

Walking the Tightrope: Government Policy and Resource Extraction in Colombia and Peru

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Published 27th January 2025

Abstract

This paper examines the balance between economic growth and socio-environmental challenges posed by extractive industries using the cases of Colombia and Peru. Both countries, abundant in natural resources, have leveraged the latter to foster economic growth, and although successful, they have faced continuous issues of environmental degradation, social conflicts, and inequality. Through comparative analysis, the paper highlights the importance of regulatory frameworks, transparent revenue distribution mechanisms, and the enforcement of Free, Prior, and Informed Consent (FPIC) for handling these problems. Lessons from these case studies serve as examples for other resource-rich countries facing similar challenges. The paper analyzes the main regulations regarding mining activities in each country, such as Law 685 of 2001 in Colombia and Legislative Decree 1100 in Peru, and stresses the importance of balancing economic benefits with long-term equitable and sustainable development.

Keywords: Extractive industries, Mining, Environmental Impact, Social Impact, Colombia, Peru, Governance, Regulation, Sustainable development

I. Introduction

In many other countries, extractive industries serve as economic means, but for Colombia and Peru, they are crucial for national welfare. In Peru, mining has alleviated the economy in times of crisis and has pushed for growth in times of recession¹, accentuating its importance to the economy. The industry has also done wonders in Colombia, breaking records by contributing over USD 20

billion to the economy² proving its significance to public revenues and job creation. However, these enormous achievements have a downside, and that is the dangers and consequences faced by local communities due to this industry.

Many regions in both countries endure deep social and environmental disturbances with little to no help or

² Asociación Colombiana de Minería. Boletín Económico: La Minería Reporta Aportes Históricos en 2022 y 2023. Bogotá: ACM, 2023.

¹ World Bank. Peru Mining Sector Diagnostic. Washington, DC: World Bank, 2021, 27–30.

retribution from the companies and the government that permits and extracts from their land. This paper contends that, although current laws establish a regulatory foundation, comprehensive reforms are essential to enhance environmental protections, strengthen community engagement, and ensure that these industries contribute sustainably and equitably to national development.

II. Economic Contributions

Extractive industries are crucial to the economic welfare of Colombia and Peru. They produce jobs, attract FDI, and contribute billions of dollars to their GDPs.

In the case of Peru, mining accounted for 11% of their GDP this year alone,³ and with each direct job in mining created, 6.25 indirect jobs were created. The FDI concerning mining, especially copper projects, was projected around US \$21 billion in the early 2010s and kept growing in recent years.⁴ Mining has been vital to Peru's economy, especially in uneasy periods, since it is one of the few sectors that demonstrate positive assistance to GDP growth, helping mitigate recessions. Also, with copper production reaching 275 million tons in 2023,⁵ Peru has a lot of significance in the copper market globally.

Their mining exports position them globally as one of the lead exporters, earning them major foreign exchange.

Colombia is not far behind. In 2022, the mining sector contributed over US \$20 billion to the economy⁶, achieving record contributions and underscoring the sector's significance to Colombia's public revenue. That same year, the mining sector provided approximately 350,000 direct and indirect jobs⁷, especially in remote rural areas that have low employment rates. The sector plays a big part in local economies, infrastructure developments, and even healthcare and education, with mining activities attracting investments in education and infrastructure. Nevertheless, these benefits are not well distributed and some regions face a more significant impact than others.

Inequality in the distribution of benefits in mining regions, both in Peru and Colombia, is an issue. Although the industry provides significant income to the countries, this money is not often seen by the local communities near mining sites. In Colombia, these communities have long fought with the government over environmental impacts, land use, and sharing of revenues. In Peru, conflict with local communities emerges from similar issues.

Nevertheless, both countries have benefitted from the growing social investments in mining regions. Colombia has various community benefit programs concerning the

³ Global Business Reports. Peru Mining Global Business Report, 2024.

⁴ Comisión Multisectorial Permanente - EITI Perú. IX Informe Nacional de Transparencia de las Industrias Extractivas: Períodos 2021 y 2022. Lima: Comisión Multisectorial Permanente, mayo 2024. DOI: 10.21201/2023.621550.

