

## **Not just gardening anymore: Latin America's environmental class conflict**

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### **Abstract**

What is the best way to conceive of and tackle socio-environmental conflict given new environmental challenges and growing protest against large-scale development projects? This paper sets out a fresh perspective on class conflict in Latin America, contrasting developmental interests on the one hand with conservationist interests on the other. Contentions over mega-projects and compliance have grouped actors together whose interests consistently cut across traditional class, regional, national, and public-private cleavages. The paper first describes the fundamental logics and interests underlying the two groups, the sources of their legitimacy, the narratives supporting them, and the power imbalance between them. It then considers how states and civil society in Latin America have sought to redress this power imbalance through institutional innovation, legal reforms, and the actions of professional civil society groups. This new class conflict matters because of exploding demand for minerals, metals, and energy and the impacts that major investors have on marginalized communities. It also matters because of rising awareness of rights and halting but real advances in protections for vulnerable communities.

**KEYWORDS** – socio-environmental conflict, human rights, Latin America, development, legal regimes, institutional capacity, NGOs

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On December 17, 2018, less than three weeks after taking office, Mexico's President Andres Manuel López Obrador (AMLO) visited the southeast region where his flagship infrastructure development was due to get underway. The Tren Maya (Maya Train) rail line was projected to wend its way for 1500 kilometers through old growth tropical forests, beach towns, colonial cities, past archaeological sites, over cave systems, and through indigenous communities and protected areas such as the Calakmul Biosphere Reserve, linking parts of the south of Mexico, one of the country's poorest and least developed areas. The purpose of AMLO's early visit was to undertake a ritual ceremony with 12 Mayan groups to ask Mother Earth's blessing for the project. He later made other visits to local communities, and during his speeches he would typically ask for a show of hands of approval for the Tren Maya. In late 2019 the government conducted a referendum in the five southern states through which the train would pass and won approval by a large margin.

Nevertheless, while AMLO spoke of the developmental benefits to the region, others were adamant that something more important was at stake. Lucila Bettina Cruz, an indigenous representative from the Tehuantepec region and environmental defender, rejected the train. She spoke of *Nuestra Vida* (Our Life), the natural diversity and cultural and biological heritage of the area, and she raised concerns about industrial parks, the presence of private firms and organized crime, and the logging and loss of water that would result from the construction. She also complained that locals were given only five days to express their views about the project. For her and many others, AMLO's 'consultations' were a farce (García Quintanilla and Reyes García 2023).

Curiously, however, Lucila held the same anti-capitalist views and used the same anti-neoliberal slogans as AMLO, even while rejecting his plan. In many ways, people like Lucila were part of AMLO's natural constituency. He spoke of lifting up the poor, providing better security, and ending corruption. He was innately suspicious of the private sector, especially if it was foreign. AMLO's statist, nationalist language was their language too. But not when it came to the Tren Maya. Lucila and other indigenous leaders resisted it not because the train would go through her backyard but because it would disrupt cultural and social patterns of life and threaten the biological heritage of the region. Lucila's response was more than just NIMBYism; it was a local conservationism, understood not just as environmental and biological, but cultural and social.

Chico Mendes, the Brazilian environmentalist, human rights activist, and union leader, once said that environmentalism without class struggle is just gardening. But the two are no longer separate in Latin America, where today's class struggle merges the environmental and the socio-economic. The challenges faced by people like Lucila are not struggles between capital and labor, or between socialism and neo-liberalism. Nor are they between the public and private sectors, or the urban middle class and rural peasants, or global economic power and domestic producer. Rather they cut across all those categories, across traditional class, national, public-private, ideological, and regional cleavages.

Latin America is rife with socio-environmental conflict, tracked by organizations such as the Environmental Justice Atlas and the Latin American Environmental Conflict

Observatory.<sup>1</sup> Development interests wield great power, often with the support of state agencies, or even presidents themselves. Site-specific, large-scale developments create point-source threats to humans and local ecologies. Energy-intensive, infrastructure-heavy, and resource-exhausting development projects can have life-altering consequences for rural farming communities or indigenous peoples living on traditional lands and undertaking livelihoods dependent on natural resources. Open-pit mining, fracking, and industrial-scale transgenic agriculture have particularly pronounced impacts, and massive developments have knock-on impacts on local food and labor costs, making life more expensive for everyone, whether they benefit from the investment or not.

