



LATIN AMERICA

AT THE END OF THE SUPERCYCLE

A report on transparency,
access to information and the
environmental institutional
during the cycle of high prices
of commodities

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PRESENTATION

During the first years of this century, the pace of the world economy was characterized by high prices of minerals and hydrocarbons and a huge demand from developed countries, especially China. This period, called as the "commodities supercycle" allowed Latin America to grow at a sustained pace and achieved significant social progress, although at the cost of a specialization around natural resources and a strong primary export bias.

Coinciding with this supercycle, there was a significant development of the system of decision-making on the management of natural resources. From a highly centralized and sectoral scheme, the environmental governance of extractive industries underwent a process of decentralization in multisectoral decision-making entities and incorporated the participation of citizens and territorial stakeholders.

At the end of this period, as evidenced by the gradual decline in commodity prices since 2011 and the consequent changes in the global economy, the extraction and sale of minerals as an engine of regional growth came into question. However, far from opening a way for alternatives, the situation has resulted in a 'race to the bottom': we persist in increasing production volumes to offset the fall in prices with the aim of maintaining the growth model unchanged.

LATIN AMERICA AT THE END OF THE SUPERCYCLE

A report on transparency, access to information and the environmental institutionalality during the cycle of high prices of commodities

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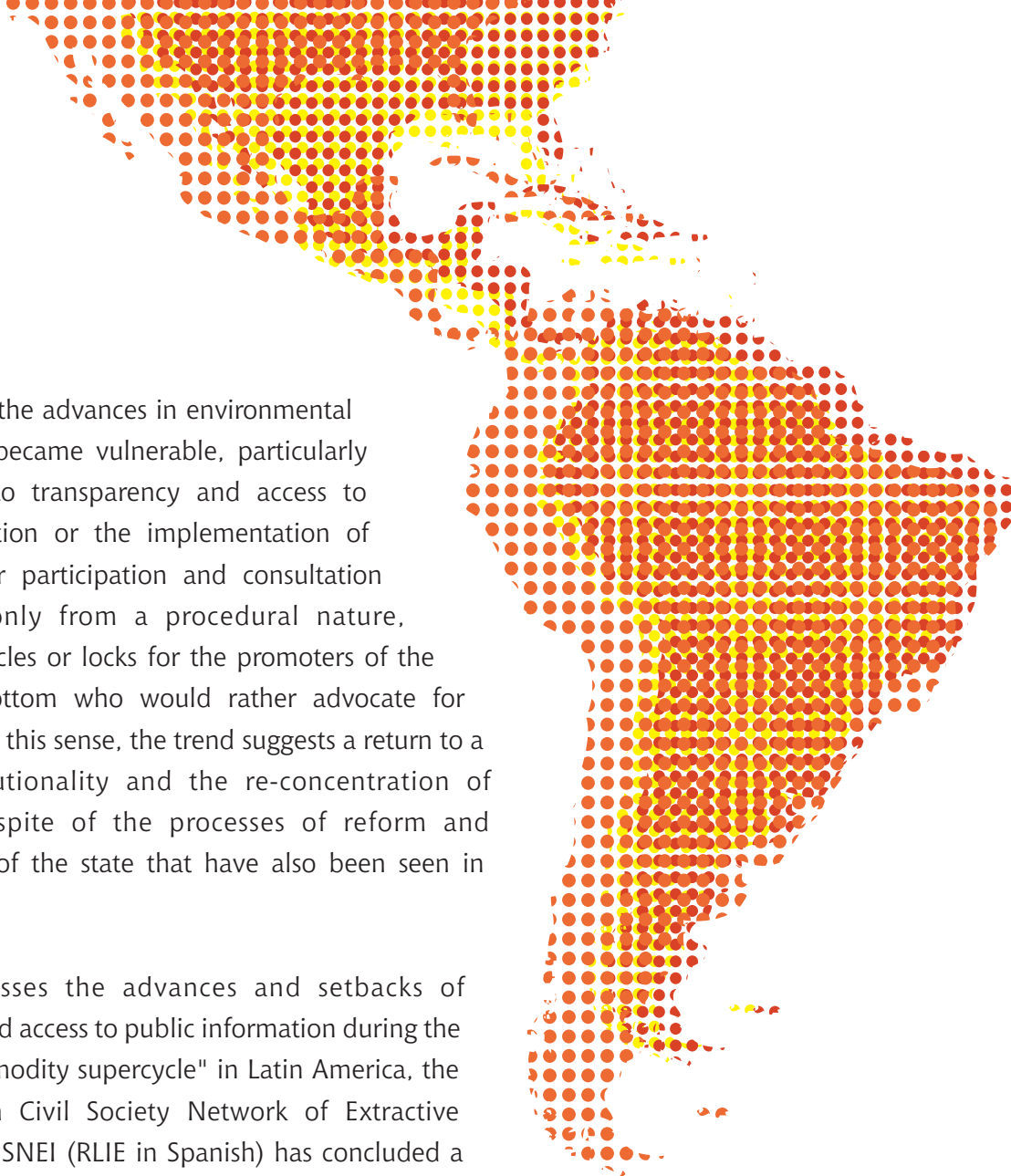
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In this context, the advances in environmental institutionalization became vulnerable, particularly those related to transparency and access to public information or the implementation of mechanisms for participation and consultation which, seen only from a procedural nature, represent obstacles or locks for the promoters of the race to the bottom who would rather advocate for deregulation. In this sense, the trend suggests a return to a sectoral institutionalization and the re-concentration of decisions. In spite of the processes of reform and modernization of the state that have also been seen in recent years.

