

Las Bambas Project: A Restriction on Indigenous Vocal Input in Peru's Mining Operations

***By: Evelyn Estrada, Research Associate
Council on Hemispheric Affairs***

On September 29, 15,000 people from the mountainous Peruvian regions of Apurimac and Cusco broke into Las Bambas mining camp, which is a \$7.4 billion USD Chinese-owned copper mine being developed in the region. The protesters are deeply troubled over the mining project's environmental impact and the lack of consultation with the surrounding unsettled communities.¹ MMG Limited (Minerals and Metals Group), a Chinese-based firm, planned to continue to develop building a plant to process the mining ore near their communities rather than transport it by pipe, raising concerns over potential environmental damage that could be done to the surrounding area.² Glencore Xstrata, the Swiss-based company that held the prior master contract over the Las Bambas project, had intended to transport extracted minerals to the coast by pipeline. However, under new Chinese ownership, which took control in 2014, the design was altered to transport the ore by truck. MMG Limited made this decision without any previous consultation with the impacted indigenous communities, as is required by law.

To deal with the 'disturbances,' the Peruvian government sent about 1,500 police officers and 150 members of the military to the Apurimac region to arrest members of the rural communities who were participating in peaceful rallies. According to Uriel Condori, a councilor official of the government of Challhuahuacho, police officers fired tear gas and live rounds at the peaceful protest demonstration, killing five people, while injuring at least 20 others. In the wake of the bloodletting, President Ollanta Humala declared a 30-day state of emergency over the Cotabambas province, where the Challhuahuacho district is located, and six others, suspending the constitutional rights of freedom of movement and assembly.³

The Apurimac mining protest is the first of its kind in this highly impoverished region, but a number of these disturbances have been taking place since President Humala took office in 2011.⁴ Humala has struggled to resolve rural opposition to mining activity in local communities, suspending several large projects after violent clashes between protesters and police had broken out. While he campaigned on a promise of protecting the lives of the people, the president has more recently emphasized the importance of protecting public goods and private property.⁵ Humala has made clear that communities, such as Apurimac and Cusco, will not be permitted to prevent extraction programs from going forward, re-emphasizing that he seems to care more about foreign investment than the lives of Peruvians.

Ronald Bello, who heads the Defense Front of Tambobamba, demanded an explanation for the

modifications made to the environmental impact assessment, citing that there was no previous consultation with any of the nearby communities.⁶ Local communities of the Apurimac region order that MMG Limited not move forward with the construction of the pipeline (which would threaten the surrounding areas by transporting ore), the molybdenum plant in Fuerabamba (which could pollute Challhuahuacho river), and plant filters in Apurimac.⁷

The rural communities of the Apurimac and Cusco regions want the consideration of the benefits and hazards moved fully into the public sphere. There is no question that mines will directly impact their lives, as well as their livelihoods. According to the President of the Chamber of Commerce of Lima, Jorge Von Wedemeyer, community groups feel that they have been neglected by the Peruvian state, citing the lack of discussion in the development plan regarding the possible repercussions of the mining projects in their districts.⁸ This lack of rural community Peruvian government policy is nothing new; this phenomenon can only fully be appreciated in the context of Peru's recent history, especially during the disruptive presidency of Alberto Fujimori epoch in the 1990s.

Consequences of Land Privatization under Fujimori

In the *autogolpe* (self-coup) of 1992, Fujimori shut down civilian courts, and other representative institutions, as well as undermined constitutional rights and protections in order to impose his authoritarian mandate over the Peruvian government.⁹ Promising modest reforms, Fujimori imposed detrimental economic policies that deregulated financial and labor markets, reduced tariffs, privatized public enterprises, and reduced tax evasion.¹⁰ Within a few years, President Fujimori had created a raw, free market economy by dismantling a fragile Peruvian state that benefited few economic actors while hurting the majority of local citizens.

There is no doubt that the Fujimori regime hurt the majority of Peruvian citizens through the enactment of ruthless economic reforms, causing it to be the most corrupt regime in modern Peruvian history. During this period, \$1.5 to \$4 billion were lost due to corruption.¹¹ The illicit privatization of public enterprises accumulated a total of \$6 billion, of which almost \$2 billion were used to buy illegal weaponry for combat in Peru's war with Ecuador in 1995. Furthermore, another \$2 billion were used to pay the foreign debt instead of properly allocating them to the public sector.¹² Instead of making himself available for his constituents, Fujimori stripped them from any government social programs, as well as confiscated rural land for the benefit of his technocratic cabinet.

The country's newly crafted neoliberal-oriented economy made it possible for the state to sell government enterprises, including worker-owned cooperatives, at the expense of the people. In 1995, Congress passed Decree Law 26505 that sought private investment to promote the development of economic activities on national territory, as well as rural and indigenous communities.¹³ Imposing his despotic authority over the rural areas, Fujimori attempted to withdraw approximately 75 percent of territorial land under cooperative and communal forms of ownership. By doing so, Fujimori attempted to reverse the efforts made by General Velasco in establishing a regime of cooperative land ownership, in which local cooperatives would coordinate agricultural production throughout the country.¹⁴ Fujimori moved to violently overturn decades of legal norms designed to protect the rural



communities throughout Peru. Previous constraints were dismantled by allowing protected land areas to be sold and distributed, leaving a large concentration of land in the hands of a relatively few number of residents.

