs. 'Farming is our future. We don't have capacity to work in the mine or in the city,' he says.

Muñoz Calderon agrees:

In the mine-construction stage they offer lots of things, like jobs and water. But then it stops. We get called in to cut all our trees down to make way for the mine, but all the technical work gets done by gringos and people with special skills. It's a lie. It's happened elsewhere, too. They are tricking us.

The president of the education centre, Alberto Nima Chicoma, presents an alternative view of his community's development:

Piura University did an analysis, demonstrating development alternatives from our wood. Algarroba trees are very plentiful and we already have some factories to process the fruit. It is very healthy for children, good vitamins, and you make it into a milk or fruit drink. Bee farms can make honey and jelly, and we have many animals... We need more studies to identify water sources and we need finance to access them. This is already happening in the lower regions. We don't need mining.

Although the presence of the company has caused some divisions within the community, the majority are resisting Manhattan's pressure, which they see as taking advantage of their poverty. Muñoz Calderon has put together a petition asking for Manhattan to leave the area. He says:

Right now, today, we are being pressured by Manhattan. Here is a letter we have written to the company. Here are all the signatures of the community – we've got this whole packet of signatures... 96 per cent of people are against mining. But the company representative is refusing to receive our petition.

With these documents we will make a public denunciation of this situation. We will go to the congress and government. The people of Tambogrande are helping us, just like we helped them. We have lived here for 180 years. Our parents gave this property to us. We want to leave it for our children and grandchildren. They will never win. Bring it on.

No consent

The company's approach, initially supported by the Peruvian government, has led to a complete breakdown of trust with most of the community. Despite the enormous impact that the Tambogrande mining project would have on the town, including the relocation of about a third of its residents, the population has not even been properly consulted about it.

Inaccurate information

One of the building blocks of genuine consultation is accurate information. The people of Tambogrande say that Manhattan has provided inaccurate or incomplete information about the magnitude of the project and its possible social and environmental impact. For example, they say it claimed its activities would not extend to agricultural areas of the valley – despite the fact that the mine concession encompasses both urban and agricultural areas. Luis Riofrío, local leader and vice-president of the National Coordinator of Communities Affected by Mining (CONACAMI), explained: 'They told us that they weren't going to touch the valley, but their own studies indicate the contrary. They told us that mining and agriculture can coexist, but none of the cases that they have used as examples of successful coexistence have anything to do with the reality in Tambogrande. The number of families that would have to be relocated has grown. We don't trust this company at all and we want them to leave Tambogrande.'¹²⁸

According to Robert Moran, an experienced hydrologist, Manhattan's Environmental Baseline Study does not satisfy reporting standards in British Columbia, the location of Manhattan's head offices, and significantly underestimates the potential environmental impact of the mine.¹²⁹

Government support

Ever since the prospect of mining in Tambogrande arose in 1999, the support of the Peruvian government had been the overriding factor in Manhattan's ability to continue its work, despite popular opposition. It is commonly accepted in Tambogrande that the government supports mining because of the revenues it generates, which enable it to pay its foreign debt and finance other expenditure. The effect of the mine locally is not a primary concern for the government. According to Franciso Ojeda, the Mayor of Tambogrande, 'The poor don't govern. Always the rich. They make laws for big companies... Mining doesn't help poor people. It goes towards paying the external debt.' Alejandro Muñoz Calderon agrees: 'We rejected mining. The state will get most of the money, while we get nothing.'

The Peruvian government has been willing both to override the Constitution of Peru and to contravene the laws and regulations that govern private investment in order to assist Manhattan.

- Peruvian law prohibits the presence of foreign companies in border zones such as Tambogrande, which is located less than 50 kilometres from Ecuador. But in May 1999, the then President Alberto Fujimori passed a Supreme Decree declaring mineral investment in Tambogrande to be of 'public necessity'.¹³⁰ That enabled him to override the law and provided Manhattan with all the necessary approvals to begin exploration in the Tambogrande concession areas.
- Foreign investment in border zones must be approved by the Combined Command of the Armed Forces of Peru. Both the Defence and Interior Ministers have to give their backing. They did not do so in the case of the Tambogrande project. Neither did the Minister of Agriculture.
- Because the Tambogrande project will affect an urban zone, the local municipality must approve permits regarding changes in land use. The municipality of Tambogrande granted these permits to Manhattan, despite the company's failure to submit a technical report – the basis on which the permits are normally granted.¹³¹

Social unrest

On 31 March 2001, a leading anti-mining farmer was assassinated, shortly after a protest against the mine turned violent. There is no evidence to link the company to the assassination. But according to the present mayor of Tambogrande, relationships within the community have been badly affected by Manhattan's presence: 'The worst impact of the company has been social, on the people,' he says. 'The people are divided, and argue with each other.'

This was the view of most of those Christian Aid talked to in Tambogrande. The community distrusts the company to such an extent that even apparently positive offers of assistance, such as paying for health and education, are seen as attempts to 'buy off' the local people. Actual bribery has also been alleged. The present mayor accuses the company of offering him 'vast sums' to change his position.¹³² The company will not comment on this.

The town calls a referendum

Because of the total lack of consultation, and a growing fear that government support would see the project become a reality, the community and its local government, supported by Oxfam, organised its own plebiscite on 2 June 2002. The plebiscite was intended as an act of peaceful and democratic resistance, and to fill the glaring void that exists in current Peruvian legislation on the inclusion of local people's opinions in the mine-approval process.

More than 27,000 citizens – 73 per cent of those eligible to vote – took part in the consultation. Almost 94 per cent voted against mine development in Tambogrande.

A number of expert international institutions, including Canadian groups Rights and Democracy and the International Legal Resource Centre, and the Peruvian organisation Transparencia (Piura Committee), supervised the consultation. All reported that the consultation in Tambogrande met with accepted technical and applicable legal standards.