Precisely to assess the advances and setbacks of transparency and access to public information during the so-called "commodity supercycle" in Latin America, the Latin American Civil Society Network of Extractive Industries - LACSNEI (RLIE in Spanish) has concluded a report in this regard. With the support of the Natural Resource Governance Institute (NRGI) it was possible to produce country studies for the cases of Bolivia, Colombia, Ecuador, Guatemala, Mexico and Peru, and to complement them with a literature review of other countries in the region. These studies report the situation of transparency and access to information in the main components of the chain of decision making in the extractive sector: concessions and contracts, production, fiscal income collection, the role of state enterprises and rent management, among others. The point is to show the advances that occurred and the need to maintain and deepen them, and also to highlight the limitations that should be corrected. This effort reflects a broader interest in knowing, in its complexity, what did the supercycle leave and teach the region. This report presents some of the conclusions of this assessment.



1. The social impact of the commodities supercycle

Since the beginning of this century, the Latin American economy enjoyed a high growth. The incorporation of Brazil to the BRICS group, the consolidation of Colombia and Peru as leading cases among emerging countries worldwide and the qualitative jumps of Bolivia and Ecuador attest to this. As a whole, the region experienced a period of extraordinary economic progress compared to the 1.01% GDP growth per year that occurred from 1970 to 2004, since that year until 2013 growth went at a rate of 4% per year. This period is called the commodities supercycle.

Figure 1
Latin America: Annual GDP growth 2004-2014 (%)

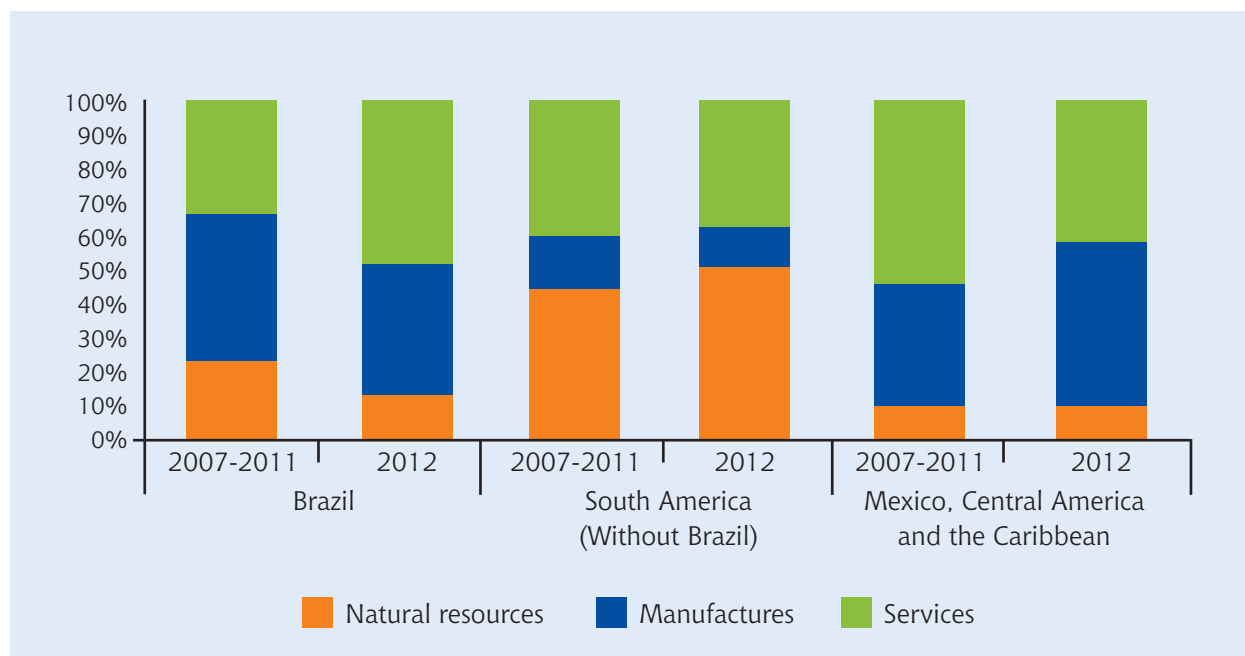


Source: Gustavo Avila, data from ECLAC.

