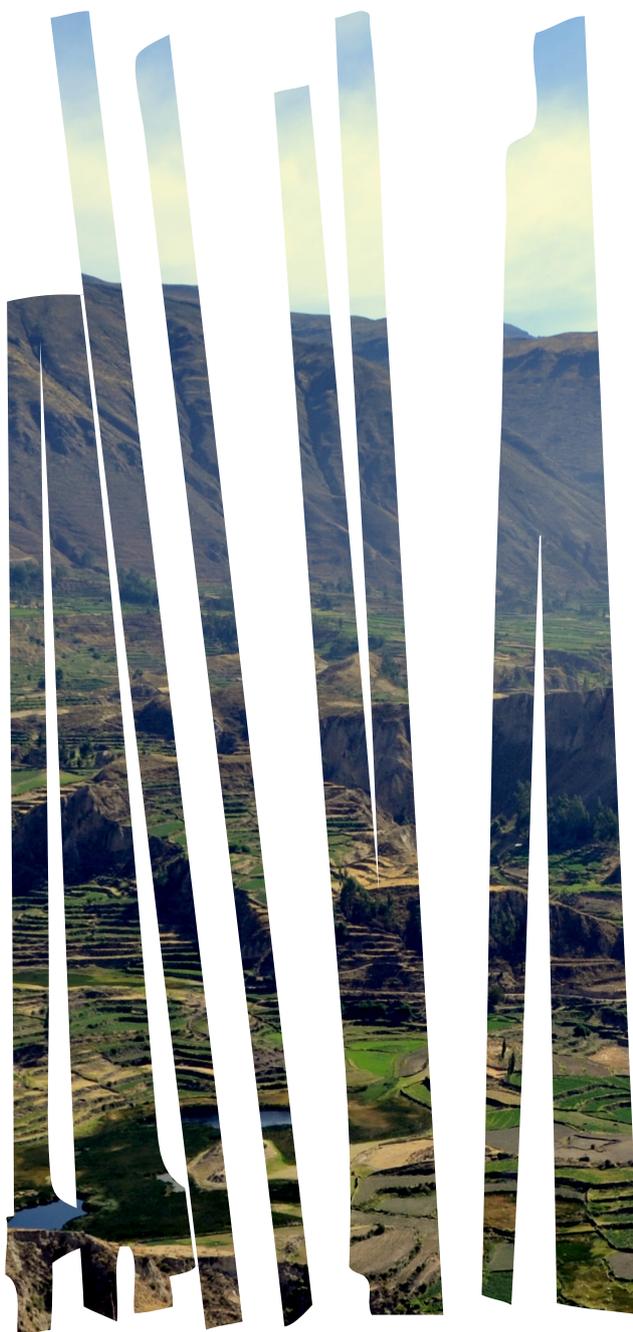


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Hybrid Institutions
Institutionalizing Practices in the Context of
Extractive Expansion

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Hybrid Institutions

Institutionalizing Practices in the Context of Extractive Expansion

Abstract

States face the challenge of developing institutions to govern the activities of social actors when an area under their control becomes the target of increased extractive activities. National and local public regulations safeguarding the environment, the assignment of extractive rights to individuals or companies, and handling of ensuing conflicts are developed in an institutional gray zone. This paper analyzes how informal institutions developed in early period become hybrid institutional entanglements that depend largely on configurations of power. It does so by looking at two cases in Peru: Water extraction in Ica, mostly by large companies and gold mining in Madre de Dios, mostly by small scale miners. Taken together, these cases show the institutions resulting from state governance of extractive activities depends heavily on the agency and political leverage of the state but also of other social actors.

Keywords: hybrid institutional entanglements | small scale miners | water extraction

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1. Introduction

Since the 1990s, for more than two decades, extractive activities such as small-scale mining and agribusinesses have flourished in Peru under governments that were anxiously looking for the unexpected benefits offered by the prosperous commodity world market. During this cycle extractive companies, such as mining and agro-export companies as well as small scale miners, increased their number, territorial presence and political importance. The extractive boom intensified extractive activities and pushed forward the extractive frontiers, generating the need for rules and procedures to facilitate, organize and contest extractive activities. Since the state was not able to regulate such activities, old and new extractive practices flourished following state, corporate and/or culturally embedded institutional frameworks.

Some of these practices were gradually institutionalized in interplay with new state norms, corporate practices and/or culturally legitimated local conventions. Other extractive rules and procedures emerged from formal or informal institutional arrangements between state, private and local actors. In this context state laws, corporate norms and local rules complemented, conflicted and intertwined, constituting in some cases hybrid institutional entanglements, that is, rules and procedures that partially respond to both formal and informal institutional frameworks.

How do practices become institutionalized as hybrid entanglements in the context of extractive expansion? This article aims to respond to this question by presenting, defining and analyzing specific cases of institutionalization of local practices that have flourished in the context of extractive boom as hybrid institutional entanglements: agribusiness companies' groundwater extraction in the Ica valley and small-scale miners' access to gold alluvial deposits in the Peruvian Amazonia. These institutionalized practices are good examples of how the processes of institutional hybridization unfold in places where state governance is seen as limited or became hybridized (Risse 2011; Li 2005), places that can be found in all regions in the world.

The article argues that hybrid entanglements are produced when governments seek to regulate local practices and social actors consciously follow both formal and informal frameworks in processes of institutional hybridization when their practices became neither completely formal nor completely informal institutions. Moreover, it argues that the type of relationship established by specific social groups with state authority, such as processes of state capture and resistance, adaptation or subjection to the state, shapes the generation of different forms of institutional entanglements.

This article draws on both primary and secondary data. Primary data has been collected between 2013 and 2018 in two research projects conducted by the author: one on conflicts in small-scale mining in the Amazon basin and another on the role of state policies in scenarios of water scarcity in Ica. In both projects, primary data has been collected through qualitative and ethnographic methods and instruments such as in-depth interviews and non-participatory observation. The systematization of secondary data is drawn from, among others, academic articles, state and other public reports, maps and datasets.

The text is divided into three sections preceded by this introduction. The first section presents the theoretical framework and key concepts used for the analysis. The second section analyzes the institutionalization of agribusiness' groundwater extraction in Ica and small-scale miners' access to alluvial gold deposits in the Amazonia as examples of hybrid institutional entanglements. Finally, the most important points of the argument presented as concluding remarks are highlighted.