Rights and Democracy was set up by the Canadian parliament to defend international human rights and to promote democratic development. In its report, it notes:

The procedures and rules utilized were more or less identical to those used in the Peruvian general election. The high rate of participation and the massive 'No' expressed by the voters allows us to affirm that the majority of the population of Tambogrande is currently opposed to the development of mining activity in the region, based on the information that was available at the time of the vote.¹³²

Roberto Obradovich, then president of Manhattan, was less impressed:

In other countries, with high levels of culture where the population's education is very high, probably in such developed countries you could apply a model of this type. But in our country, where the population is so easily manipulated, I personally believe that if these types of referendum continue throughout the country, the country will be paralyzed.¹³⁴

A shift in the balance of power

The overwhelming unanimity of the result had an immediate effect and began a new stage in the conflict in Tambogrande. The following day Manhattan's shares fell by 28.6 per cent on the Toronto stock exchange, revealing that the financial markets were following the conflict.¹³⁵

Most importantly, the Peruvian government itself was forced to adopt a new stance. At first, it refused to recognise the validity of the referendum, arguing that it had no legal force and that the

government was under no obligation to take it into account. However, as pressure from the population of Tambogrande and civil society organisations mounted, the government was forced to accept that it was a legitimate expression of the people's views.

In a press release, Jaime Quijandria, Minister of Energy and Mines, stated: 'The government considers that the popular consultation of 2 June 2002 is an authentic expression and, despite its non-binding character, it reflects the sentiments of the population at a particular moment, based on particular information, which we recognize, respect and understand.'¹³⁶

Although no official announcement has been made, the government now appears to have accepted that there will be no mine in Tambogrande. The director general of the Ministry of Energy and Mines asked Christian Aid: 'Have you never made mistakes?'

Manhattan's Environmental Impact Assessment (EIA) was presented a few months after the referendum, on 9 December 2002. The National Institute of Natural Resources (INRENA) criticised the EIA on 191 counts. In particular, INRENA noted that the assessment had failed to address the danger of contaminant leakage from the mine-tailings containment area, which would directly affect the crops in the San Lorenzo valley. Another concern was the potential loss of dry forest, resulting from the diversion of the Piura River and subsequent changes to the microclimate.¹³⁷ INRENA's observations coincide with those made in other studies, questioning the viability of the mining project.¹³⁸

The EIA was an opportunity for the Peruvian government to demonstrate its shift in attitude. Whereas it had previously granted Manhattan the right to operate, it now noted that the EIA was incomplete. The Ministry of Energy and Mines halted the approval process.¹³⁹ The fact that community complaints about company misinformation are now being taken seriously in official statements is further evidence of the government's change of heart.

On 10 December 2003, Centromin, the state mining company which promotes private investment in mining, announced that Manhattan had failed to comply with a number of qualifying conditions by the agreed deadline of 1 December. By failing to satisfy these conditions, Manhattan lost the right to a 75 per cent ownership share of the mining project.

On 8 January 2004, Manhattan announced its intention to take the decision to arbitration, claiming that Centromin had failed to follow correct procedures. The arbitration process officially began on 26 August 2004.

Remarkably, the arbiter in this process is none other than the National Institute of the National Mining, Petroleum and Energy Society, the national industry lobby organisation. Despite repeated requests from civil society, this body has declined to release information to the public about the arbitration process, arguing that it is a private matter.

The right to be consulted

Tambogrande is one of the most important mining conflicts in Peru. It involves competing economic activities and local development strategies, and challenges the government assumption that mine development is appropriate in all areas of Peru, regardless of the ecological, economic or social value of a particular area.

Tambogrande shows that involving local people is vital in the regulation of mining. Initiatives such as the public referendum in Tambogrande would be unnecessary if communities had a real say in decision-making. Mining-related conflict will continue unless citizens are given a genuine opportunity to have their say about mines.

Tambogrande also highlights the urgent need for a national strategy concerning land use. At present, mine concessions are defined according to an arbitrary grid system that takes no account of the type of land in question. A land-use strategy would note the characteristics of each zone, ensure that the land was used prudently and promote the conservation of natural resources. Mines would not be allowed at all in certain areas, such as Peru's few agriculturally productive valleys. Such controls would help avoid future mining-related conflicts.

On 17 November 2002, Francisco Ojeda, the principal leader of opposition to the mining project, was elected mayor of Tambogrande.¹⁴⁰ Following the election, the new municipal authorities began work to strengthen the position of the local population and its organisations. They are drawing up a development strategy based on agriculture.

6. A new vision for mining in Peru

Mining is not working in Peru. Its economic, environmental and social costs outweigh its economic benefits. At local level especially, the effects of increased mining investment over the last decade have been devastating for many of Peru's poorest people.

The desire of governments and companies, both domestic and foreign, to extract minerals needs to be weighed against the human rights of people directly or indirectly affected, as well as the rights of future generations to basic necessities such as clean air, safe water and unpolluted soils. Mining cannot offer a path out of poverty unless it is properly regulated.

This report has used three case studies to illustrate the impact of mining in Peru:

A dialogue between the affected parties at the **Tintaya** mine has helped improve some aspects of local people's lives. But it is too little and – for those who have lost land or livestock, or whose health has suffered – too late.

La Oroya is a polluted district and local children are suffering horrendous health problems as a result. Pollution has increased since the privatisation of the lead smelter in 1997 and the services offered to local people have worsened.

The people of **Tambogrande** have succeeded in protecting their right to live as they choose, despite government support for an aggressive mining company.

The concluding section of this report outlines the improvements needed in the governance of mining investment to ensure that the injustices of Tintaya, La Oroya and Tambogrande are not repeated.

The Peruvian government has not prevented foreign companies from acting irresponsibly. The people of Peru need legislation and methods of enforcement that will.

Dialogue is important – but not enough

Recommendations for mining companies

- Companies should learn from the important consultation process taking place in Tintaya. In many cases this form of dialogue will be the quickest way to mitigate some of the negative impacts of mining on a community.
- Where mining has harmed communities, those responsible should make full reparations. Communities live with the consequences of mining many years after a mine has gone. The mining industry cannot disown its historical responsibilities.
- Companies should support improved regulation at national and international levels. Companies that operate ethically will benefit from minimum standards that prevent other companies undercutting them by following poor practice.

Local communities are not waiting for changes in the Peruvian or international regulatory climate before seeking to safeguard their rights. Several civil society initiatives are emerging to pressurise those in power to ensure that mining benefits everyone, especially local people. These initiatives are necessary precisely because the government is failing to safeguard the interests of local people.