This expansion was encouraged by a favorable external environment between 2003 and 2008: the dynamism of world trade, the abundant liquidity in international financial markets, and the growth of private investment coincided with the high prices of natural resources, which practically quadrupled between 1990 and 2011. Moreover, it was accompanied by a macro economic management that prioritized fundamental equilibriums, the rise of high prices resulted in a primary export bias and a "specialization" around natural resources.



Figure 2
LAC: Destination of foreign direct investment by region 2007-2012 (%)



Source: Data from ECLAC, based on official preliminary figures and estimates (April 29th, 2013).

After the 2008 crisis the countercyclical policies applied in most countries allowed them to recover growth by 2010. Then, the slow but steady decline in international prices began to fall, determined by the international crisis and slowing growth of our largest buyer, China, which prioritized the development of its domestic market and meeting the needs of its population.

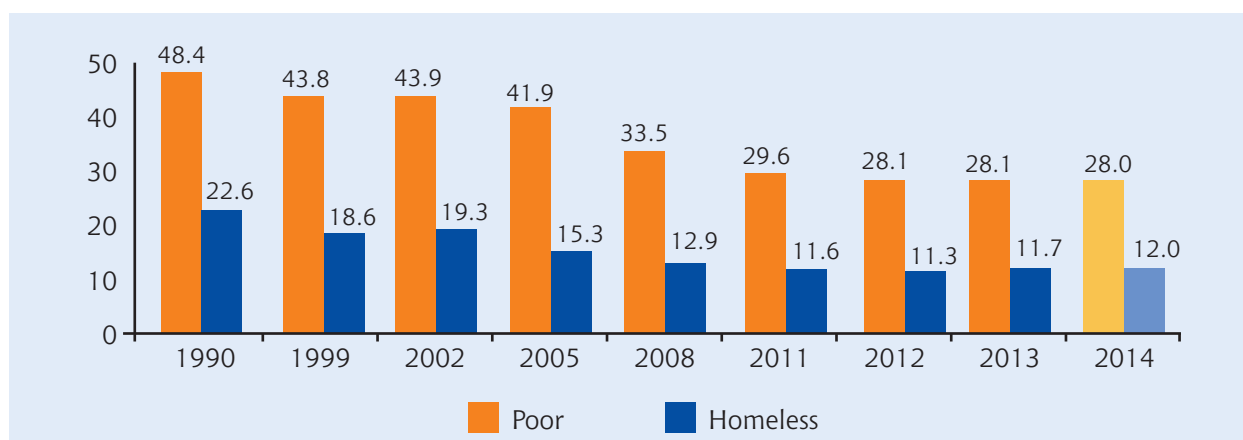
The supercycle of high prices turned the extractive sector into the cornerstone of the growth and development strategies of most countries in the region, regardless of the ideological orientations of their governments¹. In this model, the state's role can be summarized as "the creation of conditions for the development and export of commodities in exchange for a portion of the rent that is generated"². With this income the states funded various policies, in particular social programs. As a result of the redistribution of captured rent, it is undeniable that poverty decreased considerably in the region.

1 Gudynas, Eduardo. *El nuevo extractivismo progresista en América del Sur. Tesis sobre un viejo problema bajo nuevas expresiones*, in Alberto Acosta et al: **Colonialismos del siglo XXI. Negocios extractivos y defensa del territorio en América Latina**, ICARIA, Barcelona, 2013.

2 Monge, Carlos. *Los roles del Estado en relación con el sector extractivo: una mirada regional*, in Velarde, Nicoletta and Marco Zeisser (editors): **Anales Seminario Internacional Desarrollo territorial y extractivismo: luchas alternativas en la Región Andina**, Centro de Estudios Regionales Andinos Bartolomé de las Casas-CooperAccion-GRET, Cusco, 2012.

Figure 3

Latin America: Evolution of poverty and indigence, 1990-2014 (%)



Note:

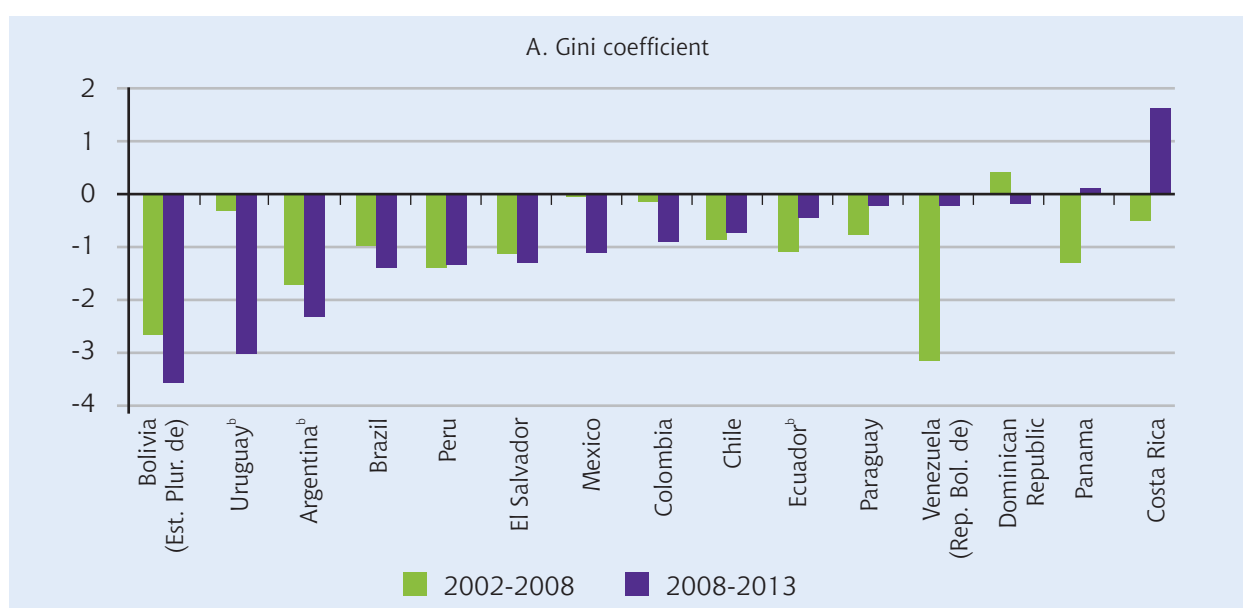
Estimates of 19 countries including Haiti. The 2014 figures are projections.

Source: Data from ECLAC.

Poverty and extreme poverty fell to their lowest levels since the 1980s, while inequality (Gini coefficient) also fell from 0.542 in 2002 to 0.486 in 2013. Nevertheless, we continue to be the most unequal region in the world, the richest 10% of the population captures 32% of total income, while the poorest 40% only receives 15%.

Figure 4

Latin America (15 countries): Annual change in inequality^a, 2002-2008 and 2008-2013 (%)



Notes:

a. Only countries for which information was available on the period between 2011 and 2013 are included. The ranking corresponds to the magnitude of the variation in the second sub period (2008-2013).

b. Urban areas, between 2002 and 2008.

Source: Data from ECLAC.

2. The institutional changes during the supercycle

The commodity supercycle in the region coincides with a series of institutional changes associated to processes of modernization and state reform. Three of them were particularly important because of their involvement with the policies related to extractive industries: (i) the construction of environmental institutionality to respond to the global challenges, initially of sustainability and then of climate change; (ii) access to information of public management to meet the challenges of transparency and accountability facing modern democracy; (iii) the participation and consultation of citizens to meet the demands of citizens involvement in the public and to ensure a governance with democratic procedures.

Thus, the governance of the extractive industries, hitherto highly centralized and sectoral, initiated a process of decentralization into multisectoral decision-making entities. At the same time, it opened the door for the participation of citizens and territorial stakeholders. During the rise of supercycle, in spite of some difficulties, a progressive scenario was configured in which the extractive sector had to adapt to new stakeholders, to higher levels of enforcement and public scrutiny, as well as to new rules and standards set for the development of its activities. This processes showed various misunderstandings and sometimes significant resistance.