⁵ Global Business Reports. Peru Mining 2024: Calm After the Storm. Pre-Release Edition. 2024. Accessed November 19, 2024. https://www.gbreports.com/files/pdf/_2024/Peru-2024-Pre-release-web.pdf.

⁶ Asociación Colombiana de Minería. *Boletín Económico: La Minería Reporta Aportes Históricos en 2022 y 2023*. Bogotá, Colombia: ACM, diciembre 2023. DOI: 10.21201/2023.621550.

⁷ EITI Colombia. Informe de Transparencia en las Industrias Extractivas: Vigencia 2021. Bogotá: EITI Colombia, 2022. DOI: 10.21201/2023.621550.

extractive sector, for example, its partnership with the Extractive Industries Transparency Initiative (EITI) has focused on empowering communities and civil societies who are directly affected by the sector.

Also, in Peru, the government has launched various initiatives to redistribute the earnings from mining. The most important initiative is “Canon Minero”, which is a fiscal policy that works by reserving a portion of the funds earned by taxes on mining operations and giving them to the local governments and communities affected by these.

It is clear that extractive industries are essential to the economic growth and welfare of these nations, they have proven it through the years with their massive earnings, but that does not mean that there is no room for reformation and flaws in regulations as we’ll keep exploring forward.

II. Environmental and Social Challenges

Even if the checks are filled with zeros, this does not help pay the real cost of this operation since it is not fixed with money. With health crises, deforestation, contamination of the water, and even displacements of communities, the repercussions of mining activities are highly dangerous if not done correctly and have become very controversial with the doubt of their true worth.

In Northern Colombia, at La Guajira, is the Cerrejón mine, owned by Glencore, a Swiss multinational commodity trading and mining company. Being one of the world's largest pit coal mining operations, it has had dreadful effects on the environment. To support its operations, the mine diverted the Ranchería River to

maximize its utilities and decrease its costs⁸. La Guajira is a semi-desert region that has been suffering from various droughts through the years due to physical conditions and the region's climate, but the problem has intensified thanks to extractive industries. When water is accessible in the region from the rivers, there have been traces of oils and coal residues that have polluted the rivers, disrupting everything from biodiversity to health, to agriculture. Aside from water pollution and further scarcity, the coal dust from the operations degraded air quality in communities surrounding the project. Studies show that there is a correlation between mining dust exposure and increasing respiratory illness among La Guajira's Indigenous Wayuu population, a group that by Colombia's constitution is protected.

There are regulatory policies for environmental protection in Colombia, for example, Law 99 of 1993⁹, which created the Ministry of Environment and stated that decisions about the exploitation of natural resources must be made in consultation with Indigenous communities if it concerns them. The ministry is in charge of issuing permits for oil and natural gas exploration, production, and construction of refineries and it has the power to revoke licenses for non-compliance and issue penalties.

The fault in the system is the state's unwillingness to enforce a strong hand, which allows for the mistreatment

⁸ Oxfam. *A Toxic Legacy: Glencore's Footprint in Colombia and Peru*. Oxford: Oxfam International, 2023.

⁹ International Energy Agency. "Law 99 of 1993: Creation of Ministry of Environment." Accessed November 19, 2024. <https://www.iea.org/policies/8917-law-99-of-1993-creation-of-ministry-of-environment>.

of the environment by prioritizing economic growth. This lack of enforcement and accountability has allowed companies to operate with minimal obligations, as seen in La Guajira, at the expense of local communities and ecosystems.

The Espinar Province in Peru, sadly, experiences a similar situation to La Guajira. The Antapaccay copper mine, also operated by Glencore, has caused severe environmental problems. The mine has been linked with the contamination of nearby rivers with mercury, cadmium, lead, and other toxic metals, this reached such levels that the water is no longer safe for consumption or agricultural use¹⁰. In that area, the Indigenous Quechua communities reside, this issue threatens their health as they rely on those sources of water to drink and farm. Reports from the Quechua community reveal how the contamination has led to respiratory problems, skin conditions, and other chronic diseases. In addition, blood samples taken from locals show alarming levels of heavy metals. Not only have these communities been affected, but also their animals. Due to the metals seeping into the soil and vegetation that surrounds the mine, some livestock showed poisoning and malnourishment due to the toxic fields. This area is in grave danger, with limited access to health services residents are often unable to get treatments for these illnesses related to mining activities.

