Politics and institutions in mining EIS approvals

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Abstract

Contestation and conflict on mining EIS approvals highlight the role of political and institutional factors in regulatory processes. This encourages reflection on regulatory design and implementation that respond to political and institutional factors to prevent conflict. Regulatory design and implementation often rest on assumptions that regulators are well placed to protect wider societal interests and have access to full, timely information. In practice, EIS approval decisions occur within highly political negotiations on project design, under imperfect information, constrained timelines and limited regulatory capacity. These factors pose difficulties for conflict prevention in regulatory approval processes. This paper proposes a conceptual framework to analyse the role of political and institutional factors in EIS approval processes, and uses it to examine two Peruvian cases of mining EIS approvals. The paper suggests regulatory design and implementation criteria to improve approval processes, which centre around supporting inclusive dialogue on sustainable development. It argues that conflict escalation emerges when approval processes do not respond effectively to institutional and political contexts, as various actors seek to influence a regulatory process that fails to engage with their values and interests. It suggests that in the cases analysed, poor proponent-community relations, limited social science influence in EIS, and a weak regulatory framework, lacking civil society trust, hindered constructive dialogue on sustainable development.

1. Introduction

The planning and approval stage of mining projects is prone to social conflict (Davies and Franks, 2011) because it draws attention to significant changes, provoking responses that range from fierce opposition to strong support. It immediately precedes changes with potentially significant distributional consequences (Tang et al., 2005), affecting a number of actors with different values, interests, levels of power and capacity, and who respond differently to proposed developments. During the EIS assessment and approval process (**EAAP**), opponents of proposed projects have maximum bargaining power and scope to influence project design; and significant financial incentives emerge for proponents and national governments – in the form of shareholder returns and royalty streams. These forces create a highly political environment for mining EAAP, where institutional design and dynamics play a central role (see for example Cárdenas Cornejo, 2011, Tang et al., 2005).

The high likelihood of conflict during EAAP calls for analysis on how to design and implement permitting processes, that effectively respond to the political and institutional environment, to prevent conflict. We approached this question by analysing two Peruvian cases of conflict in EAAP: Minas Conga and Tia Maria (see Table 1). Based on these we formulated design and implementation principles or criteria to improve EAAP centred on facilitating dialogue on mining and Sustainable Development (**SD**). Here we present the conceptual framework and discuss findings under each of its components.

Table 1. The Minas Conga and Tia Maria Projects

Minas Conga		Tia Maria	
Project	**EAAP Conflict**	**Project**	**EAAP Conflict**
- Gold project in Cajamarca, Northern Peru. - Owned by Minera Yanacocha, Minas Buenaventura and the IFC. - 5,000-7,000 jobs during construction.	- Three alpine lagoons to be replaced with artificial reservoirs. - Significant regional opposition. - Project suspended in late 2012 after 5 civilian deaths and major regional strikes.	- Copper project in Arequipa, southern Peru. - Owned by Southern Copper Peru. - 3,000 jobs during construction, 650 during operation.	- Concerns over water usage and its impacts on agriculture. - Cancelled in 2010 after civilian fatalities and significant major regional strikes. - Undertaking new EIS in 2013.

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2. Methodology

We propose a conceptual framework based on the literature on political and institutional factors influencing EAAP and EIA, iterative analysis of detailed case chronologies, and our previous case study work (Arbelaez-Ruiz and Benavides, 2000). With this framework we analysed two cases selected based on availability of information and expert opinions. We conducted a literature review on the dynamics of the Peruvian mining sector including conflict, compiled detailed case chronologies, and analysed them with the proposed framework. Based on the literature review we identified design principles to improve EAAP processes by making them more supportive of dialogue on SD.

3. Conceptual Framework

The framework offers general categories to classify the key elements that affect EAAP and focus analysis on those elements. Political and institutional factors, including power relations, influence all the elements in this framework. The other elements are the characteristics or design of the proposed project, contextual factors (other than of political and institutional nature), people and institutions – which we term actors, and the EAAP itself, understood as a process that creates knowledge and decisions around a project design, its consequences and desirability. The EAAP has important procedural and relational components. Within them we have highlighted the role of assessment criteria and conflict. Figure 1 presents the conceptual framework.