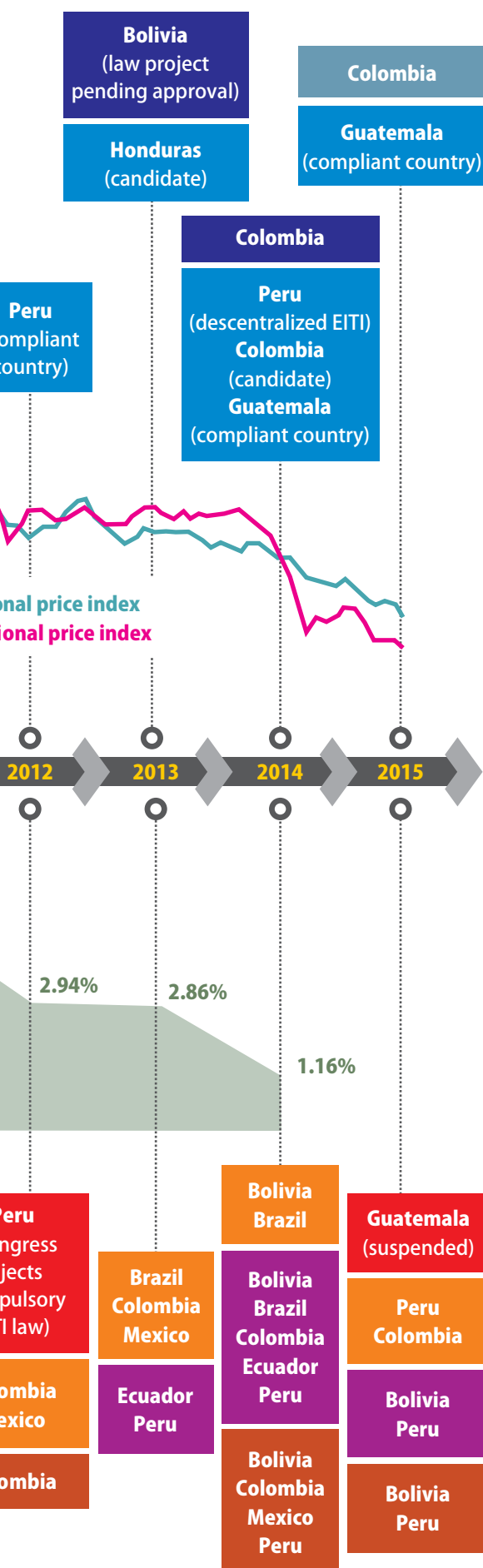
In recent decades, most countries in the region adopted environmental laws and established high-level environmental authorities, usually a Ministry of Environment, a process that takes as its starting point the National Environmental Policy in Brazil given in 1981. In this context, significant progress was made on environmental issues, including the enactment of laws and mechanisms for citizen participation, the development of a framework for environmental justice and in particular, the implementation of policies on access to information.

The laws of transparency and public information access were approved since 2002 (Mexico and Peru). Today, 15 countries in the region constitutionally guarantee access to information; in 19 there are specific laws on access to public information and other 6 are in the process of approval or creating the norm. In this way, the parameters of access to environmental information are divided between the environmental framework law and the law on access to information, although Brazil and Argentina have specific standards for environmental information.

The SUPERCYCLE and the TRANSPARENCY of the



EXTRACTIVE INDUSTRIES in LATIN AMERICA



ADVANCES

SETBACKS

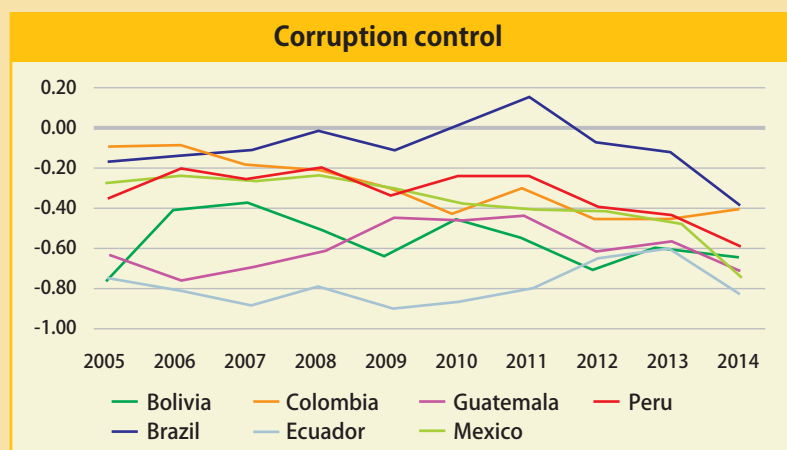
INFORMATION ACCESS INDEX. NRG 2013						
Reporting Practices	Bolivia	Brazil	Colombia	Ecuador	Mexico	Peru
Licensing process	0	100	100	83	33	67
Contracts	33	0	33	67	33	100
Environmental and social impact assessments	0	33	100	17	50	100
Exploration data	17	100	100	50	100	100
Production volumes	100	100	100	100	100	100
Production value	67	67	67	67	100	67
Primary sources of revenue	44	100	50	33	100	67
Secondary sources of revenue	0	67	33	22	67	40
Subsidies	67	0	N/A	0	100	33
Operating company names	0	100	100	100	N/A	100
Comprehensive SOC reports	17	100	50	50	100	N/A
State-owned company production data	76	86	100	95	100	N/A
State-owned company revenue data	67	100	38	60	83	N/A
State-owned company quasi fiscal activities	0	50	N/A	0	100	N/A
State-owned company board of directors	60	100	100	100	100	N/A
Fund rules	N/A	N/A	N/A	N/A	100	N/A
Comprehensive fund reports	N/A	N/A	N/A	N/A	33	N/A
Subnational transfer rules	100	100	100	100	100	100
Comprehensive subnational transfer reports	100	100	100	100	67	100
Subnational reporting of transfers	100	100	0	100	100	100

The colors represent a valuation to the level of transparency in information disclosure practices in each subject.