Social tensions and conflicts with the community are very present in the Antapaccay mine. Indigenous communities have protested against Glencore and demanded that the corporation take responsibility for the health and environmental damages and work on the prevention of these; the protests have escalated and ended in confrontations against security forces and left some injured.

Although both Peru and Colombia have signed the International Labor Organization's Convention No. 169, which grants recognition of Indigenous and tribal peoples' control over their land and resources and specifies the need for Free, Prior, and Informed Consent (FPIC) from these communities before initiating any type of extractive activities in their lands, the states have been at fault by not respecting this. In the case of the Antapaccay mine, some reports have indicated that this process was bypassed, intensifying the gravity of the situation and strengthening opposition.¹¹

Peru's Law 27446, amended on May 3, 2024, mandates that for all mining activities, environmental impact assessments (EIAs) must be carried out., but the assessments have been criticized for failing long-term impacts and focusing instead on short-term mitigation measures. The Antapaccay mine has been sanctioned on various occasions by the country's environmental oversight agency, OEFA, but these sanctions have not resulted in significant changes in practices.

¹⁰ CooperAcción. *The Antapaccay Case*. Lima: CooperAcción, 2023.

¹¹ EITI Peru. *IX Informe Nacional de Transparencia de las Industrias Extractivas*. Lima: EITI, 2024.

These examples of how extractive industries harm the environment and threaten the lives of many stress the need for comprehensive reforms. Without improvements the ongoing social and environmental conflicts will continue and more people will continue to get sick, paying the true cost of these industries.

III. Current Governance Structures

In Colombia and Peru, extractive industries face substantial legal frameworks that work to ensure a balance between sustainable development, social equity, and economic growth. Still, there is a clear issue in reinforcing these laws and regulations restricting their envisioned outcomes.

All mining activities in Colombia are regulated by the Mining Code, Law 685 of 2001, which presents basic guidelines for the exploration, exploitation, and closure of mining projects. This law offers a thorough licensing system that highlights the importance of community engagement and environmental protection but has been demonstrated to be weak when the time of enforcement comes, particularly against illegal mining¹². Another issue the law has not been able to combat is the inadequate conditions for workers' health and safety.

A lamentable case that portrays the deficient action from the government, not only for the local community but also for the international companies that invest in the

country is Zijin Mining in Buriticá, a small town in the Antioquia department.

Back in 2019, Zijin Mining Group CO., a large multinational Chinese mining company, acquired Continental Gold, a gold mining company; When the transition happened, Zijin recognized the social responsibility work of Continental and promised to continue the social and environmental commitments while ensuring transparency in Buriticá, Colombia's largest gold mine¹³. However, the Chinese company carried out a minimal to almost nonexistent media and community engagement policy, with the project's website outdated and lacking effort in continuing relations with the local governments.

The deterioration of the relationship with the community kept aggravating, with over three documented work blockages, something that never happened under Continental's control of the mines. One of the issues that infuriated the municipality of Buriticará is the fact that Zijin paid USD 11 million to the Colombian government in 2021 for the operation of the mine, but the territory received approximately USD 100,000, less than 1% of the transaction.

In 2022 the conflict reached peaked escalation with the case of 2 dead workers, the community was infuriated by

¹² Asociación Colombiana de Minería. *Boletín Económico*. Bogotá: ACM, 2023.

¹³Continental Gold initiated its operations in 2016 in Colombia. Celebrated for their social development activities and inclusion of the communities in the area, Continental Gold was very close with the government, local authorities, and artisanal miners (in Colombia not all artisanal mining is illegal as the government recognizes the right of the land of some communities).

this tragedy and while the Antioquia Miners Association asked the government to pursue legal action, Zijin was pleading with the government to intervene in the blockades by the residents that interfered with their project.

In the Antioquia region, the Clan del Golfo invaded the territory and carried out illegal mining operations extorting formal companies and individual artisanal miners. The residents in the area have endured violence and insecurity for many years and Zijin is now another of their victims. The company received a mine in a conflict zone that lacks protection from the state and has significantly affected its productivity and production. Zijin pleaded with the government to address illegal mining activities, but the response has been insufficient to solve the issue.