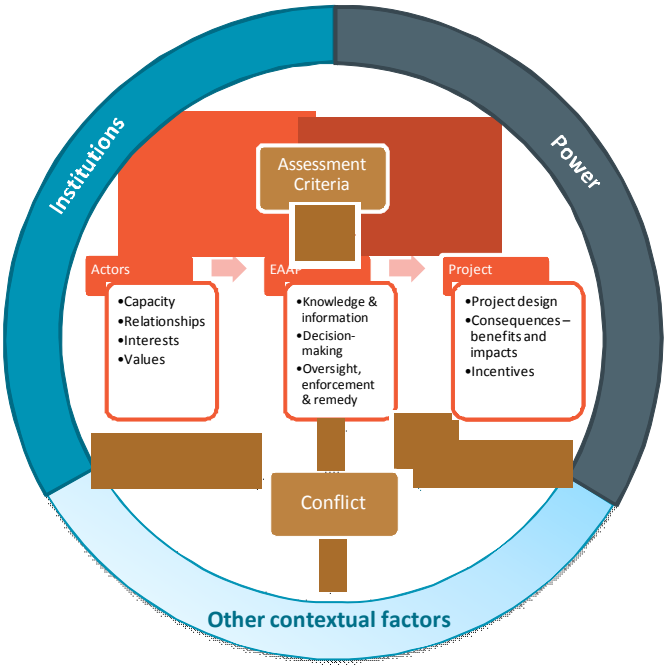

Figure 1. Conceptual framework to analyse EAAP

Political and Institutional Factors: We emphasize the influence of institutions and power relations on the processes and actors involved in EAAP. Institutions configure ways to create knowledge about proposed projects, shape decision-making processes and influence the quality of development and resource management (Bebbington and Bury, 2009), including participation mechanisms (see Castillo and Avila, 2008). Environmental management institutions, such as EAAP and its associated participation mechanism, mirror how power is distributed in a political system (Devlin and Yap, 2008, Tang et al., 2005).

Despite often being construed as purely technical, EAAP is political (Lockie, 2001, Owens et al., 2004, Tang et al., 2005). Political considerations can inform the choice of appraisal methods and the outcomes of decision making stages. The general political climate, dominant discourses, and the interests of those controlling the appraisal stage influence the choice of appraisal approaches (Owens et al., 2004). Power affects actors' influence on EAAP (Gibson, 2006, Palerm, 2000) and the type of knowledge and priorities that institutions favour. Therefore, power has weight over who can understand and participate in EAAP (Lockie, 2001). Political considerations also inform decisions resulting from appraisal processes, with appraisal decisions likely reflecting the interest, norms and values of decision-makers who operate in a political arena (Owens et al., 2004, Leknes, 2001, Arbelaez-Ruiz and Benavides, 2000). During final stages, closer to decision-making, 'political considerations' are more likely to prevail (Leknes, 2001).

The project design, actors and EAAP: EAAP is a space where analysis and assessment, debate and conflict, take place amongst actors (people and organisations) interested in the proposed project, who seek to influence its design. Values and interests motivate actors' positions and strategies towards the project (Craig, 1990, Gibson, 2006, O'Faircheallaigh, 1999, Tang et al., 2005). EAAP is a broader process than prescribed in impact assessment regulations. It encompasses a range of strategies that actors might use to influence project design, not all of which would be catered for in formal regulatory procedures. Actors' ability to engage in EAAP depends on a number of factors, including capacity, power and access to information and participation (Gibson, 2006, Devlin and Yap, 2008, Palerm, 2000). These vary from context to context, for example, civil society organisations might develop strong capacity based on support from an affluent, educated middle class (such as in the case of Taiwan, Tang et al., 2005) or drawing on international support (e.g. Peru, see Bebbington et al., 2008, Castillo and Avila, 2008) or through alliances between intellectuals and campaigners (Devlin and Yap, 2008).

Conflict and Assessment Criteria in EAAP: Conflict might emerge in EAAP as a result of structural root causes, igniting factors or triggers, or combinations of both (see for example International Alert, 2007). An obvious trigger of conflict is divergence of positions on whether and under what circumstances proposed projects are acceptable. Actors assess project acceptability using criteria consistent with their values and interests. There may not be alignment between the assessment criteria that regulatory authorities and proponents utilise, and those of regional and local actors (Bebbington and Bury, 2009), and this can lead to conflict.

EAAP might deal effectively with conflict or it might externalise it, depending on whether it has mechanisms to respond to conflict, and on the underlying causes of the conflict. In some cases the causes might go well beyond the specific project in which case the EAAP will not be sufficient to resolve the conflict. Conflict that is externalised, either because of lack of effective mechanisms or because of its significance going beyond the proposed project, might transform the political and power dynamics and result in institutional innovations (Bebbington and Bury, 2009).

4. Findings

By applying the above conceptual framework to the cases of Conga and Tia Maria we found:

Political and Institutional Factors: A number of political, institutional and social factors influence mining EAAP in Peru including:

- diverging positions on appropriate national development models (Lesova, 2012).
- limited State presence in regions with high poverty and deprivation levels, paired with constrained regional capacity for development planning (Castillo and Avila, 2008).
- significant rents extracted from low income regions through mining (Castillo and Avila, 2008).