- Satisfactory (71-100)
- Partial (51-70)
- Weak (41-50)
- Deficient (0-40)
- N/A Not applicable

Source: The 2013 Resource Governance Index (RGI) by Natural Resource Governance Institute.

Available in <http://www.resourcegovernance.org/rgi>



The value goes from -2.5 (weak governance) to 2.5 (strong governance)

Source: World Bank

Many countries made progress in generating electronic databases of environmental information; at least in 20 of them there is some kind of commitment to these records. The environmental information systems from Chile, Ecuador, Mexico and Peru stand out for their many indicators and cartographic and numerical records.

Table 1
Access to public information and environmental institutionalality

Country	Law of access to public information	Constitutional recognition	Environmental framework law	Delivery deadlines for public and environmental information Extended deadline
Bolivia	No (but Supreme Decree in 2005)	Yes (2007)	1992	15 days
Brazil	2011	Yes (1998)	1981	20 days / 10 days
Colombia	2014	yes (1991)	1993	10 days / 3 days
Chile	2008	Yes (reform in 2005)	1994 (2010)	20 days / 10 days
Ecuador	2004	Yes (2008)	1999	10 days / 5 days
Guatemala	2008	No	1986	10 days / 10 days
Mexico	2002	Yes (with modifications between 2007 y 2013)	1988	20 days / 20 days
Peru	2002	Yes (1993)	2005	7 days / 5 days

Source: Grupo Propuesta Ciudadana

Noting the value chain of extractive industries, we found that in terms of information on concessions and contracts in the mining and hydrocarbons sector, although with restrictions, progress was made in all countries except for Guatemala and Mexico. The greatest progress was made in Colombia, while in Bolivia access is difficult and in Ecuador contracts appendixes and work plans are not published.

The greatest advances have occurred in the information published on the production (value and volume). One hypothesis is that the information in this area is much more complete and timely

because of its usefulness to demonstrate the successes of the model and to justify the sectoral policies to the sector that the various governments applied, regardless of their political orientation and their revenue collection and destination. With known fiscal frameworks in all countries, the information on the fiscal income collection from extractive industries related to income tax showed general improvement across countries. From there, some peculiarities are registered. In Ecuador there is no information about additional taxes or the amount paid by the oil companies for external services. Also, the fate of such income is unknown. In Peru, where the publication of tax and non-tax incomes are presented in total volumes and not company by company, under the EITI (Extractive Industries Transparency Initiative) standard, now participating companies have opened their tax secrecy and disclose all their payments.

In general, there is opacity related to information about revenue management except for Brazil, Colombia and Peru, where this is published complete and across multiple computer information applications. In the cases of Bolivia and Ecuador, the opaqueness is in relation to the allocation of resources and the level of income disaggregation for the local level and its destination.

Though with different update rates, all countries have accessible information on monetary poverty, unmet basic needs, inequality and urban and rural employment, disaggregated by subnational levels. During the supercycle indicators have improved as part of the social progress of the region as stated in the annual reports of ECLAC, however, there are no public records to identify the specific contribution of the extractive sector in improving social conditions or employment indirect generated. Access to information on direct employment is difficult, for example in countries like Guatemala and Peru. On social business spending there is access in Brazil and Colombia, and to a lesser extent and with limitations in Peru.

Major difficulties are found in the field of environmental information. While commitments to prior consultation were achieved in some countries through regulations for hydrocarbon activities (Bolivia 2007, Ecuador 2012) or through laws (Peru 2012), the relevant information has always been very limited. In Bolivia compensation arrangements and the use of such resources are not registered, in Ecuador there is not yet a regulation for consultations on mining, whereas in Peru, the implementation of this mechanism has been a process fraught with setbacks, particularly with regard to publishing the regulations of the respective law given in 2011, and the database that identifies and counts the indigenous peoples who attends the right to consultation.

Table 2 summarizes the assessment by countries in the region, conducted in 2013 by NRGi regarding transparency and access to information on the various components of the value chain of the extractive industries.

Table 2
Information Access Index. NRGi 2013

Reporting Practices	Bolivia	Brazil	Colombia	Ecuador	Mexico	Peru
Licensing process	0	100	100	83	33	67
Contracts	33	0	33	67	33	100
Environmental and social impact assessments	0	33	100	17	50	100
Exploration data	17	100	100	50	100	100
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Deficient (0-40)
N/A Not applicable

Source: The 2013 Resource Governance Index (RGI) by Natural Resource Governance Institute.
Available in <http://www.resourcegovernance.org/rgi>

As we can see in the information on production volumes and the rules of rent distribution, countries generally perform satisfactorily. On the contrary, regarding the publication of contracts and information about socioeconomic impacts, we see a common weakness to all countries, accentuated in the case of Bolivia and Ecuador, which appear in the balance sheet with a greater number of areas where the level of transparency and access to information is classified as "poor" or "weak."