Meanwhile, opponents face enormous challenges protecting social and ecological systems and holding governments and developers to account so that they adhere to the law and respect rights. Many in affected communities lack the legal and organizational knowledge to mount a campaign to ensure compliance and defend their rights. In some cases they are illiterate, or speak only indigenous languages, and have little money or influence. Though their lands are close to development projects and suffer from environmental degradation, they are – in many senses – far from the institutions of justice that may help them defend their rights. At the same time, regulators are often unwilling or incapable of resisting intensive development. They lack the will or incentives to ensure enforcement. Corruption is part of the problem to be sure, but public agencies often have insufficient resources, authority, and expertise to manage environmental oversight and enforcement. Political pressures to facilitate investment can be enormous. Institutions frequently act on behalf of

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<sup>1</sup> See <https://ejatlas.org/>. Also <https://olca.cl/oca/index.php>

developers and local governments, and the odds are stacked against those who find themselves neighbors of mega-projects.

### **A New Class Struggle**

The new class conflict pits developmental interests on the one hand against cultural, social, and ecological, interests on the other. It deserves to be understood and analyzed for what it is: a conflict between developmentalists and conservationists. Depending on the given project, *both* developmentalists *and* conservationists may be comprised of domestic and international actors, public and private sector actors, wealthy and poor groups, urban and rural communities, Left and Right ideologies. This fact cuts against deeply ingrained notions rooted in traditional social cleavages. For example, it is misleading to assume that development conflict is the result of neoliberal ideologies and policies (Astorga et al 2017: 7ff), or that the private sector or foreign multinationals are the sole cause of conflict.

Development advocates include local companies, domestic investors, governments, and workers, not simply international companies. Conservationist advocates include international foundations, NGOs, and thinktanks as well as domestic NGOs, indigenous groups, and others (Escárzaga and Pinto 2020; Li 2015: 6). Pressures to abide by rights and environmental obligations come from inside and outside Latin America, from public and private organizations, from civil society groups in urban and rural areas.

Governments across the political spectrum have proposed and carried out massive infrastructure projects. They are not confined to the neoliberal Right. Leftist Brazilian President Lula da Silva rammed through one of the world's biggest projects, the Belo Monte hydroelectric dam, against the opposition of environmental groups and local

citizens. On the other end of the ideological spectrum, Carlos Menem, when president of Argentina, enacted neoliberal policies to encourage mining investment, with little attention to social or environmental consequences. No country in Latin America is especially good at ensuring the protection of local communities, whatever the prevailing government ideology. In rankings produced by the Environmental Democracy Index, socialist countries like Venezuela and Nicaragua are grouped with free market countries like Costa Rica and Chile in terms of guaranteeing environmental rights (Worker and Lalanath 2015).

Nor are mega-projects solely the purview of the private sector: they are pushed by both public authorities and private investors. President Lula faced down the opposition of numerous civil society opponents who were supported by the Inter-American Commission on Human Rights and Brazilian state and federal institutions, including the courts, the human rights commission, and the prosecutor's office. AMLO shows every sign of doing the same. Likewise, foreign firms are hardly more prejudicial to conservationists than domestic ones, despite perspectives which sometimes characterize them as such (Lemus 2021). Investments by home-grown companies in Latin America have equally damaging consequences for local communities (Leyva et al. 2018). In fact, some foreign companies have disinvested from development projects because of ecological damages. In early 2021, several European banks, including Credit Suisse and BNP Paribas, decided to halt financing of Amazon-region Ecuadorian oil exports for that reason.<sup>2</sup>

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<sup>2</sup> [https://amazonwatch.org/news/2021/0125-bnp-paribas-credit-suisse-ing-to-exclude-exports-of-ecuadorian-amazon-oil?utm\\_campaign=lap&utm\\_source=newsletter&emci=26713100-acb6-ec11-997e-281878b83d8a&emdi=e856386c-33b7-ec11-997e-281878b83d8a&ceid=93315](https://amazonwatch.org/news/2021/0125-bnp-paribas-credit-suisse-ing-to-exclude-exports-of-ecuadorian-amazon-oil?utm_campaign=lap&utm_source=newsletter&emci=26713100-acb6-ec11-997e-281878b83d8a&emdi=e856386c-33b7-ec11-997e-281878b83d8a&ceid=93315)

International public sector actors are also not a homogenous group. Funding agencies such as the Inter-American Development Bank and the World Bank have withdrawn support for controversial and damaging projects<sup>3</sup>, or (in the case of the Inter-American Commission on Human Rights) issued requests to suspend operations in the interests of local communities (Veramendi 2015). Similarly, French legislation in 2017 imposed new due diligence rules requiring French firms operating in the region to respect rights and laws (Schilling-Vacaflor and Gustafsson 2022). Meanwhile, Canadian governments of both the Left and the Right aggressively promote its mining sector, even when other Canadian organizations uncover evidence of human rights violations by Canadian companies (Working Group on Mining and Human Rights in Latin America 2014; PODER et al 2017; Acevedo 2017).