Mining-affected communities have developed a number of alternatives to binding legislation in an attempt to bridge regulatory gaps, including dialogue roundtables as well as direct meetings with companies. In order to improve their relatively weak negotiating position they have strengthened their organisations, and have created the National Coordinator of Communities Affected by Mining (CONACAMI). They have also increased their knowledge by visiting similar communities elsewhere in Peru and in other countries to share information.

The Espinar dialogue roundtable, discussed in this report, is one of several innovative community-driven initiatives in Peru. Such initiatives seek to resolve conflicts over land transfers, environmental contamination and human rights abuses, and to establish a more equitable relationship between companies and neighbouring communities. Six of the principal mining companies in Peru¹⁴¹ have met with CONACAMI representatives, with the support of two Christian Aid partners¹⁴² to explore the possibility of entering into a process of dialogue.

The Mining Dialogue Group was established two years ago by a group of Peruvian and international NGOs. It aims to build trust between diverse stakeholders and now includes the participation of companies and Peru's federal and municipal governments. The Mining Dialogue Group has discussed important issues such as mining taxes, the social and environmental policies of the mining industry, the easement process under the Land Law, the participation of citizens in decisions about mining, and the relationship between mining companies and local communities.

These initiatives share a common goal – the development of methods to prevent and resolve mining-related conflict. In the absence of government leadership, they are an attempt to generate consensus, on a level playing field, among the groups that are in conflict.

Today, virtually all companies, large or small, have developed written codes of conduct, and an increasing number have undertaken environmental audits. Companies are signed up to a plethora of agreements and standards within the industry. The International Council of Mines and Minerals has initiated dialogue with a number of large international NGOs and is working with the Global Reporting Initiative to develop non-binding standards.

Many mining companies have also adapted their organisational structures in response to criticism. Common changes include the hiring of social science professionals; the adoption of codes of ethics and/or conduct; and the use of new reporting methods that record the social impact of corporate activity.

The initiatives of leading companies in adopting this change of approach should not be underestimated. They are a welcome step towards acknowledging and addressing the historic problems of the industry as a whole. But too often companies have seen dialogue as a means of hanging on to their licence to operate without taking the most important part of the process seriously – listening and then acting on what they have heard.

Experts remain sceptical about the efficacy of voluntary measures, most of which are non-binding, lack effective and credible independent monitoring, have no mechanisms for redress, and lack any regime of sanctions for violators, however serious the violations.

In its report, *Behind the Mask: The Real Face of Corporate Social Responsibility*, Christian Aid argued that the main achievements of the corporate social responsibility industry are measured not in improvements in standards of environmental care or human rights, but in superficial credibility, and therefore the investment rating of mining companies.¹⁴³

Christian Aid believes that corporate social responsibility manifested through the voluntary adoption of minimum standards has an important part to play in enhancing the quality of life of local communities. However, even in countries which have a strong and enforced regulatory framework, abuses continue to occur.

Closely associated with the emphasis on voluntary measures has been a marked aversion to adopting legally-binding standards or sanctions for violators. It is the clear strategy of the industry to support the development of voluntary codes as a means of avoiding more stringent regulation.

Experience has shown that in mining, as in most industries, threat of effective sanctions makes companies work harder to avoid breaching accepted standards. It also lends power to communities in dialogue with companies – meaning discussion can focus on realising benefits, rather than avoiding or redressing harm. If companies do break accepted standards they should be punished and communities compensated.

There is no doubt that dialogue between communities and mining companies is crucial. However, what is apparent from this report is that, on its own, dialogue will never be enough. Communities need the support of the national government to ensure their rights are protected.

Binding national regulation is needed

Recommendations to the Peruvian government

- National regulation guaranteeing the involvement of local communities in decisions about mining in their area must be put in place and enforced:
 - Information about the project and a consultation period should be posted widely.
 - Adequate time should be allowed to determine local opinion. This should be sufficient to allow time for information dissemination and discussion, say six months.
 - Information-sharing and consultation with a community or indigenous people should be conducted and concluded in public, in an accessible place within the affected area.
 - Where companies are found to have deliberately divided communities this should be sufficient grounds for the denial or cancellation of a mining licence.
 - A local decision to reject mining should stand for a significant minimum period, say five years. This would reduce the threat of persistent harassment.¹⁴⁴
- To ensure that companies satisfactorily comply with these provisions, a monitoring body which enjoys the confidence of all parties – especially the affected community – should report independently on the process.

The current regulatory system in Peru is failing to protect its citizens from the significant damage associated with mining operations. Nationally, there is a common perception that the Ministry of Energy and Mines is not equipped and lacks the political will to manage and resolve mining conflicts. Regional governments have also been less than successful in intervening in disputes.

Certainly, many community members feel powerless. According to one community leader in Tintaya: 'We don't bother with courts, basically because we know we won't win. The authorities ignore people from rural areas.' Another leader, Francisco Cordova, agrees: 'International law seems like a good idea. There are laws protecting people but they are not applied. The legal system in Peru will not save us – the government makes laws in favour of the company not us. And there is corruption.'

The conflict between introducing measures to protect people and the environment, and a continued desire to attract foreign investment in mining, is apparent in two of the main environmental initiatives in Peru – PAMAs and EIAs.

PAMAs are not effective

Environmental Management and Mitigation Programmes (Spanish acronym: PAMAs) were introduced in the 1990s to gradually reduce the contamination produced by existing mines and smelters to 'maximum permissible limits'.¹⁴⁵ Such reductions were to be achieved largely through improved technologies. Once companies have presented PAMA proposals to the Ministry of Energy and Mines (MEM), the final terms and conditions of these agreements are determined on a case-by-case basis, in negotiation between the two parties, behind closed doors.

But PAMAs haven't worked. The technological modifications required under these programmes have proved inadequate. Moreover, companies frequently seek to extend the deadlines by which improvements have to be made, or to modify their PAMAs in order to make requirements less stringent. The government routinely grants such extensions and modifications without consulting its citizens, essentially rewarding companies for their non-compliance.

Recently, a congressional sub-committee produced a draft report, evaluating existing environmental regulations for the mineral sector.¹⁴⁶ Arguing that PAMAs for smelters have failed completely, the report cites a number of problems:

- The MEM accepts requests from the mining industry to modify PAMA requirements.
- The MEM lacks an adequate auditing system to ensure that companies comply with PAMA requirements. The auditing function is carried out by private companies which are directly contracted by industry.