2. Conceptual Framework

Institutions are commonly defined as a set of persistent rules and procedures that structure, or shape, political and socioeconomic relationships, as well as the interactions between individuals and the social groups that make up society (Leftwich 2006). Moreover, institutions are generally classified into two groups: formal and informal (North 1990). Helmke and Levitsky (2004) assert that the former is understood in terms of rules that are arranged, transmitted and reproduced through channels recognized as official, while the latter originate and reproduce in unofficial domains. For the authors, an institution that is formal implies that the rules are formally established and that infraction of such rules has sanctions prescribed by an authority constituted in a code. Informal institutions also prescribe appropriate behavior and sanctions; however, these are generated in the non-formal areas of collective action and can be explicit or not.

The literature on institutions follows a top-down approach when institutional analyses are driven from a legalist or state view, thereby informal institutions are mostly seen as marginal or complementary to formal forms of government. Thus, the persistence and reproduction of informal institutions are perceived as indication of limited governance (Risse 2011, Helmke and Levitsky 2004). Another common view is to see informal institutions circumscribed to the realm of traditional cultures (North 1990). However, the simple association of informality with the realm of tradition runs the risk of taking informal institutions as a-historical presuppositions or as part of a static cultural

essence (Helmke and Levitsky 2004: 727). Several studies have shown that informal institutions are not marginal, but constitutive to governance schemes and even be inherent to effective forms of governance in many parts of the world (Boege 2017, Sindzingre 2006).

Governance schemes are driven by social actors vis-à-vis changing formal and informal domains. Institutions are institutionalized practices performed and legitimated by social actors. Social actors' institutionalizing practices may follow formal frameworks established by the state or corporate powers recognized by the state (Ferguson 2005) or informal frameworks such as culturally founded rules that are not recognized or regulated by the state or corporate powers. In addition, the formal domains are dynamic; changes in formal frameworks can formalize or forbid long standing informal institutions, transforming them into formal institutions or making them illegal, respectively. Likewise, and against the erroneous perception that they originate from an immovable cultural substrate, informal institutions, like formal ones, are in constant transformation, and one of the main incentives they have to do so is the presence of changes in the formal institutional environment (Helmke and Levitsky 2004: 731).

In many cases social actors combine formal and informal frameworks while institutionalizing practices. As Olivier de Sardan (2013: 288) asserts it is more productive to think of institutions as mechanisms for coordinating collective action rather than abstract structures. The institutions that regulate collective action are, in this way, part of a disorderly process and without fixed assembly direction made by individuals within the limits of their circumstances (Cleaver 2002: 17). These are not defined a priori by a set of necessary, specific and sufficient forms and functions (Sindzingre 2006: 70) but are continuously transformed by the combination of forms of authority, cooperation and behaviors perceived as more credible or effective than others.

Some authors regarding the way in which formal and informal institutions are intertwined, have used the state "strength / weakness" or "presence / absence" as possible values for this kind of explanatory variable. Drawing in this framework, the ability of states to provide public services and maintain internal security is evaluated by international organizations, classifying them in an ascending line that goes from failed or collapsed states, passes through weak or vulnerable states and culminates with stable or consolidated states. In contexts characterized by a tenuous or weak state presence, formal institutions achieve some degree of effectiveness thanks to the mediation of non-state institutions that follow their own logic or that are informal (Boege et al. 2008: 3-7).

As Boege et al. (2008) asserts the identification of a state as “weak” implies recognizing the existence of other political actors that are “strong” in relation to the state. This is especially true in societies where the idea of the state has not solidified in a solid manner and where the notion of citizenship, as opposed to other, more rooted identities, does not connect with individuals (Turnbull 2002). In these contexts, social actors can combine formal and informal institutional practices, developing ‘hybrid institutions’. Moreover, one can think of an institutional continuum in which the actors choose a course of action by combining normative practices with traditional, moral or customary ones (Sindzingre 2006). The legitimacy of these hybrid institutions is based on reference to socially acceptable ways of doing things, as well as existing or previous tradition, identity, rights or relationships of authority (Hall et al. 2014).

Assessments of state-building policies based only on the understanding of such societies as “fragile states” have, however, shown a series of problems in the achievement of their objectives (Grävingholt et al. 2012), so that some alternative perspectives that understands these spaces as “hybrid political orders“ have been developed (Boege et al. 2008, 2009). From this alternative perspective, there are informal institutions that dispute to the state their privileged position in the establishment of rules and procedures of coexistence. These institutions, such as those generated by religious movements or transnational criminal networks, have the capacity to establish norms of coexistence and some type of order (Mehler 2003).

The central issue, however, is not necessarily to find mechanisms to “incorporate” informal institutions into the hierarchies of the state. The instrumental use of native or local institutions by for example colonial governments through the indirect rule is already known (Asad 1973, Hart 2006) and does not constitute a real collaboration: the state recognizes traditional chiefs to build their power and in return, the bosses take refuge in a powerful and foreign structure, which may call into question its legitimacy vis-à-vis the population (Boege et al. 2008: 8).

Moreover, the collaboration of formal and informal institutions does not consist necessarily in an inclusion of a weak structure by a stronger one. Actually, the places where the limits between formality, informality or even legality they are diffuse, constitute fertile spaces to produce institutional hybridization rather than collaboration (Das and Poole 2004). In such contexts, frictions occur between traditional collective identities and the notions of state citizenship, frictions that need to be transformed into constructive interactions to build an effective state. For this, it is useful to think about the fundamental functions of the state and how they are being carried out in these spaces, as well as to address the sources of legitimacy of formal and informal

institutions. The functions of the state, as recognized by Clements et al. (2007) are not an end by themselves and in conditions of hybridity, their ultimate objectives of providing development, security and peace can be best achieved through institutional hybridization and not by processes of state formalization.

This article aims to shed light to the institutionalization of practices that regulate the actual social interaction in extractive realms. It argues that these rules are formed in a dynamic with formal and informal institutional frameworks. Thus, they can be related to state norms, corporate and/or local practices, forming hybrid institutional entanglements which cannot be fully enclosed by a single formal or informal institutional framework. The way such institutions are produced and reproduced depends on the state and other social actors' agency and political leverage.