Until 2011, in a process not without contradictions, the countries of the region appeared to move towards a more complex, multisectoral, relatively decentralized governance in the decisions made and with some willingness to incorporate participation mechanisms and monitoring on the extractives' impacts. Indeed, this approach was not exhausted in the public sector and gradually involved the companies. An example of this is the commitment of a large block of them into transparency initiatives of a global nature such as the EITI standard.



3. Has the race to bottom already started?

The economic growth in the region with falling poverty and inequality was not sustainable over time. This is due to two main reasons. First, the operation of the model depends on a high demand and high prices of commodities. There is abundant historical evidence of the market volatility of energy commodities and minerals, subject to ups and downs determined by the demand of large consumers and the supply of large producers. In the supercycle of the beginnings of this century, this role corresponded to the economies of China, Asia and the developed countries in general, beyond the control of the second rank producers, such as Latin America.

The second reason is that this form of growth generates large internal gaps in productivity and access to quality jobs. ECLAC has documented this situation in Latin America, highlighting how productivity per worker is much higher in the mining and quarrying sector (which hardly generates direct jobs) and is significantly lower in sectors such as agriculture, which employs more people³.

As a result of the fall in prices, in the case of minerals since 2011 and in the hydrocarbon since 2014, growth projections in the region are down-particularly for the countries specializing in the export of commodities⁴, opening the possibility for reversing the progress achieved on poverty and inequality.

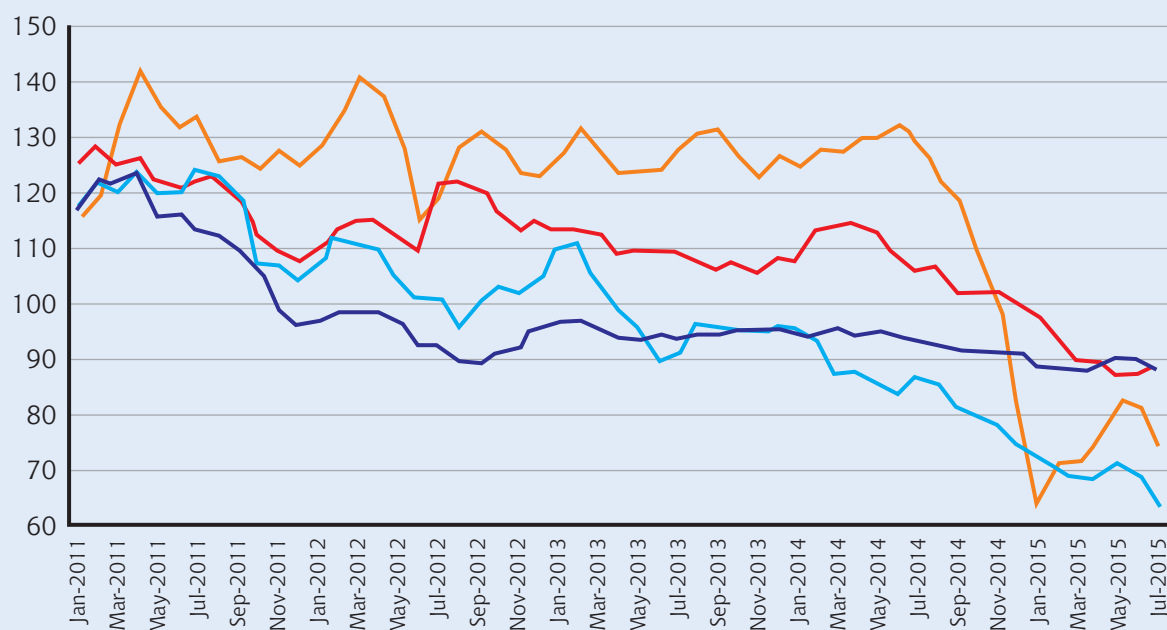
In this scenario, the greatest risk for the region is to initiate a competition between countries to attract large investments in mining and hydrocarbons, offsetting falling prices with larger production volumes, a phenomenon known as a "race to the bottom". In this logic, and the need to attract investment at almost any cost, many of the institutional progresses could be reversed. The weakening of the environmental institutionality, the neutralization of legislation on consultation and even the path of fiscal regression appears as possibilities for governments. Thus, relegating the challenges of diversification and tax reform which are the ones that should be addressed. Regardless of whether it is a "progressive" or "neoliberal" government, measures and decisions in that direction have been happening since 2012.

3 ECLAC. *Compacts for Equality: Towards a Sustainable Future*. Santiago, April 2014.

4 ECLAC. *Economic Survey of Latin America and the Caribbean 2015: Challenges in boosting the investment cycle to reinvigorate growth*. Santiago, August 2015.