The sub-committee concludes that the requirements that were established under the Regulation for Environmental Protection in Mining and Metallurgical Activity, including PAMAs and the maximum permissible limits for contaminant emissions, have failed to control the environmental contamination generated by mining and metallurgical activities.

EIAs are not working

Any company proposing a new project in Peru has to carry out an Environmental Impact Assessment (EIA). But these are inadequate. A study published by the Environment and Ecology Sub-commission of the Peruvian Congress identified serious limitations with the use of EIAs in the mining sector. Having studied several EIAs, it found that they were incomplete and not based on rigorous engineering analysis.¹⁴⁷

One of the most serious criticisms of the process is that EIAs are carried out by consultancies contracted by the companies themselves. It is therefore questionable whether EIAs provide an independent, accurate and complete assessment of environmental risk.¹⁴⁸

The limitations placed on citizen participation constitute one of the most serious criticisms of existing environmental regulation. Until December 2002, the Regulation for Citizen Participation in the Approval Procedure of Environmental Studies governed citizen participation in decisions involving mining activity.¹⁴⁹ But:

- citizen participation was limited to a public hearing at the end of the EIA approval process
- the public could not get access to independent advice to enable them to understand an EIA; given the technical nature of EIAs, such advice is essential

- most importantly, there was no guarantee that public concerns would be addressed, nor was there much likelihood that opposition to a mining project would prevent an EIA from being approved.

In December 2002, the regulation governing citizen participation in the approval process was modified.¹⁵⁰ Unfortunately, the shortcomings identified above were not properly addressed. Several additional public workshops are now mandatory but the timelines are still too short to allow for genuine, informed participation.¹⁵¹

Moreover, the Ministry of Energy and Mines is under no obligation to take people's views into account. So the impact of citizen participation remains uncertain. EIAs are still unintelligible to the average person. Manhattan's Tambogrande EIA was hundreds of pages long and full of technical jargon. Parts of it were in English.

Perhaps most concerning is the impression that the process is not genuine. In the last decade, the Ministry of Energy and Mines has *never* rejected an EIA for a medium- or large-scale mining project.

Conflicts could be reduced if the government established formal mechanisms to enable its citizens to take part in the mine-approval process. Once a mine was approved, the affected communities could also verify that the effects of the mine were in line with those anticipated in the company's EIA and that, if necessary, mitigation strategies set out in the EIA were implemented.

Governments have a duty to protect the rights of their citizens and to resist mining companies that are not prepared to adhere to strict environmental and social regulation, even at the risk of losing potential foreign investment.

The fiscal pressure on the Peruvian government and governments like it all over the world is greatly increased by the need to repay foreign and domestic debt. This is often the decisive factor in leading them to accept foreign companies' mining proposals, despite the harm they might cause. It is vital then that national governments are supported at an international level to enable them to put the lives and livelihoods of their citizens first.

A supportive international context

Recommendations to the international community

- Countries that are home to transnational companies should enact legislation that will require those companies to operate to the same standards wherever they operate in the world. Mechanisms are required to ensure that communities are able to complain about harm done to them by such companies.
- There should be international support for the draft UN Norms on Transnational Corporations concerning minimum labour, environmental and human rights standards. The international community should develop these norms into binding laws with sanctions imposed on companies that break them. Free-trade agreements sometimes include clauses that make the lowest national standard the norm, but the opposite – the highest national standards – should apply. National and local governments should have the right to impose even stricter environmental and social standards should they wish.
- Influential organisations, such as the World Bank and other donors, should stop putting pressure on client countries to attract investment by reducing protective regulation and offering harmful incentives, thus encouraging a race-to-the-bottom. Rather, they should

persuade developing country governments that without certain conditions in place, investment in mining and similar sectors will not lead to poverty alleviation, as the EIR indicates.

Christian Aid is calling for international rules to govern mining operations wherever they are in the world – irrespective of the regulatory regime in a given country. Companies should have to operate to international standards agreed by their home country.

Miguel Palacin, president of CONACAMI, Peru's national mining watchdog, is keen on this idea: 'BHP wouldn't do in Australia what it is able to do here,' he says. 'Yes, I am totally in favour of international law. The only times we have won things have been with international help. I don't trust Peru's laws. The whole structure is wrong. It is all centralised. Communities are outside the structure of the state. The Peruvian government would listen to this.'¹⁵²

There is no reason why BHP Billiton's facilities in Espinar should operate to less exacting standards than its facilities in Australia. Doe Run should offer the same protection to Peruvian children with lead poisoning in La Oroya, as it does to American children affected by its operations in Missouri.

Even in developed countries, poor and marginalised people are too often forgotten. Aborigines in Australia and the First Nations of Canada continue to suffer at the hands of companies and governments keen to extract minerals.

While socially responsible companies are to be applauded when they act in the interests of poor communities, it is a mistake to rely on the goodwill of companies to fill this regulatory void. They are under constant pressure to cut costs and increase profits.

Christian Aid is calling for an international treaty or treaties covering environmental and social rights, along the lines of the OECD Convention on Bribery.

The bribery convention is structured in such a way as to encourage all member countries to sign up to and adopt the same legal standards, ensuring that no single country is disadvantaged by having more stringent regulations. Now that countries have adopted the bribery legislation, anyone accused of bribery can be tried in his or her home country.

The adoption of this form of legislation is an implicit admission that many host countries do not have the ability to deal with bribery themselves, and that in some cases the bribery actually involves host governments and/or legislatures. The same argument holds for environmental and social illegalities.

Conditions for foreign investment

This section has focused on the need for effective regulation to enforce minimum environmental, human and labour rights, and minimum health and safety standards. This would be a vital step towards ensuring sustainable development – but it would not be enough. International minimum standards would not cover certain areas which need to be reformed, if mining is to benefit poor people. These include taxation, conditions on local sourcing, joint ownership of enterprises and minimum levels of local employment.

Conditions for foreign investment should make sure that such investment leads to sustainable development for the local population. With its legal reforms in the 1990s, the Peruvian government swept away a range of constitutional protections for campesino communities as well as a host of obligations imposed on mining companies.