In 1996, the National Mining Cadastre Law (Law 26615) was enacted, guaranteeing foreign mining firms exclusive control of the necessary land resources to implement their operations, as well as eliminating many previous mining-claim procedures that the law required.¹⁵ The restructuring of the economy enabled the government to grant many liberties to the mining companies, while limiting those of Peruvian citizens. Alarming, Fujimori also made every possible effort to constrain the rights of his fellow Peruvians to protect their territories, along with their spelled out rights.

International Realm Assisting Indigenous Communities

Over the years, Peruvian government officials have attempted to move away from the harshness of the Fujimori era with its laws directed at the indigenous people by ratifying International Labor Organization (ILO) Convention 169, which recognizes the rights of the indigenous to participate in the discussion of any measurements that may affect them.¹⁶ Peru is among the limited number of countries in the world (one of 20) that has ratified the convention, according to the ILO.¹⁷

Article 4 of the Convention states that governments should adopt specific measures in order to preserve the property, culture, and environment of indigenous people, as well as restrain foreign mining companies from going against the wishes of such communities.¹⁸ Article 6 of the Convention requires that local participants freely participate in political processes that affect them, such as development projects.¹⁹

Disempowering Local Community Actors

The transformation of the Peruvian economy unfortunately increased the non-responsive strength of the private sector while weakening that of the public sector, which had relied on heavy state intervention. Today, mining exports amount to 55.2 percent of Peru's total exports.²⁰ Despite the country's mining operations being labeled by scholars Jeffrey Bury and Adam Kolff as the "primary axis for national economic development,"²¹ many mining zones show high levels of poverty, and are plagued by environmental damages.

There are other issues as well. ILO Convention 169 requires mining companies to reach an agreement with local landowners.²² Companies are expected to compensate the impacted communities for any environmental consequences that may affect them. Most mining companies, however, do not enter into negotiations with the locals with an open mind, leaving them to deal alone with reduced agricultural productivity, increased poverty and health problems, along with tainted water supplies.²³ Transnational mining operations are altering the lives of local populations without input or consent, despite laws that mandate negotiations.

Although international law underscores the importance of dialogue between both parties in establishing parameters for carrying out mining projects, Peruvian laws actually serve to severely limit the



protection granted to these communities. In 1995, under the authoritative rule of the Fujimori administration, *La Ley de Tierras* (Law of the Land) was enacted as one of the most threatening laws directed at indigenous communities, in which the autonomy of indigenous peoples were, in reality, trivialized. The law stated that the land rights of the indigenous people were revoked, that their land could be sold, and that any land deemed by the government as not being effectively used would be confiscated.²⁴ Furthermore, the state made clear that if a community is in debt, its lands could be legally seized.²⁵ Allowing the government to define what land is going unused enables the government to sell these mineral-rich lands to transnational mining corporations. In prioritizing direct investment, the Peruvian government has denied basic rights to its citizens.

Conclusion

On October 7, the Peruvian government reached an agreement with community leaders from the Apurimac and Cusco regions to end their strike against Las Bambas. The government agreed to lift the state of emergency declared on September 28 and withdraw police forces from the region once the strike against the private sector comes to an end.²⁶ The Ministry of Housing has pledged to provide housing and social welfare for the families of protesters killed in the anti-mining movement. Most important, the government has committed to holding workshops in Quechua to clarify the environmental implications of a proposed molybdenum plant.²⁷

President Humala is content that the agreement was based on dialogue, yet he does not acknowledge that the protest was a product of miscommunication between locals and MMG Limited. Neoliberalization of the economy, along with liberalization of Peruvian laws directed at nullifying the rights of indigenous people, have resulted in the creation of a country with insufficient indigenous incorporation in the determination of development projects in their communities.

Despite having run on an environmentally conscious platform, President Humala has approved more than a dozen controversial extraction programs without any previous consultation with the communities in which the projects would take place.²⁸ Consequently, these mining projects have to now face high levels of resentment by local community actors, having resulted in the deaths of at least 57 anti-mining activists between 2002 and 2014.²⁹ Since Humala has disregarded the basic rights of indigenous communities to act as political actors in development project negotiations, otherwise it is considered a direct violation of the ILO Convention 169.

The demonstration against Las Bambas was the second this year for which the Peruvian government has found it necessary to declare a state of emergency. These social crises may have most likely been prevented if MMG limited had observed national and international laws that called for prior consultation with indigenous communities. Indigenous actors have had to form organizations defending the well-being of their communities, since the government habitually has refused to act on their behalf. Because the government has not provided indigenous people a seat at the table, the Apurimac Region has created the *Frente de Defensa Territorial y Ambiental* (Territorial and Environmental Defense Front)—an organization that demands mining companies with large concessions in these zones to guarantee the protection of the environment, water sources, and rural areas under their jurisdiction.³⁰



The Peruvian government should be wise to move forward to ensure the complete, full integration of social actors into the decision-making realm, considering the lack of rural actors reflected in the country's political institutions. Demanding prior consultation ensures that those primarily affected by any sort of development plan taking place in their communities will be able to voice their concerns, as well as guarantee the protection of their livelihoods. President Humala has to make certain that all citizens are treated equally, since he has constantly made sure to illegally bypass the rights of his citizens in allowing mining firms to develop plans in their communities.

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