In developing this argument, the article asserts that hybrid institutional entanglements are dynamic and as such it is fundamental to understand hybrid entanglements in a continuum from almost informal to almost formal institutionalized practices. Moreover, the state may formalize practices or legally ban them in the context of changes to public policies. These changes may not significantly affect the reproduction of rules in place when the state is not capable or has no real interest in implementing formal law, but certainly could move such institutions to the formal or informal side of the continuum.

In addition, following Boege (2017: 219) this article asserts that hybridization of formal and informal institutions reveals the variety of forms of political and economic agency of the subjects in specific social situations: obstruction, resistance, capture, re-appropriation, cooptation or subordination. As Chatterjee (2004) asserts, societies are divided by an axis of legality in which there is an illegal component that; however, it is backed by a certain social legitimacy. In such situations, hybridity can emerge as a political tool that directs the action of the state, redirecting its resources towards the interests of the group. So, the question that emerges is at what point the hybridizations become 'dysfunctional' and to what extent it can be said that it orders "consolidate the position of the local and traditional elites", reinforcing in this way social inequalities of different types (Bagayoko et al. 2016: 15).

This conceptual framework allows us to analyze the way by which power in the two different cases proposed in this article influence the characteristics acquired by formal-informal institutional entanglement, in spaces of greater or less institutional hybridity.

3. Institutionalized Practices as Hybrid Institutional Entanglements

The two cases presented show how social actors combine formal and informal frameworks in institutionalizing their practices, however, they do so from different power positions vis-à-vis the state. While agribusiness companies are able to use political influence, small scale miners can resist state regulations. In both cases, power shapes the way institutional hybridization has unfolded.

3.1 Case 1: Agribusiness Companies' Extraction of Scarce Groundwater Resources in Ica: Institutional Hybridization Pushed from Above

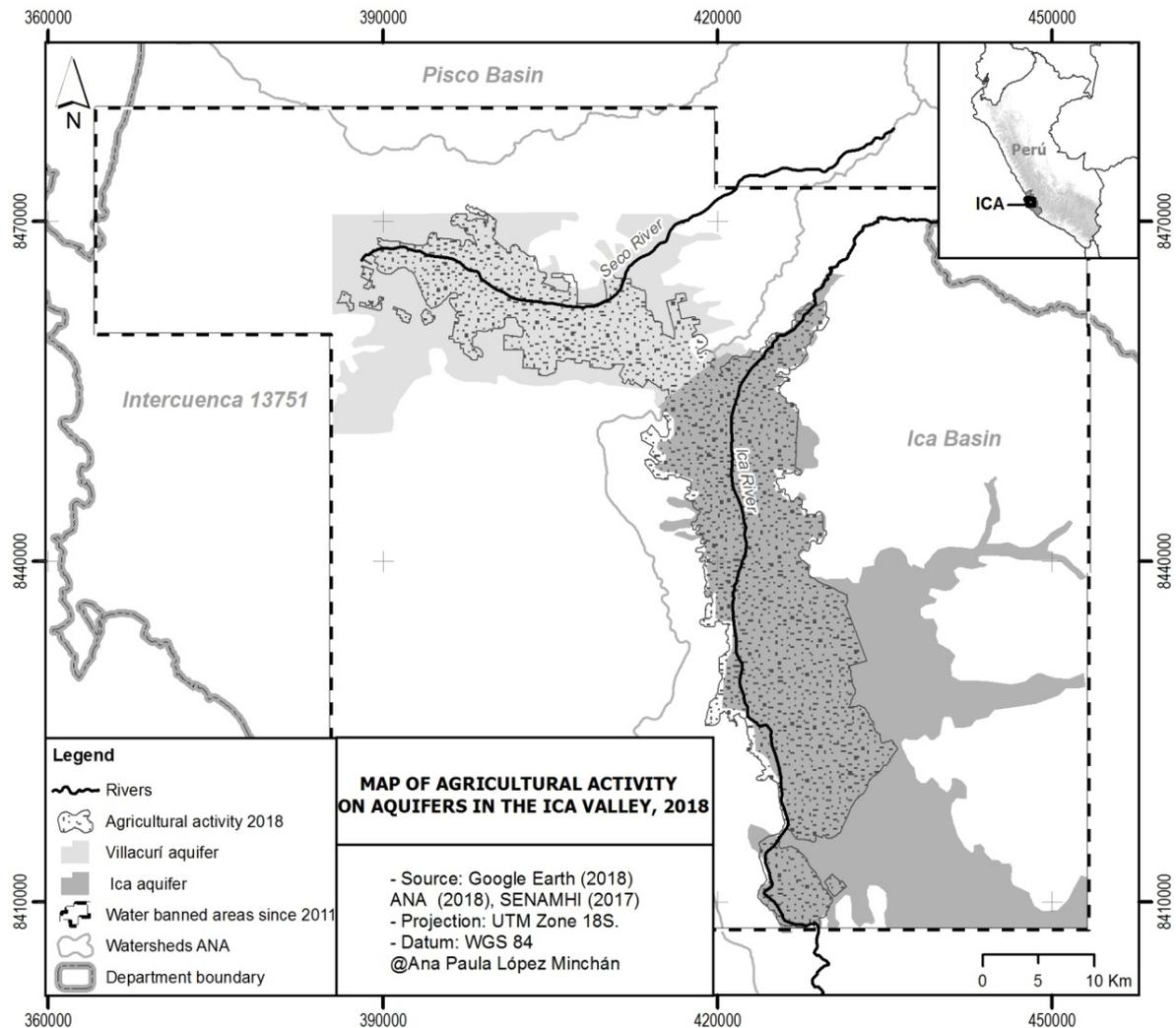
Since the early 1990s, the Peruvian government's policy was mainly to appeal to private investments for agro-export expansion. This policy attracted domestic and foreign capital, introducing for new export crops. With increased demand for asparagus on the international market, the Ica valley consolidated by the end of that decade as one of the country's main agro-export zones.

Under this productive model small family farms were regarded as inefficient in producing for a global market requiring high-quality, massive volume, and constant production. Therefore, the government concentrated on appealing to and fostering the formation of export companies with access to large land areas. Between 1994 and 2012, while agricultural land ownership between 100 and 500 hectares increased by 19.67% in Ica, large sized properties of 500 hectares or more increased by 347.90% (INEI 1994, 2012). Mass-production of new crops mainly for export has risen along with traditional cotton. The model's economic success is intimately linked to the increased worldwide demand for fresh crop luxury foods, which is accompanied by a steeply increased demand for resources (water and land) to grow these products. The main crops produced by the agribusiness were asparagus (which harvest area has increased from 411 ha in 1991 to 10,400 ha in 2011) and table grapes (with a harvest area increase from 3,000 ha in 1994 to 5,082 ha in 2011) (ANA 2018). Export destinations for the table grapes has changed from Europe and US to China because of less stringent agrochemical residue norms.