The case of Zijin has raised concerns about Colombia's reputation as a mining investment, has put into question the government's legitimacy given the dual failure to protect the community and aid Zijin, and brings to public attention the systematic weakness within the state and lack of political will.

Like Colombia, Peru's laws have extensive environmental safeguards and a comprehensive framework to navigate and manage mining projects. The General Mining Law (Decree Law 109) serves as a guideline for mining activities and establishes the Ministry of Energy and Mines (MINEM) to oversee these processes. Thanks to Law 27446, Peru reassures the need for environmental assessments (EIAs) in all mining projects with potential

ecological impacts and requires public participation in the evaluation. Complementary to the latter, the Law on Mine Closure Plans serves as a legal framework for accountability of the companies for environmental restoration post-operations if necessary, and binds financial guarantees. Similar to Colombia, not all artisanal mining is illegal, and Peru targets the formalization of small-scale mining and artisanal mining through Legislative Decree 1100, which seeks to formalize artisanal and small-scale mining, lays out the sanctions for illegal mining activities, and aims to reduce environmental damage.

On paper, Peru's mining legal framework is idealistic, like Colombia's; it demands EIAs for project approval, counts with tax stability agreements that attract foreign investment, focuses on formalization, and encourages public participation, offering local populations a voice.

So why is Peru still facing various challenges in the sector? The answer is straightforward: weak enforcement and monitoring. The lack of resources and political commitment impede the enforcement of labor and environmental laws, especially in remote areas. Although Legislative Decree 1100 pursues formalization in the sector, only 10% of artisanal miners will be formalized by 2022 in regions like Madre de Dios, where gold mines thrive and the environment deteriorates every day. Another case of government failure will be the water contamination in the Yanacocha mines, one of the largest gold mines in the world, which has faced non-stop criticism for the contamination, the negative impact on local communities,

and the frail environmental monitoring and public engagement.¹⁴

In both Andean countries, there are clear and extensive legal requirements governing the mining sector that aim for monetary growth, environmental prosperity, and social equity. However, the countries' institutions falter in the application of these. The case of Zijin in Buriticá demonstrates the dual failure of governance, the inability of the government to take care of its communities, and neglect of its legal responsibility to the company. Likewise, Peru, as seen in the Yanacocha mine, struggles with the enforcement of labor and environmental protections demonstrating the systematic weakness in its institutions.

These cases showcase the vulnerabilities in the governance structures of Colombia and Peru, the gap between their socio-environmental goals and economic growth targets while disregarding the real-life impacts of their inadequate governance is a reminder of the formidable work yet to be done.

IV. Policy Recommendations

IV.1 Strengthen Regulatory Enforcement

Colombia and Peru have mining and environmental laws that national agencies enforce, OEFA in Peru, and ANLA, and ANM in Colombia, nevertheless, these

agencies undergo hardship in fulfilling their duties due to corruption, underfunding, and other issues.

The first recommendation to achieve this is to increase the funding of these existing agencies to carry out regular inspections and work on real-time monitoring. In Colombia, for example, The National Mining Agency (ANM) is responsible for the administration of natural resources owned by the state and the promotion of sustainable use of the latter following the law. Although ANM reported revenue of approximately COP 8,8 billion and accounted for 7% of the GDP, the Ministry of Finance and Public Credit assigned the ANM with a budget of only COP 131,476 million.¹⁵ If the country truly wants to see a change in the sustainable management of its resources and improve its impact on the environment and communities, the funds should go in harmony with the revenues to see progress.

Secondly, the countries could invest in new technologies, such as satellite monitoring, to identify illegal mining activities in remote areas. The use of space technology can implicate a reduction of cost when it comes to EIAs and facilitate monitoring and the gathering of information to improve transparency. Similar projects are being accomplished by The European Space Agency in partnership with the United Nations Crime Institute

¹⁴ EITI Peru. *IX Informe Nacional de Transparencia de las Industrias Extractivas*. Lima: EITI, 2024.

¹⁵ "Informe de Rendición de Cuentas 2023." Informe De Gestión, August 14, 2023.

(UNICRI)¹⁶ and Satellite Applications Catapult has created a community called MineSense that works discussing and brainstorming for solutions to challenges in the mining industry. This could serve as a possible partnership opportunity for Colombia and Peru, which lack access to these advanced technologies and may benefit MineSense with new grounds for the exploration and testing of their devices.