These reforms were partly a response to strong pressure from international financial institutions. They should be reversed, so that communities are once again protected by law and mining companies are made to accept their responsibility to the regions in which they work. However, a new regional treaty is set to entrench, rather than reverse, these changes.

The Free Trade Area of the Americas (FTAA) is a multilateral trade agreement that seeks to create a free-trade zone from Alaska to Patagonia. Based on the North American Free Trade Agreement (NAFTA), the FTAA is currently being negotiated by all the governments of the western hemisphere, with the exception of Cuba. As well as promoting the free trade of goods, the FTAA, still in draft form, governs foreign investment and trade in services.

Under the FTAA, foreign investment, including investment in mining, is encouraged through deregulation. First, governments are forbidden from imposing 'performance requirements' on foreign investors. These performance requirements are often very beneficial to local people. For example, countries can insist that companies source a certain proportion of their work force or supplies locally.

Other provisions would allow foreign investors to sue national governments for virtually any regulatory action that limits their expected profits. With limited exceptions, these apply even when the regulatory action is intended to benefit or protect society. Using similar provisions under NAFTA, a number of multinational companies have successfully sued governments for approving environmental regulations that were designed to protect their populations but imposed costs on the companies. The successful litigants were awarded millions of dollars in compensation for what was seen as 'expropriation' – and the governments were forced to pay.¹⁵³

If the FTAA comes into force, it is likely to herald a 'regulatory chill', in which governments are hesitant to approve measures that could result in them being sued under international trade provisions. The result will be a diminution of national sovereignty and perhaps further threats to the territories of campesino communities and indigenous peoples.

According to a recent report by Oxfam, the FTAA will 'place big corporations in a privileged position in relation to the rights of the population of the Americas.'¹⁵⁴ Moreover, given that much of the foreign investment in Peru is in sectors such as forestry, mining, hydrocarbons and fishing, the country's environmental problems are likely to be exacerbated under the FTAA.

The UK government, among others, currently opposes binding international minimum standards. Instead it argues for:

... a primarily voluntary approach that takes compliance by companies with all relevant legal requirements wherever they operate as the base level of performance and CSR [corporate social responsibility] as action by companies that goes beyond compliance, integrating socially responsible behaviour, including ethical values, in their core values, in recognition of the sound business/economic/competitiveness benefits in doing so.¹⁵⁵

The UK will not endorse a 'global legally binding convention' because of the risk of:

- 'diverting the energy of the still relatively small community in business and elsewhere focused on CSR from action to debate'
- 'complex legal and technical issues involved in determining and putting in place a global set of rules and the institutional architecture at national and international levels needed to back them up'
- 'doubts about the effects if, as seems likely, the global norms and standards that could be agreed by all governments were some way below what leading players are now doing.'¹⁵⁶

Christian Aid rejects these arguments. The CSR community is currently characterised by debate rather than action, as Christian Aid's recent report, *Behind the Mask*, showed.¹⁵⁷ And while the process will inevitably be complex, this has never been a valid reason for failing to enact important international law.

The people of Peru are suffering at the hands of companies that have polluted their land and damaged their health. There is no evidence to suggest that imposing minimum standards will lead to even worse practice among leading companies.

International regulation will lead to better national regulation. One problem that countries such as Peru face is the threat of disinvestment if they enforce decent minimum environmental standards. Maria Chappuis, Peru's director general of mining, told Christian Aid that the government faces a dilemma about how to respond to Doe Run's non-compliance in La Oroya. If it imposes fines and/or insists Doe Run pays for cleaning up its own mess, there is the possibility that the company may just cut its losses and run. The people of La Oroya are also in a quandary, as they don't want to lose their jobs and an important part of the local economy. In effect, they are prepared to sell their health, and Doe Run is taking advantage of their poverty.

The threat of disinvestment is a genuine one. Operational costs are an important factor for investors and better environmental standards mean higher costs. Countries are therefore tempted to lower these standards, to attract profit-maximising firms. However, if there were universal norms, the downward pressure on environmental regulation would be reduced. National legislatures would be better able to enforce minimum standards themselves, making international procedures less necessary.

Such laws would benefit companies, especially those that already have relatively high standards. They would make people more inclined to believe companies' promises about their impact and terms for mining development might be easier to agree. In the absence of genuine enforcement mechanisms, communities are likely to remain cynical about company assurances. As the president of the Front for the defence of Tambogrande put it: 'We have won the battle but not the war, because the laws are very fragile. I agree with international law.'