In addition to population growth, this agro-export boom brought increasing demand for groundwater. The Ica river irrigates the Ica valley while aquifers are located in the west end of the valley close to the sea (see Figure 1). Currently, the Ica river and aquifers feed some 26,000 ha of irrigated land in the Ica valley, while also providing water to the city of Ica and surrounding villages. Most small and medium-size holders irrigate

their land from the river, while large scale producers use groundwater from the Ica and Villacurí aquifers.

Figure 1: Map of Agricultural Activity on Aquifers in the Ica valley, 2018



The agro-export boom in the Ica valley has had profound consequences in terms of generating water scarcity (Damonte et al. 2014, Damonte 2015). In an arid climate such as Ica's, expanding the agricultural frontier requires access to new water sources. In this scenario, agro-exporters are the ones with the necessary capital to access groundwater, which is the only additional quality water source available at this time. In accordance with the reports of the National Water Authority (ANA), in 2009 the exploitation of the aquifers surpassed the reserve volume by 125% and in 2013-2014 by 171% (Muñoz and Zuñiga 2018: 114).

What are the formal rules and procedures for groundwater extraction in the Ica valley? Before 2019 there was no formal regulation for groundwater extraction. In 2009 a new law for water resources was enacted in Peru. In their regulatory norms enacted in 2010

this law establishes that the well owner must be a formal producer and needs to own the land where the well will be built and get a usage license that is a water concession for each well in use. The amount of water the producer can extract in a given period is specified in the water concession. The producers must assume all costs related to the well building and maintenance. Agribusiness companies own and use the vast majority of groundwater wells over the aquifers of Ica, Lanchas and Villacurí. These companies are formal producers and formally own the land where wells are located; however, just a small number of the wells have usage licenses, the others have been informally built or are informally used. Official numbers show that in Ica, some 860 groundwater wells are installed, of which only 249 have a license (ANA 2018).

In addition, the state previously had a formal right to directly control the amount of water extracted in each well. However, the agribusiness association fiercely opposed direct state regulation during the discussion about the regulation of the new law of 2019. Indeed, they even physically prevented ANA functionaries from entering their private property where their wells were drilled, despite the legal mandate for state regulation. So, the state resorted to include them as well. In such a situation, all well licenses could have been canceled and thereby all actual wells used would be considered to be informal or illegal, but the state did not want to start such a fight with the agribusiness companies, so the legal regulations in place since 2010 assigns to the wells' owners an obligation to count and declare to the ANA the amount of water they extract, in effect giving agro-export companies the right to self-regulate. From then on, companies have simply declared to the water authority the amount of water they extract.

However, the formalization of a former informal self-regulation of the volume of groundwater extraction per well did not resolve the issue of the increasing number of informal wells in the context of increasing groundwater scarcity. Thus, the state decided to declare a water emergency in the Ica region. In 2011 Chief Resolution N° 330 was passed, thereby ratifying a ban on the drilling of new boreholes in Ica and the prohibition of new underground water use rights in Villacurí and Lanchas. ANA's local officials have focused on detecting illegal drilling works, identifying non-registered wells and inspecting flow meters in order to verify the quantity of water being extracted. As a result, infringers have been issued fines up to S/. 3850 (approximately USD 1,200) and unlawful wells, mostly on the land of small holders, have been closed. Just before this punitive process, the government declared a legal amnesty for all informal wells that were informally used. Companies could formalize their informal wells with no fines just before the ban on new wells took place.

The policy was partially successful since many existing informal wells were formalized or closed down, but it did not prevent the drilling of new informal wells by the companies. So, the government enacted a new norm that allowed the producers to build new wells but only to replace unusable old ones. Again, this norm facilitated the formalization of formerly informal wells, but did not prevent the companies from continuing to drill wells to supply their increasing groundwater demand for cropping crops for exports. ANA estimates that the number of informal wells have increased even during the water ban period: by 2015 about 65% of wells in Villacurí and 81% in Lanchas have no license at all (ANA 2015). Clearly, the self-regulation policy was not working, but the lack of adequate government regulation seems to be politically motivated and key to the constitution of their territory, especially since small and medium well owners have been regulated. Agro-exporters, on the contrary, rely on their power and political legitimacy to avoid state oversight.

Throughout this period, the companies have extracted the water they have needed for furnishing their increasing demand with no effective state regulation even in the context of water scarcity and emergency. This practice has been institutionalized since no effective state sanction or significant social opposition has been able to prevent it. The state has tried to firm up their formal framework while other possibly affected water users have not raised their voices against companies' extractive practices (Damonte 2015). The actual rules and procedures that govern the companies' extraction of groundwater entangles formal rights and informal procedures: companies are formal, part of their wells are formal, their exports follow formal channels and pay formal taxes, however they informally manage the number of wells and the amount of water extraction in accordance with their markets' needs, irrespective of formal rules or environmental concerns.