Lastly, it is recommended to explore the possibility of having independent auditing mechanisms to ensure transparency and accountability, limiting corruption and inefficiency. These could involve private regulatory companies that offer an unbiased report on the mining sites, minimizing the chance of corruption and personal gain. The financing of this mechanism could be shared by the government and companies due to their mutual benefit.

IV.2 Improve Revenue Distribution Mechanisms

Both countries already have existing legal frameworks addressing revenue distribution (General Royalties System, Law 2056 of 2020, in Colombia, and Canon Minero, Law 27506 in Peru), these mechanisms allocate revenue from mining operations to local governments, but communities often do not see this money and if they do it is unproportionate to what they should receive.

I recommend the creation of a “Priority Impact Fund” that is complementary to the existing frameworks and has

the purpose of ensuring that a fixed share of the royalties goes directly to the development of affected communities by mining activities. This fund would have to count on a transparent bi-yearly report that shows how the revenues are being spent and has the government’s support to issue penalties for the misuse of these.

IV.3 Enforce Free, Prior, and Informed Consent (FPIC)

Both countries have FPIC requirements under the ILO convention No. 169, but as seen in the cases, the implementation of this tends to be rushed and superficial.

The mandate of third-party mediators is recommended, such as NGOs and universities, to oversee the process and ensure the consideration of community voices.

Also, the development of legal consequences for companies that overlook FPIC could include fines and suspension of permits.

Another recommendation to improve the FPIC efficiency is to include terms for periodic renegotiations as new occurrences happen in the project.

IV.4 Enhance Environmental Monitoring

Although the countries have laws to protect and improve the environment, as is the case for regulations, revenue distribution, and FPIC, these are inefficient in implementation.

The implementation of performance bonds could resolve this issue by acting as a guarantee from mining companies to meet the pre-stated requirements of their

¹⁶ European Space Agency. *Mining Applications*. Paris: ESA, 2024.

operations¹⁷. This bond would be required before the projects begin and would be inaccessible to the companies. The companies would receive parts of the bond as the project develops and based on monitoring assessments that will evaluate the impact of the project. The bonds would aid in improving accountability, diminishing risks, and improving the overall transparency of their work.

IV. Conclusion

Extractive industries in Colombia and Peru undoubtedly play a prominent role in their economies, contributing to job creation, public revenues, and overall economic growth and development. However, these industries come with harmful social and environmental costs that mainly affect local communities. Peru's *Canon Minero* exists to redistribute mining revenues to regional governments but this does not reach local communities¹⁸. The Cerrejón coal mine in Colombia diverted rivers and polluted water supplies leading to droughts and causing health crises for the Wayuu Indigenous community. Both Peru's and Colombia's mining frameworks look good in theory but in practice, they lack enforcement and wound up neglecting sustainable practices.

The evidence showcases the pressing need for transformative reforms that still concentrate on maximizing economic growth but prioritize the environment and society. These reforms should focus on

improving the revenue distribution mechanisms, through a *Priority Impact Fund* that transfers royalties directly to affected communities, strengthening regulatory enforcement, by increasing funding, adopting independent audits, and leveraging technology to make monitoring easier in remote areas, enforcing FPIC through third-party mediators, and lastly, enhancing environmental monitoring by implementing performance bonds to ensure companies' accountability.

The cases of Colombia and Peru offer valuable insights for countries, communities, and companies on how to leverage multiple interest groups while battling together against social and environmental issues. Colombia, Peru, and other resource-rich countries around the world should prioritize inclusive regulatory frameworks and take action to comply with them to achieve social, economic, and environmental prosperity.

Understanding the balance between economic growth and sustainability and the true cost of this industry is important to reform and create new policies ensuring a sustainable future. It does not matter if a country has comprehensive legal frameworks, if the institutions are weak and there is minimal political will to enforce this, it leaves the door open for the intensification of social inequalities and the continuous degradation of the environment.

¹⁷ World Bank. *Mining Sector Diagnostic*. Washington, DC: World Bank, 2021.

¹⁸ EITI Peru. IX Informe Nacional de Transparencia de las Industrias Extractivas. Lima: EITI, 2024.

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