Endnotes

- 1 Campesino refers to the indigenous peoples of the Peruvian Andes. It does not include indigenous nations that live in the Peruvian Amazon.
- 2 According to the Banco Central de Reserva del Perú (BCRP) in 2003.
- 3 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*, p 15.1. See <http://minerals.usgs.gov/minerals/pubs/country/1995/9519095.pdf>
- 4 Debt has only recently (2003) fallen below 50 per cent of GDP due to relatively strong growth between 1998-2003. www.latin-focus.com/latinfocus/countries/peru/pereireal.htm
- 5 According to Victor Torres of the Confederacion Campesina del Peru, www.newsandletters.org/Issues/2003/July/PeruJuly03.htm
- 6 These reforms follow a pattern similar to 'structural adjustment' reforms supported by the World Bank around the world.
- 7 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*, p 15.1. See <http://minerals.usgs.gov/minerals/pubs/country/1995/9519095.pdf>
- 8 See Ministry of Energy and Mines, *Referential Mining Plan 1999-2008*.
- 9 Supreme Decree No. 014-92-EM (04/06/92).
- 10 Political Constitution of 1993.
- 11 Legislative Decree No. 674. Law to Promote Private Investment in State Companies (09/27/91).
- 12 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*.
- 13 Ministerio de Energía y Minas, 2002b, p 21-22, cited in Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*.
- 14 Latinobarómetro. See Latinamerica Press at www.lapress.org/article.asp?IssCode=0&lanCode=1&artCode=3286
- 15 Legislative Decree No. 708 (11/14/91).
- 16 Legislative Decree No. 662. (09/02/91).
- 17 The mining sector pays both direct and indirect taxes. Mining companies are directly taxed on net earnings, net assets, the repatriation of earnings and any interest earned. Indirect taxes include sales tax, tariffs on imports, and tax paid on behalf of employees.
- 18 J De Echave y Aliaga. *Minería y Reinserción Internacional en el Perú*. Instituto para el Desarrollo de la Pesca y la Minería 1994.
- 19 A Liebenthal et al 2003. Extractive Industries and Sustainable Development: *An Evaluation of World Bank Group Experience*. World Bank Operations Evaluation Department, IFC Operations Evaluation Group and MIGA Operation Evaluation Unit. [www.ifc.org/ifcext/oeg.nsf/AttachmentsByTitle/ei_report/\\$FILE/ei_report.pdf](http://www.ifc.org/ifcext/oeg.nsf/AttachmentsByTitle/ei_report/$FILE/ei_report.pdf)
- 20 *Striking a Better Balance, Volume 1: The World Bank Group and Extractive Industries*. The Final Report of the Extractive Industries Review, December 2003.
- 21 Tailings are the rock wastes left behind following ore extraction. They often contain heavy metals, acid-forming minerals, and residue from toxic chemicals used in the extraction process, including cyanide and sulphuric acid.
- 22 Constitution of 1979.
- 23 Law No. 26505 (17/07/95).
- 24 Supreme Decree No. 017-96-AG (19/10/96).
- 25 The Spanish word is *servidumbre*.
- 26 Only one mining easement has been granted by the MEM.
- 27 Marco Arana, *Minería Pobreza y Contaminación Ambiental en Cajamarca*. Cited in Victor Torres, *Hacia una estimación de los efectos de la actividad minera en los índices de pobreza de los departamentos del Perú*, December 2003, Lima.
- 28 Thirty days is insufficient time for a community to evaluate, with the help of legal and other technical advice, whether it wishes to enter into negotiations with the company.
- 29 In the case of agricultural lands, expropriation may only be undertaken in cases of public necessity involving public works and services. Under the Land Law 'agricultural land' includes agricultural, pastoral and forested lands.
- 30 Supreme Decree No. 014-92-EM (04/06/92).
- 31 Legislative Decree No. 613. Environment and Natural Resources Code (07/09/90).
- 32 Legislative Decree No. 757 (13/11/91).
- 33 Carlos Chirinos and Manuel Ruiz, *Concesiones sobre Recursos Naturales: una Oportunidad para la Gestión Privada*. Sociedad de Derecho Ambiental, 2002.
- 34 Legislative Decree No. 708 (11/14/91).
- 35 Supreme Decree No. 016-93-EM (01/05/93).
- 36 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*, p 15.
- 37 Ministerio de Agricultura Tercer Censo Agrario, 1994.
- 38 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*, p 15.
- 39 www.latin-focus.com/latinfocus/briefings/2002/0209_briefings/Peru.htm
- 40 Michael L Ross, *Extractive Sectors and the Poor*, Oxfam America, New York, October 2001.
- 41 See F Lopez, José Luis et al, *Informe Final: Canon Minero y Descentralización*, Asociación Civil Labor, 2002.
- 42 Ministerio de Energía y Minas, *Plan Referencial de Minería 2000-2009*. www.minem.gob.pe/mineria/publicaciones/public08/archivo.pdf
- 43 The sol is the currency of Peru. At an exchange rate of 3.45 soles to the US dollar, one sol is worth US\$0.29.
- 44 Comisión Investigadora de los Delitos Económicos y Financieros cometidos entre 1990-2001, *Balance de la Inversión Privada y Privatización 1990-2001 – Objetivos/Resultados*, Fondo Editorial del Congreso del Perú, 2002.
- 45 Ibid.
- 46 Taken from V Torres, *Minería y Política Tributaria, Actualidad Minera del Perú*, No 55, November 2003. www.cooperaccion.org.pe Cited in Echave, CooperAcción. Note that the figure of two per cent is derived looking only at the two most significant taxes on mining.
- 47 *Striking a Better Balance, Volume 1: The World Bank Group and Extractive Industries*. The Final Report of the Extractive Industries Review, December 2003, p 29.
- 48 Information provided by the Ministry of Energy and Mines.
- 49 Statistics from Peru's Fondo Comun de Desarrollo (FONCODES) cited in *Gambling With People's Lives: How Does the World Bank's 'High-Risk/High-Reward' Funding Strategy Threaten People and the Environment?*, Environmental Defense, 2003.
- 50 *World Bank Group Mining Industry Investment: Bottlenecks to Achieving Poverty Reduction, 'The Yanacocha Example'*, Submission by Newmont Mining Corporation, December 2002, p 5.
- 51 Law No. 27506 (9/07/01).
- 52 See F Lopez, José Luis et al, *Informe Final: Canon Minero y Descentralización*, Asociación Civil Labor, 2002.