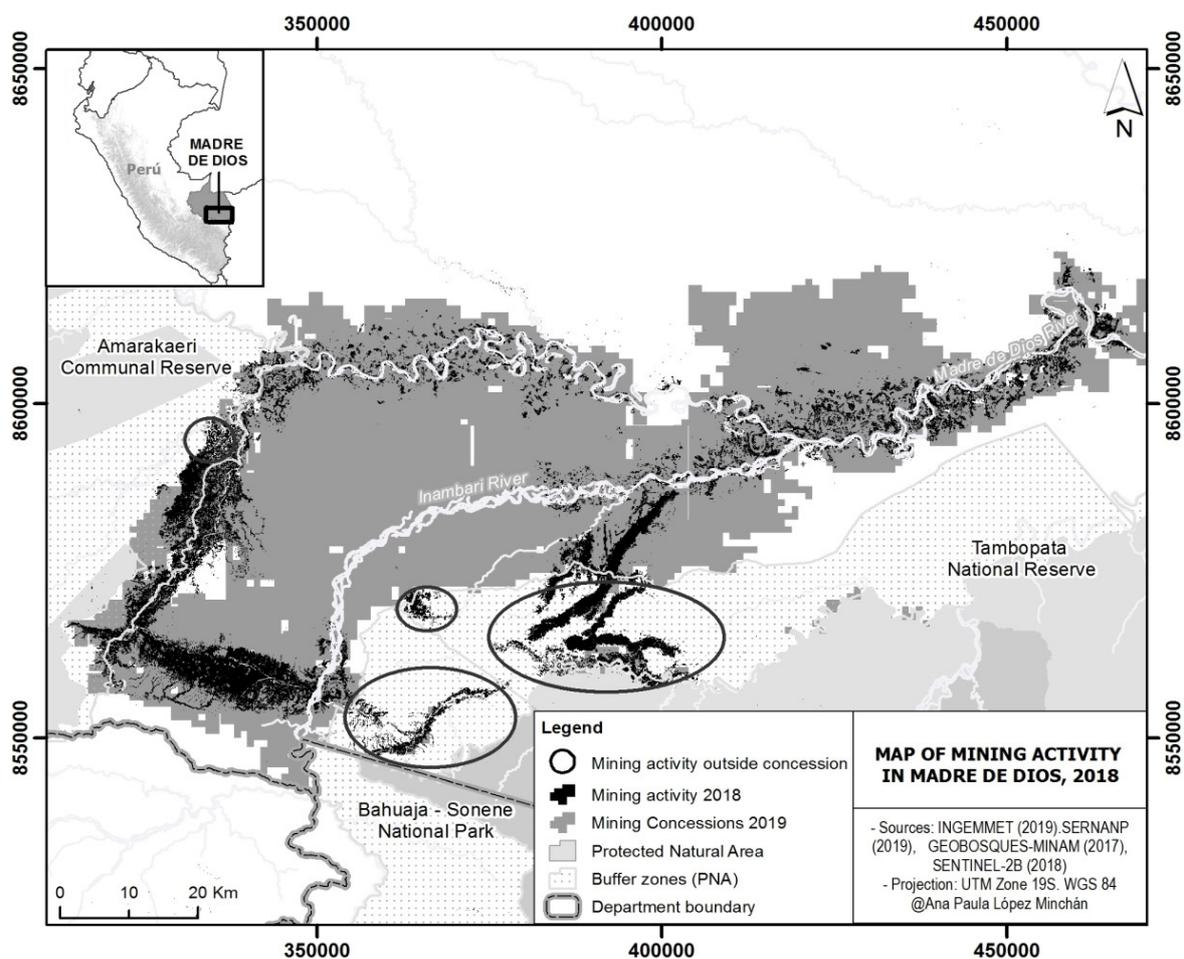
In Ica as in other Peruvian coastal valleys, the agro-export group's political and economic power has become the main agent driving hydro-territorial redefinition (Damonte and Boelens 2019). Supported by the neoliberal policies and mindset promoted by the government in the last decades, the agro-export companies established their power by developing the financial and technical capacity to pursue high-tech export agriculture and contest existing territorialities and alternative imaginaries related to smallholders' livelihood, food-based agriculture, and dignified drinking water services for the cities. Next, they build on their political capacity to establish the rules to access groundwater, overriding other organizations in the watershed - including the state - and legitimize their water control using the dominant discourse (Damonte and Gonzales 2018, Damonte et al. 2016). Private enterprise makes the desert bloom; it earns foreign exchange for the country and provides employment for the region; it uses cutting-edge irrigation

technology so they are an example of “efficient” water management, which must be followed to utilize other abandoned land in Ica and other valleys on the Coast.

3.2 Case 2: Institutionalized Practices for Small Scale Miner’s Access to Gold Alluvial Deposits in the Amazonia: An Institutional Hybridization Pushed from Below

Madre de Dios is a region in the southern Peruvian Amazon bordering Bolivia and Brazil. With a total population of approximately 134,100 permanent residents, it is the least populated province in the country (INEI 2014). Over the last decade this province has caught national attention due to the massive environmental destruction caused by the multiplication of small-scale mining activities in this fragile environment. (Damonte et al. 2013; Ipenza and Valencia 2014; Mosquera 2006; Pachas 2011a; Valencia 2014) (see Figure 2).

Figure 2: Map of Mining activity in Madre de Dios, 2018



The miners are the most important group in economic and political terms, although they represent only around 10 percent of the population (Mosquera et al 2009; Pachas 2011b). Most miners are Andean immigrants but there are also some Amazon natives and even a few foreign miners from China and Russia.

In Madre de Dios, miners have differing ways to access ore deposits. There are miners with formal mining concessions given by the state. They are the formal concession “holders” and have the right to formally mine in their concession. Sometimes, formal holders prefer to “invite” “guest” miners to mine on their concessions for a payment, usually a percentage of the ore extracted. In this case, the “guests” are informal miners, informally allowed by formal “holder” miners to access their formally received concession. However, miners can also invade a vacant concession or no-mining zone and seek social (informal) recognition as “holders” by force or by claiming “first possession rights”. Again, they can invite “guest” miners. Then, there are the “peons” who are miners working for “holders” or “guests” for a payment, usually a small percentage of the gold extracted daily, called a “royalty”. Finally, the “*chichiqueros*” are miners who temporarily invade other people’s concessions where they mine individually until the “holder” finds out. They are independent, free, and mobile miners.

Thus, in Madre de Dios miners have four non-exclusive ways to access the ore deposits: as a holder, as a “guest”, as a “peon” or as a “*chichiquero*” which made up several combinations. Just as an example, a miner can hold formal and informal concessions and be a “guest” miner in another holder concession. Moreover, a *chichiquero* can be also a peon. In general, newcomers are peons and *chichiqueros* who aspire to someday become “guests” and then “holders”, which had commonly happened in the context of actual labor mobility and extractive territorial expansion.

The rules and procedures for accessing ore deposits are clear and well established, they are mostly informal institutions. Just when formal holders access their given concession directly or through formally hired workers, it is following only formal norms for accessing ore deposits (and formal concessions account for only a small portion of the mining land). Moreover, almost no formal holders comply with all formal requirement for mining extraction such as environmental provisions, so there is almost no completely formal mining in the region. However, the most common ways to access the ore deposits are completely informal and their degree of informality is changing in accordance with changing state formalization initiatives and policies.