Figure 5

LAC: Price index of basic export products, January 2011 - July 2015
(index 2010: 100)



- Food, tropical drinks and oils / oilseeds
- Forestry and agricultural commodities
- Energy
- Minerals and metals

Percentage change between periods		
	January 2011- May 2015	June 2014- May 2015
Food, tropical drinks and oils / oilseeds	-30.2	-19.8
Forestry and agricultural commodities	-24.2	-5.6
Energy	-28.9	-37.8
Minerals and metals	-39.2	-13.9

Source: Data from ECLAC, based on official figures.

In the case of Bolivia, a regime of strong anti-neoliberal rhetoric, since 2014 and under Supreme Decree 2195, has limited self-determination of indigenous peoples, their power to impose their own rules, territorial organization and conduction as well as driving their very notion of development according to own criteria. On the other hand, the Law of Mining and Metallurgy of 2014 facilitates the use and partial use of water and limits the consultation procedures for the operational phase, while norms as the Supreme Decree 2366 from 2015 authorizes oil exploration in natural protected areas.



In Ecuador, since 2013 steps have been taken which in practice violate environmental procedures in the process of concession and exploitation in order to rush the mining and oil exploitation. This is how it was decided to exploit the oil under the Yasuni National Park. The most significant institutional setback came when the Ministry of Environment happened to be coordinated by the Ministry Coordinator of Strategic Sectors which also regulates the Ministries of Hydrocarbons and Energy (2014).

Meanwhile in Brazil, to facilitate compliance with the goals of the National Mining Plan 2030, award procedures and environmental licensing of new mining projects were simplified. It has thus opened the possibility of mining in areas hitherto protected by law; even altering the National System of Protected Areas to allow mining in 10% of the full protection units is being discussed.

In Colombia, the National Development Plan considers that the mining and hydrocarbon resources are strategic, and under this principle has increased the power of the Ministry of Mines and Energy. Supreme Decree 041 of 2014, the so-called "express licenses", shortens the environmental analysis of alternatives and allows companies to submit an environmental management plan and begin to work without waiting for the approval from the environmental authorities. Even more aggressive, in 2015 the government launched an aid plan for oil companies including extensions for the investment deadlines, more flexible guarantees and favorable tax measures.

In Mexico, through a constitutional reform implemented in 2013, the energy sector was opened to private investment and authorizes the occupation, administration, auction or selling of the land or water that may be required before an enforceable (including by express reference collective lands of ejidos and communities). The Hydrocarbons Law of 2014 allows the terms and conditions for the use, enjoyment or involvement of land, property and rights to be negotiated directly between the owners or holders of rights and contractors, contemplating prior consultation if it affects communities and indigenous peoples (run by the Energy Secretariat) and an Environmental Impact Assessment by the company.

Finally, in the case of Peru, successive decrees since 2013 facilitate investment delivering certificates of non-archaeological remains in derisory time (DS 054-2013-PCM), more flexible procedures for the approval of the Environmental Impact Assessments (DS-060- 2013-PCM), reduce restrictions and facilitate environmental and tax permits and allow special procedures to facilitate the delivery of any rural land for investment projects (Law 30230-2014), among others.

It appears that with the exception of Chile, the countries of the region have started a "race to the bottom", retreating to a sectoral governance of extractive industries, with decision entities heavily concentrated in the executive branch and with increasing limitations for the involvement of regional stakeholders and the general public. In this scenario, the problems of accessibility to the existing information are likely to multiply and exacerbate and transparency initiatives could reach their ceiling.

4. For a new environmental governance

With advances and setbacks in countries of either "progressive" or "neoliberal" governments, it is clear that it is still important to regulate access to public information. But will not be enough if a structural change is not guaranteed, this means ensuring the quality and timeliness of the information that it is delivered and responding promptly to citizens' demands. The use of internet, though important, does not solve basic problems of accessibility and understanding; it requires simple, accurate and verifiable information; of a vigilant and mobilized citizen attitude; a public management with the capacity and resources to investigate; the will of rulers, public officials, and companies to submit themselves to public scrutiny.

Building a new governance of the extractive industries requires not going back on the advances and promoting successful initiatives. A new governance involves not backtracking on the standards achieved; getting disaggregated information from companies and governments. Also moving forward in transparency in tax matters, reporting costs, transfer prices and clarifying the processes of determining the actual beneficiaries of the investments. Moreover, it implies ensuring and improving the institutionality and the environmental systems created and respecting the consultation processes.

To propose a new environmental governance does not reflect a position against the extraction of mining and hydrocarbon resources. It does reflect, however, the search for alternatives against their exploitation at any cost, without respecting the opinion of the people and without a criteria of economic and environmental sustainability. A scenario that unfortunately pushes the region to a "race to the bottom" which has already begun.

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