- 53 World Bank Group Mining Industry Investment: Bottlenecks to Achieving Poverty Reduction, 'The Yanacocha Example', Submission by Newmont Mining Corporation, December 2002, p 2.
- 54 *Striking a Better Balance, Volume 1: The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review*, December 2003.
- 55 See for example, Sociedad Nacional de Minería, Petróleo y Energía (SNMPE), *El Canon Minero: ¿Cómo Es y Cómo Debería Ser?*, PowerPoint presentation available from Christian Aid.
- 56 World Bank figures.
- 57 Alfredo C Gurmendi, *The Mineral Industry of Peru, US Geological Survey Minerals Yearbook – 2001*.
- 58 As cited in *Organización Internacional de Trabajo, Condiciones de Trabajo, Seguridad y Salud Ocupacional en la Minería en Perú*, 2002.
- 59 Ministerio de Energía y Minas, *Importancia de la Minería en el Desarrollo Nacional*, 1999. See www.minem.gob.pe/mineria/publicaciones/public07/importancia.pdf
- 60 Interview, April 2004.
- 61 UNES, *Situación Ambiental del Aire, Aguas y Suelos en la Provincia de Yauli-La Oroya*, 2002.
- 62 UNES, *Evaluación de Niveles de Plomo y Factores de Exposición en Gestantes y Niños Menores de 3 Años de la Ciudad de La Oroya*, 2000.
- 63 *Striking a Better Balance, Volume 1: The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review*, December 2003, p 26.
- 64 www.lapress.org/article.asp?lanCode=1&artCode=983. 31 July, 2000. Yanacocha is the biggest gold mine in South America. It is a joint venture that includes US mining giant Newmont, the World Bank's International Finance Corporation and the Peruvian company Buenaventura.
- 65 Interview, June 2003.
- 66 See Pamela White (2002) 'The Real Price of Gold.' *Boulder Weekly*. Available at <http://boulderweekly.com/archive/051602/coverstory.html>. Cited in *Gambling With People's Lives: How Does the World Bank's 'High-Risk/High-Reward' Funding Strategy Threaten People and the Environment?*, Environmental Defense, 2003.
- 67 Unless otherwise stated, information and quotes from individuals are from interviews conducted by Christian Aid in April 2004.
- 68 Trees and shrubs of the genus *Cinchona* are cultivated for bark that yields valuable medicines.
- 69 BHP Billiton, Rio Tinto and Anglo American collectively control approximately 30 per cent of the world market in twelve principal metals.
- 70 Tailings are the rock wastes that are left behind following ore extraction. They often contain heavy metals, acid-forming minerals and residue from toxic chemicals that are used in the extraction process.
- 71 Interview, April 2003.
- 72 CooperAcción, *Los Conflictos de Tierras en La Provincia de Espinar. El Caso de BHP y las Comunidades de Tintaya Marquiri y Alto Huancané*, June 2001.
- 73 Ibid.
- 74 CooperAcción, *Percepción del Impacto Social de la Minería en las Comunidades Campesinas de Vicco, Espinar, y Yauli-La Oroya*, 1999.
- 75 Interview with Carmelo Saicotaípe, former vice president of Hauno Huano, supported by other interviews.
- 76 S A Equas, *Evaluación Ambiental Aire, Agua, y Suelos: Area de Influencia de las Operaciones Mineras de BHP Tintaya S.A. Espinar – Cuzco*, December 2000.
- 77 April, 2003. The Huinumayo River is affected by a tailings containment area that interferes with water flow.
- 78 S A Equas, *Evaluación Ambiental Aire, Agua, y Suelos: Area de Influencia de las Operaciones Mineras de BHP Tintaya S.A. Espinar – Cuzco*, December 2000.
- 79 CooperAcción, *Percepción del Impacto Social de la Minería en las Comunidades Campesinas de Vicco, Espinar, y Yauli-La Oroya*, 1999.
- 80 S A Equas, *Evaluación Ambiental Aire, Agua, y Suelos: Area de Influencia de las Operaciones Mineras de BHP Tintaya S.A. Espinar – Cuzco*, December 2000.
- 81 Interview with Florentino Cutenounka, April 2004.
- 82 CooperAcción, *Percepción del Impacto Social de la Minería en las Comunidades Campesinas de Vicco, Espinar, y Yauli-La Oroya*, 1999.
- 83 Interview, April 2003.
- 84 Interview, April 2003.
- 85 CooperAcción, *Percepción del Impacto Social de la Minería en las Comunidades Campesinas de Vicco, Espinar, y Yauli-La Oroya*, 1999.
- 86 Interview, April 2003.
- 87 The Roundtable is funded by its participants. For more information on funding and organisation see www.christianaid.org.uk/campaign/mpm/index.htm
- 88 El Acta de la Primera Reunion de la Mesa, 6 February 2002.
- 89 Interview, April 2004.
- 90 CooperAcción, *Percepción del Impacto Social de la Minería en las Comunidades Campesinas de Vicco, Espinar, y Yauli-La Oroya*, 1999.
- 91 Interview, October 2004.
- 92 See www.cooperaccion.org.pe/modulo/boletin/detalle.php?IdArticulo=0037&Seccion=N
- 93 Interview, April 2004.
- 94 Smelting is the process of melting or fusing mined ores in order to separate the metallic constituents.
- 95 www.doerun.com.pe
- 96 For a discussion of the dangers associated with exposure to these contaminants, see the US Environmental Protection Agency web site at www.epa.gov/ebspages/pollutants.html
- 97 The three organisations are CooperAcción, CENCA and Filomena Tomaira Pasci.
- 98 As established in the Regulation for Environmental Protection in Mining and Metallurgical Activity. Supreme Decree No. 016-93-EM (01/05/93).
- 99 As established in the Regulation of National Ambient Air Quality Standards. Supreme Decree No. 074-2001-PCM (24/05/01).
- 100 UNES, *Situación Ambiental del Aire, Aguas y Suelos en la Provincia de Yauli-La Oroya*, 2002.
- 101 For more information on lead poisoning, see the US Centers for Disease Control's toxicological profile for lead at www.atsdr.cdc.gov/toxprofiles/tp13.html
- 102 New research demonstrates that adverse health impacts are incurred even at this 'safe' level.
- 103 See also AIDA, *Proposed actions to protect public health in La Oroya*. See www.aidaamericas.org/aida.php?page=1
- 104 Interview with Ena Rosa, April 2004.
- 105 Interview.
- 106 Interview.
- 107 See for example <http://yosemite.epa.gov/opa/admpress.nsf/0/c06854ebcdc6009a852569d700569048?OpenDocument>
- 108 Juan Aste Daffós, Doe Run: Emergencia Economica en La Oroya, Presentation, Lima, 26 November 2003.
- 109 Based on data submitted by Doe Run Peru to the Ministry of Energy and Mines.
- 110 A Cederstav, and Alberto Barandiarán, *La Oroya Cannot Wait*, Interamerican Association for Environmental Defense and the Peruvian Society of Environmental Law, 2002.
- 111 SVS Ingenieros, Golder Associates Brasil Ltda, *Evaluación Ambiental Especial de la Fundición de La*