- frustration on ineffective use SD and poverty alleviation funds (World Bank, 2011), while industry and national government discourses on mining centre on its SD contribution (La Republica, 2011, ICMM, 2008).
- negative perceptions on mining due to its environmental and social legacies (World Bank, 2005).
- erratic and weak regulation system (Bebbington and Bury, 2009), lacking civil society trust (Consejo de Ministros del Peru, 2012).
- limited institutional capacity for conflict resolution (Office of the Ombudsman, 2012).
- shortcomings in decentralisation processes, with incentives for regional actors to elevate regional mining conflicts to the national level (Arellano-Yanguas, 2011).
- recent changes to tax regimes, citizen participation regulation and EIS approval regulation signal potential for possible positive change in the long-term, subject to strong cooperation.

Project Design: Significant aggravating factors were implicit in the project designs. Both projects were perceived at the regional/local levels as affecting the quantity and quality of already scarce water supplies. The projects were seen as threats to human settlements, other economic activity, and to the already meagre livelihoods of some Andean communities.

Actors: Difficulties emerged from poor relationships, capacity gaps, and differences in values and interest. There had been conflicts between the proponent and regional communities, and the national government lacked community trust. Proponents and the national government demonstrated an incomplete understanding of local and regional dynamics (capacity issue) but had more control over EAAP outcomes than regional actors (power unbalance). There was a perception that the interests and values of regional and local actors were incompatible with those of the national government and proponent, with regional actors perceiving national governments and proponents as colluding.

There were issues of willingness or capacity to engage in constructive dialogue and to understand alternative positions. Financial imperatives, timelines and legal compliance were central in proponent discourse, while the national government backed proponents' positions for the larger part. Regional perspectives received national attention after conflict had severely escalated, with proponents and the national government prioritising legal processes over relationship building.

EAAP: A number of factors limited the scope for effective conflict resolution:
- Conflicts of interests and capacity issues afflicting the regulatory apparatus (Cárdenas Cornejo, 2011, Bebbington and Bury, 2009)
- EAAP was not integrated with regional planning processes
- Some local and regional actors had limited scope to participate in the formal aspects of EAAP
- Limited social science influence on proponent and national government strategies for EAAP

Assessment Criteria: there was apparent disconnection between the assessment criteria of the national government and the proponent with those of regional actors, and a lack of formal mechanisms to bridge differences.

Conflict: Conflict escalation led to human and material loss and demonstrated the limitations of a purely technical or rationalist approach to appraisal. However, conflict also brought innovations that support trust building and dialogue including: external, independent review, more conciliatory communication, new dialogue spaces including mediators, extended timelines, and shifts in government positions.

It is important to note that it would not be realistic to expect that EAAP could resolve conflicts emerging from long-standing, deeply entrenched social dynamics. EAAP are highly reliant on the strength of institutions and civil society at large.

5. Regulatory design and implementation criteria

Analysis of the Conga and Tia Maria cases, together with documented experiences of other EAAP (Gibson, 2006, Kahn and O'Faircheallaigh, 2010, O'Faircheallaigh, 2000, O'Faircheallaigh, 2010, O'Faircheallaigh, 2011) suggest that the following design and implementation criteria could support improvements in EAAP to prevent conflict by effectively responding to political and institutional factors. The criteria centre around facilitating dialogue on SD and include: inclusive dialogue, transparency and accountability, social science influence, integration of EAAP with other processes, and adjusting incentives and gaining political support. We outline the criteria in Table 2.

Inclusive dialogue	Transparency and Accountability	Social Science Influence	Integration	Incentives and Political Will
-Inclusive -Early start -Flexible participation -Bridging knowledge systems	-Accessible information -Open process -Third party oversight	Social science to influence EAAP strategies of governments and proponents as well as technical aspects of EIS	Integrate dialogue, negotiation, consent, impact assessment and approval processes	- Secure elected decision-maker commitment to the process - Checks and balances to address perverse incentives

Table 2. Regulatory design and implementation criteria

6. Conclusion

The Conga and Tia Maria EAAP conflicts escalated because of significant trust and relationship issues and not merely because of gaps in technical rigour in EIS. In an environment of limited trust (in the state's regulatory apparatus and amongst actors), perceived project impacts intensify feelings of vulnerability. While technical and resourcing limitations were evident amongst regulatory authorities, more significant shortcomings were that the proponent and national government displayed limited ability to operate effectively in the regional socio-political context and that regulatory institutional designs lacked credibility. As a result, perceptions of a gulf between regional and national and proponent agendas grew. While these conflicts were destructive and violent, they precipitated innovations that could promote dialogue and trust building.

A number of criteria could be used to design and implement EAAP that are more supportive of dialogue on sustainable development as a means to avert conflict. These criteria centre around promoting inclusive dialogue, implementing mechanisms to support transparency and accountability, integrating EAAP with regional planning processes and with consent building efforts, addressing incentive issues, and ensuring that rigorous social science informs EAAP design and implementation.

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