Before 2001 there were no specific formal rules to govern small scale mining in Peru. In that year, the government enacted a supreme decree (27651)¹, officially recognizing artisanal mining for the first time and incorporating it into the General Mining Act. The law defines artisanal miners as individuals or groups who work for their living by mining manually or using rudimentary equipment. In the case of gold producers in gold placer ore deposits formed by gravity separation during sedimentary processes which is the Madre de Dios case, production capacity must be at most 200 m³/day for being consider artisanal mining (Mosquera et al 2009). Under this formal framework, miners are required to obtain a tax number and a mining concession or a mining contract with the concession owner, as well as an artisanal miner certificate in order to access the ore deposits. From this general framework the state started to develop regulations to foster formal and prevent the expansion of informal artisanal mining.

In 2005 the government passed the Environment Act (2005) which defines the guidelines for environmental management, the sustainable use of natural resources and land planning and zoning in Peru. The EEZ proposal establishes eight zones grouped into five main categories (Fernandez 2010). It prioritizes ecological protection (49.64 %) and non-mining production (40.22 %) leaving just 10.14 percent of the territory for potential small-scale mining activities. Interestingly, this zoning plan does not preclude large-scale extractive projects since it addresses only land use, not subsoil resource extraction - though it could establish some land access restrictions for extractive purposes particularly in conservation areas.

However, new miners' groups in the 2010 expanded their activities into banned reserves areas' buffer zones such as "La Pampa" which overlaps with the buffer zone of Tambopata National Reserve, transgressing the mining limits established by the EEZ and menacing this protected area. In February 2011, the state responded by enacting Act 1100 which declared illegal all mining activities not authorized by the state. As a result, informal miners mining ore deposits in rivers, lakes and protected areas become illegal miners. Subsequently, the Ministry of Environment urged the navy to launch a punitive campaign against illegal miners in the region, sinking many dredger boats on the Madre de Dios River. In the same 2011, the Ministry of Energy and Mines published the Supreme Decree N° 013-2011 approving the "National Plan for the Formalization of Artisanal Mining" (PNFMA).

Miners resisted the state pressure for formalization and mobilized against punitive campaigns. They accused the state of being ill prepared to understand the mining

1 Supreme Decree N° 013-2002, passed April 21, 2002.

activities in the region while demonstrating against state crimes towards miners in the context of punitive campaigns. After some years, it was clear that the formalization plan was a failure in the region since less than 1% of miners were trying to obtain the status. Consequently, the state looked for some policy changes to provide incentives for miners to seek formalization (Damonte 2016, 2018).

In 2013 the central state enacted a supreme decree to create an exceptional procedure under the same law to drive forwards formalization². Under this exceptional procedure, non-formal miners are required to submit a declaration of commitment in order to be considered “in the process of formalization”, until they fulfill all the requirements to complete the process. This opened up a new window for informal miners to achieve certain degree of formalization. Moreover, the ministry of environment recognized some *chichiqueros* associations as miners “in the process of formalization” (Damonte 2018). Interestingly enough, *chichiquero* miners have neither formal nor informal concessions and many of them work in no-mining zones such as “La Pampa”, so the window of formality was opened also for illegal miners.

The same process of repression and conciliation has been repeated several times since 2010. The government, with the support of the media and public opinion, launches a repressive intervention against so-called illegal miners, but the miners resist, and the pace of formalization stops. Miners mobilize against punitive measures through demonstrations, road blocks and general strikes. The government is forced to put the formalization process on hold and establish roundtables to conduct dialogue and negotiate some conditions. By 2014, more than 90% of miners were “in process of formalization” in Madre de Dios but by 2019, no one had completed the process. Rules and procedures for access to ore deposits have not changed.

In this case, small scale miners’ power to produce and reproduce their rules for ore deposits comes from their capacity to mobilize and negotiate state regulations. state policy has tried to regulate the access to ore deposits by creating mechanisms for recognizing actual miners (as artisanal miners) as well as limiting their area of extraction (no-go zones) (Pachas 2011a, Pachas 2011b). Miners have responded to these evolving formal frameworks by accepting recognition and resisting punitive campaigns. They have chosen to accept some state regulations to get some rights and recognition that in turn would help them to resist other regulation. In this way, the institutionalized practices to access ore deposits in Madre de Dios are mostly but not completely informal, that is, they can be regarded as hybrid institutional entanglements.

2 Supreme Decree DS 032-2013-EM enacted on August 23, 2013.

4. Final Remarks

The institutionalization of informal institutions has been a fundamental process for developing governance schemes in the context of extractive expansion. Extractive activities have flourished without formally established or actually enforced rules and procedures. In such contexts, some local practices have been reproduced and produced as informal institutions to govern extractive intensification and territorial expansion and as a way to maximize the unregulated use of resources. In addition, the reproduction of informal institutions in the context of increasing state regulatory efforts have fostered processes of institutional hybridization.

The cases of water extraction in Ica and alluvial gold deposit access in Madre de Dios show how agro-export companies and miners institutionalized their extractive practices not just as informal institutions but as hybrid institutional entanglements. In Peru the state has gradually developed formal frameworks to regulate extractive activities but these formal regulations have been only partially adopted. Agro-export companies and miners have chosen to follow some formal procedures while maintaining their informal rules, intertwining formal and informal frameworks to get formal rights to extract resources while avoiding the regulation that would restrict their extractive activities. Thus, the rules and procedures for water extraction and ore access are not formal but not completely informal either.

Moreover, the way these hybrid institutional entanglements have been constituted has depended on the power balance between the different state regulatory agencies and the companies or local groups that pursue unregulated extractive activities. In first case, agro-export companies are able to compel the state to formalize some of their informal extractive practices while avoiding the effective regulation of others such as the volume of water extracted. In this sense, they have hybridized the state governance from above, showing their power to influence state regulatory efforts. In the second case, miners have effectively resisted state regulation in order to get recognition and negotiate changes in the state institutional frameworks. Thus, they have hybridized state governance from below. In both cases, hybrid institutional entanglement has been the result of power-laden disputes for resources control between the state (in its different level, sectors and branches) and local extractive agents. These cases show that different social groups establish diverse relationships with the state based on their political interests and capacities (Chatterjee 2004). Thus, more than the weakness or institutional strength of the states, the nature of the formation of the entanglement between formal and informal institutions will depend on the way in which the political

scenarios that frame the institutional development in different social spaces have been constituted.