- Oroya, June 2003.
- 112 *Gestión*, August 14, 2003.
- 113 Interview with Senior Official in Municipality of Yauli-La Oroya, April 2004.
- 114 *St Louis Post-Dispatch*, 'Concern about lead prompts lawsuit against company', 24 September 2001.
- 115 Doe Run presentation to Ministry of Energy and Mines.
- 116 *Globe and Mail's Report on Business*, 27 March 2001.
- 117 www.lapress.org/article.asp?lanCode=1&artCode=2895. 19 June 2002.
- 118 Robert E Moran, *Una Mirada Alternativa a la Propuesta de Minería en Tambogrande, Perú*, August 2001. Also Instituto Nacional de Recursos Naturales, *Observación Técnica No. 019-03-INRENA-OGATEIRN-UGAT, Estudio de Impacto Ambiental Proyecto Tambogrande*, April 2003. INRENA is an agency in the federal Ministry of Agriculture. The report was submitted to the General Office of Environmental Issues of the Ministry of Energy and Mines. www.inrena.gob.pe/dgaa/tambogrande/ot-019-03-ogateirn-ugat.pdf. A Technical Roundtable of civil society organisations has also formally identified environmental, economic and legal reasons that mining activity should not be undertaken in the San Lorenzo valley.
- 119 Interview, June 2003.
- 120 According to information from the Peruvian Ministry of Agriculture. See Fidel Torres Guevara, *Desarrollo de Piura: Agro o Minería, Piura, Vida y Agro*, June 2001.
- 121 Tambogrande has a population of more than 72,000 inhabitants which is supported primarily by agricultural activity.
- 122 J Aste Daffos, *Valor Económico del Valle de San Lorenzo*, Mesa Técnica de Tambogrande, April 2002.
- 123 In addition to the Tambogrande concessions, Manhattan possesses neighbouring concessions totaling 77,000 hectares – in Lancones (74,000 hectares) and El Papayo (3,000 hectares). The entire valley of Tambogrande is approximately 57,000 hectares in size.
- 124 Robert E Moran, *Una Mirada Alternativa a la Propuesta de Minería en Tambogrande, Perú*, August 2001. Also Instituto Nacional de Recursos Naturales, *Observación Técnica No. 019-03-INRENA-OGATEIRN-UGAT, Estudio de Impacto Ambiental Proyecto Tambogrande*, April 2003. www.inrena.gob.pe/dgaa/tambogrande/ot-019-03-ogateirn-ugat.pdf
- 125 Ibid.
- 126 Acid mine drainage occurs when sulphide compounds found in waste rock or tailings are exposed to air and water. The resulting chemical reaction produces sulphuric acid, which dissolves heavy metals that may be present in the same rock. Once released, these contaminants enter ground and surface waters.
- 127 Robert E Moran, *Una Mirada Alternativa a la Propuesta de Minería en Tambogrande, Perú*, August 2001.
- 128 Interview, May 2003.
- 129 Robert E Moran, *Una Mirada Alternativa a la Propuesta de Minería en Tambogrande, Perú*. August 2001. Cited in K Keenan, J de Echave and K Traynor, *Mining and Communities: Poverty Amidst Wealth*, November 2002.
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- 131 According to analysis by the NGO Technical Roundtable.
- 132 Interview, April 2004.
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- 134 Roberto Obradovich speaking at a press conference in Peru's foreign press association in Lima, a few days after Tambogrande's referendum. At the time, Obradovich was Manhattan's president in Peru.
- Obradovich left his post at Manhattan several months afterwards.
- 135 Allan Robinson, *The Globe and Mail*, 4 June 2002.
- 136 7 January 2003. See www.mem.gob.pe/wmem/prensa/notihoy813.pdf
- 137 Instituto Nacional de Recursos Naturales, *Observación Técnica No. 019-03-INRENA-OGATEIRN-UGAT, Estudio de Impacto Ambiental Proyecto Tambogrande*, April 2003.
- 138 Robert E Moran, *Una Mirada Alternativa a la Propuesta de Minería en Tambogrande, Perú*, August 2001. See also the work of the Mesa Técnica de Tambogrande.
- 139 The EIA evaluation process has been suspended by the Ministry of Energy and Mines, pending the results of the arbitration process.
- 140 Municipal election results echoed those of the popular consultation: more than 90 per cent of the electorate in Tambogrande voted for candidates whose platforms were rooted in opposition to the mining project.
- 141 BHP Billiton, Anglo American, Yanacocha, Doe Run Peru, Southern Peru and Antamina.
- 142 CooperAcción and Asociación Civil Labor.
- 143 Christian Aid, *Behind the Mask, The Real Face of Corporate Social Responsibility*, April 2004.
- 144 There are precedents for such a provision, including legislation in the Northern Territories of Australia.
- 145 Established under the Regulation for Environmental Protection in Mining and Metallurgical Activity, Supreme Decree No. 016-93-EM (01/05/93), see Chapter 1.
- 146 As yet unavailable to the public. Cited in newspaper article, 'Según Investigación del Congreso: Fracaso Programa de Adecuación Ambiental de Fundiciones Mineras', *Gestión*, 14 August 2003.
- 147 Comisión de Ambiente y Ecología del Congreso de La Republica del Peru, *Informe Final de la Sub Comisión Investigadora del Cumplimiento de los PAMAs y EIAs de las Empresas Mineras del País*, August 2003.
- 148 Interview with Robert Moran by Tito Cabello.
- 149 Ministerial Resolution No. 728-99-EM/VMM (09/01/2000).
- 150 Regulation for Consultation and Participation in the EIA Approval Procedure, Ministerial Resolution No. 596-2002-EM/DM (21/12/2002).
- 151 The public is granted 120 days to review studies that take approximately three years to prepare.
- 152 CONACAMI currently has 15 cases from Peru before the Inter-American Commission for Human Rights and others at the UN.
- 153 See M Swenarchuk, *Civilizing Globalization: Trade and Environment, Thirteen Years On, Canadian Environmental Law Association Report No. 399*, March 2001. www.cela.ca/international/399global.pdf
- 154 Oxfam International, *Fair Trade for the Americas*, Oxfam Briefing Paper, 2003.
- 155 DTI, *Corporate Social Responsibility – A Draft International Strategic Framework*. March 2004, p 2.
- 156 DTI, *Corporate Social Responsibility – A Draft International Strategic Framework*, March 2004, p 6.
- 157 Christian Aid, *Behind the mask: The real face of corporate social responsibility*, 2004.

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Front cover picture: Victor Cutenounka, sitting on the site of his grandmother's house, which was knocked down by the Peruvian government to make way for a tailings dam for the Tintaya Copper Mine, Espinar, Peru. His parents still live a few hundred metres away

Photo: Christian Aid/Jonathan Glennie

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