The hybridization of governance schemes in places of extractive expansion or intensification have generated significant institutional challenges for governance, which may be understood in the theoretical realm of institutional curses. Governments eager for windfall profits have opened up territories for extractive developments without proper public regulation, creating conflictive and sometimes ungovernable scenarios. However, this is not to say that a lack of established state regulation has produced only chaos; extractive agents have managed to establish governance schemes by institutionalizing their practices as institutional entanglements. Thus, the possible institutional curse would depend on the forms adopted by these entanglements and their functionality in the quest for developing more institutional governance.

Analysis of these cases prove to be no exception, and reinforce the argument already present in the literature that informal institutions and hybrid institutional forms do not respond to situations of marginality, but structure in themselves forms of social behavior (Boege 2017; Sindzingre 2006; Hemlke and Levitsky 2004; Olivier de Sardan 2013). Thus, state presence does not lead to some linear process of gradual formalization but to processes of hybridization or distinct “assemblages” (Li 2005) that are established dynamically between local groups and different state representatives. In such scenarios power disputes play the key role in shaping institutional governance precluding or reinforcing institutional rule.

5. Bibliography

Asad, Talal (1973): *Anthropology and the Colonial Encounter*, London: Ithaca Press.

Autoridad Nacional del Agua, Direccion de Conservacion y Planeamiento de los Recursos Hidricos (2015): “Plan de Gestión del Acuífero de Ica-Villacurí-Lanchas,” in: *Estado Situacional de las aguas subterráneas*, Lima: Autoridad Nacional del Agua, online at: [http://www2.congreso.gob.pe/sicr/comisiones/2011/com2011enemin.nsf/regtodos/BDF11683169FB81B05257F5600768C20/\\$FILE/SituacionAguasSubterranas.pdf](http://www2.congreso.gob.pe/sicr/comisiones/2011/com2011enemin.nsf/regtodos/BDF11683169FB81B05257F5600768C20/$FILE/SituacionAguasSubterranas.pdf).

- Autoridad Nacional del Agua, ANA (2018): *Plan de Gestión del acuífero del valle de Ica y pampas de Villacurí y Lanchas*, online at: https://www.ana.gob.pe/sites/default/files/normatividad/files/ica_-_plan_de_gestion_0_0.pdf (consultado 21.10.2019).
- Bagayoko, Niagale; Hutchful, Eboe and Luckham, Robin (2016): “Hybrid Security Governance in Africa. Rethinking the Foundations of Security, Justice and Legitimate Public Authority”, in: *Conflict, Security & Development*, 16, 1, 1-32.
- Boege, Volker (2017): “Looking Beyond Institutional Reform. Engaging with the Hybridization of Peace and Political Order. Two Cases from Oceania and West Africa”, in: Ansorg, Nadine and Kurtenbach, Sabine (eds.), *Institutional Reforms and Peacebuilding Change, Path-Dependency and Societal Divisions in Post-War Communities*, Abingdon: Routledge, 218-236.
- Boege, Volker; Brown, Anne; Clements, Kevin and Nolan, Anna (2008): *On Hybrid Political Orders and Emerging States: State Formation in the Context of ‘Fragility*, Berlin: Berghof Research Center for Constructive Conflict Management.
- Boege, Volker; Brown, Anne and Clements, Kevin (2009): “Hybrid Political Orders, Not Fragile States”, in: *Peace Review: A Journal of Social Justice*, 21, 1, 13-21.
- Chatterjee, Partha (2004): *The Politics of the Governed. Reflections on Popular Politics in Most of the World*, Columbia University Press.
- Cleaver, Frances (2002): “Reinventing Institutions. Bricolage and the Social Embeddedness of Natural Resources Management”, in: *European Journal of Development Research*, 14, 2, 11-30.
- Clements, Kevin; Boege, Volker; Brown, Anne; Foley, Wendy and Nolan, Anna (2007): “State Building Reconsidered. The Role of Hybridity in the Formation of Political Order”, in: *Political Science*, 59, 1, 45-56.
- Damonte, Gerardo (2015): “Redefiniendo territorios hidrosociales. Control hídrico en el valle de Ica, Perú (1993-2013)”, in: *Cuadernos de Desarrollo Rural*, 12, 76, 109-133.
- (2016): “The ‘Blind’ State: Government Quest for Formalization and Conflict with Small-Scale Miners in the Peruvian Amazon”, in: *Antipode*, 48, 956-976.
- (2018): “Mining Formalisation at the Margins of the State: Small-scale Miners and State Governance in the Peruvian Amazon”, in: *Development and Change*, 49, 5, 1314-1336.

- Damonte, Gerardo and Boelens, Rutgerd (2019): "Hydrosocial Territories, Agro-export and Water Scarcity: Capitalist Territorial Transformations and Water Governance in Peru's Coastal Valleys", in: *Water International*, 44, 2, 206-223.
- Damonte, Gerardo; Bueno de Mesquita, Mourik; Pachas, Victor Hugo; Chávez Mary; Flores, Adhemir and Echave, José de (2013): "Small-Scale Gold Mining and Social and Environmental Conflict in the Peruvian Amazon", in: Cremers, Leontin; Kolen, Judith and Theije, Marjo de (eds), *Small-Scale Gold Mining in the Amazon*, Amsterdam: CEDLA, 68-84.
- Damonte, Gerardo and Gonzales, Isabel (2018): "Política pública, relaciones de poder y conflicto de intereses en la gestión del agua en Ica", in: Oré, Maria Teresa and Muñoz, Ismael (eds.), *Aguas en Disputa. Ica y Huancavelica, entre el entrampamiento y el diálogo*, Lima: Fondo Editorial PUCP, 75-112.
- Damonte, Gerardo; Gonzales, Isabel and Lahud, Julieta (2016): "La construcción del poder hídrico: agroexportadores y escasez de agua subterránea en el valle de Ica y Villacuri", in: *Anthropologica*, 34, 37, 87-114.
- Damonte, Gerardo; Pacheco, Eduardo and Grados, Claudia (2014): "Dinámicas de concentración y escasez de agua. El boom agroexportador y los pequeños propietarios en las zonas medias y altas del río Ica", in: Damonte, Gerardo and Oré, Maria Teresa (eds.), *¿Escasez de agua? Retos para la gestión de la cuenca del río Ica*, Lima: PUCP, 127-171.
- Das, Veena and Poole, Deborah (2004): *Anthropology in the Margins of the State*, Santa Fe: School of American Research Press.
- Grävingholt, Jörn; Leininger, Julia and Haldenwang, Christian von (2012): *Effective Statebuilding? A Review of Evaluations of International Statebuilding Support in Fragile Contexts*, Copenhagen: DANIDA.
- Ferguson, James (2005): "Seeing Like an Oil Company Space, Security, and Global Capital in Neoliberal Africa", in: *American Anthropologist*, 107, 3, 377-382.
- Hall, Kurt; Cleaver, Frances; Franks, Tom and Maganga, Faustin (2014): "Capturing Critical Institutionalism: A Synthesis of Key Themes and Debates", in: *European Journal of Development Research*, 26, 71-86.
- Hart, Keith (2006): "Bureaucratic Form and the Informal Economy", in: Guha-Khasnobis, Basudeb; Kanbur, Ravi and Ostrom, Elinor (eds.), *Linking the Formal and Informal Economy. Concepts and Policies*, Oxford: Oxford University Press, 21-33.

Helmke, Gretchen and Levitsky, Steven (2004): "Informal Institutions and Comparative Politics: A Research Agenda", in: *Perspectives on Politics*, 2, 4, 725-740.

Instituto Geológico Minero y Metalúrgico, INGEMMET (2019): *Catastro Minero Google Earth*, online at <https://www.ingemmet.gob.pe/catastro-minero-google-earth>.

Instituto Nacional de Estadística e Informática, INEI (1994): *III Censo Nacional Agropecuario 1994*, Lima: Instituto Nacional de Estadística e Informática.

(2012): *IV Censo Nacional Agropecuario 2012*, Lima: Instituto Nacional de Estadística e Informática.

(2014): *Estado de la Población en Perú*, Lima: Instituto Nacional de Estadística e Informática.

Ipenza, César and Valencia, Lenin (2014): "Perú", in: Heck, Carmen and Tranca, Jaime (eds.), *La Realidad de la minería ilegal en países amazónicos*, Lima: SPDA, 175-218.

Leftwich, Adrian (2006): *What is Politics? The Activity and its Study*, Cambridge: Polity Press.

Li, Tania (2005): "Beyond 'the State' and Failed Schemes", in: *American Anthropologist*, 107, 3, 383-394.

Mehler, Andreas (2003): *Legitime Gewaltoligopole - Eine Antwort auf Strukturelle Instabilität in Westafrika?*, Hamburg: Institut für Afrika-Kunde (IAK).

Ministerio del Ambiente del Perú, Geobosques-MINAM (2017): *Visor Geobosques*, online at: <http://geobosques.minam.gob.pe/geobosque/visor/> (last access: 11.11.2019).

Ministerio del Ambiente del Perú, Servicio Nacional de Meteorología e Hidrología del Perú, SENAMHI (2017): *Infraestructura de Datos Espaciales del SENAMHI* online at: <http://idesep.senamhi.gob.pe/portalidesep/> (last access: 11.11.2019).

Ministerio del Ambiente del Perú, Servicio Nacional de Areas Naturales Protegidas por el Estado, SERNANP (2019): *GEOportal de Sernanp*, online at: <http://geo.sernanp.gob.pe/geoserver/principal.php> (last access: 11.11.2019).

Mosquera, César (2006): *El Desafío de la Formalización en la Minería Artesanal y de Pequeña Escala. Análisis de las Experiencias del Perú, el Ecuador, Colombia y Bolivia*, Lima: CooperAcción, Acción Solidaria para el Desarrollo.

- Mosquera, César; Chávez, Mary; Pachas, Víctor and Moschella, Paola (2009): *Estudio Diagnóstico de la Actividad Minera Artesanal en Madre de Dios*, Lima: Fundación Conservación Internacional.
- Muñoz, Ismael and Zuñiga, Alejandra (2018): “El problema de sobreexplotación de los acuíferos de Ica y Villacurí-Lanchas. Estudio de caso bajo en enfoque institucional del manejo de los recursos de uso común”, in: Oré, María Teresa and Muñoz, Ismael (eds.), *Aguas en disputa. Ica y Huancavelica, entre el entrampamiento y el diálogo*, Lima: Fondo Editorial PUCP, 113-165.
- North, Douglass (1990): *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.
- Olivier de Sardan, Jean-Pierre (2013): “Embeddedness and Informal Norms: Institutionalisms and Anthropology”, in: *Critique of Anthropology*, 33, 3, 280-299.
- Pachas, Víctor (2011a): *Historia de una incertidumbre. Hábitat, conflicto y poder en la minería artesanal de oro de Perú*, Lima: Earth First SAC.
- (2011b): *A propósito del plan nacional para la formalización de la minería artesanal en el Perú*, Lima: CooperAcción, Acción Solidaria para el Desarrollo.
- Risse, Thomas (2011): “Governance in Areas of Limited Statehood”, in: Risse, Thomas (ed.), *Governance without a State? Policies and Politics in Areas of Limited Statehood*, New York: Columbia University Press, 1-35.
- Sindzingre, Alice (2006): “The Relevance of the Concepts of Formality and Informality: A Theoretical Appraisal”, in: Guha-Khasnobis, Basudeb; Kanbur, Ravi and Ostrom, Elinor (eds.), *Linking the Formal and Informal Economy. Concepts and Policies*, Oxford: Oxford University Press, 58-73.
- Turnbull, Jane (2002): “Solomon Islands: Blending Traditional Power and Modern Structures in the State”, in: *Public Administration and Development*, 22, 191-201.
- Valencia, Lenin (2014): *Madre de Dios: ¿Podemos evitar la tragedia? Políticas de ordenamiento de la minería aurífera*, Lima: SPDA.

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trAndeS seeks to create and promote knowledge that can contribute to the realization of the United Nations' Sustainable Development Goals in the Andean Region. It focuses its efforts linking two dimensions: sustainable development as addressed by the 17 Sustainable Development Goals (SDGs) that the United Nations established for the year 2030, and the serious socioeconomic, sociopolitical and socioecological inequalities that persist in the Andean region. Our goal is to identify how these inequalities present challenges to achieving the SDGs and how progress toward the SDGs can contribute to reduction of these inequalities.

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