Finally, some argue that capitalism is to blame, and that workers or peasants suffer from development while companies benefit. But rural communities and indigenous groups are themselves divided over the merits of large-scale investment. Some locals argue for development and others argue for conservation, even within the same communities. In fact, the arrival of a mega-development project tends to exacerbate pre-existing divisions in communities because *both* the opportunities *and* the risks increase (Astorga et al 2017: 75; Atkins 2019). Many workers and peasants are employed by investors. In northern Chile, some locals complained of exclusion from consultations and financial rewards related to Barrick Gold's Pascua Lama mining investment (Astorga et al 2017: 68; 74-5), while others benefitted from the employment. The same happened in the Bajo la Alumbrera mine in Argentina (Lamallice and Klein 2016). In wind energy investments in Oaxaca, Mexico,

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<sup>3</sup> <https://es.mongabay.com/2017/04/banco-mundial-abandona-controversial-proyecto-minero-angostura-paramo-colombiano/>

local pro-investment advocates sought advice on things like how to choose investment associates, manage finances, deal with internal governance and organizational capacity-building, and negotiation skills, while others opposed the project entirely.

In summary, the following claims might plausibly but incorrectly be made:

- The public sector protects all in society, the better for workers and peasants in development zones.
- The domestic interest (including vulnerable communities) is better served by excluding foreign developers.
- Leftist governments with their social welfare norms are a better guarantee for rural communities facing large-scale development.
- The urban middle class is too remote and only through rural grassroots organizing among impoverished communities are the marginalized saved from development predations.

Table 1 below illustrates these cleavages using examples in a somewhat different way.



**Table 1. Actors, traditional social cleavages, and the development-conservation divide.**

	<b>Traditional cleavages</b>	<b>Developers</b>	<b>Conservationists</b>
<b>Statism</b>	Public sector	AMLO Tren Maya in Mexico	Gabriel Boric, Chilean president. Signed Escazú treaty protecting environmentalists.
	Private & voluntary sector	European, North American, Latin American, Chinese energy and mining investors – Iberdrola, Glencore, Teck, etc.	Environmental and human rights NGOs; Credit Suisse, BNP Paribas – defunding
<b>Nationalism</b>	International	Canadian mining interests and government. Chinese investors. European energy firms.	IADB; World Bank; IACHR; international NGOs; EU & France – defunding/due diligence, rights protections
	National	Grupo Mexico. Domestic investors	Conservation funds; domestic rights groups
<b>Ideology</b>	Neoliberal	Argentine president Carlos Menem pro-mining reform.	Ecuador president, Guillermo Lasso, limits on extractivism, rights for communities
	Leftist	President Lula – Brazil Belo Monte dam	Colombia President Gustavo Petro, moratorium on mining and hydrocarbon exploration
<b>Class</b>	Urban middle class	Pension funds and small investors	Civil society defenders and funders of conservation interests.
	Labor/peasant	Local mine & farm workers	Indigenous conservationists

### **Theorizing the origins of socio-environmental class**

Much has been written about the impacts of mega-projects on poor and marginalized people and communities, as well as their various responses and resistances (Walter and Wagner 2021; Scheidel et al. 2020; Christel 2020). Likewise there are many critical and normative studies in the fields of political ecology, ecological economics, and the environmentalism of the poor (Martínez Alier and Jusmet 201; Aguilera Klink and Vicent

Alcántara 1994; Svampa and Viale 2014; Guevara et al 2018). These literatures are vast and I do not review them here. Instead, my purpose is to distil and sharpen the logic and understanding of the developmentalist-conservationist divide in a region in which the stakes are rising quickly. I look at the position taken by developers and those impacted by development, rather than looking at the causes of environmental degradation or the impact on poor and marginalized communities. Power differences, inequalities, exclusion, distributive impacts, and marginalization are related and extremely important issues, but my focus here is not on behavior and outcomes but on identifying positions and rationales. My approach sheds light on the sometimes counterintuitive positions taken by those with power and those without; those directly impacted by development and those who are not directly impacted. I also seek to provide a set of policy guidelines for strengthening response by policymakers which do not draw from Marxian outlooks.

Both sides of the developmentalist-conservationist class divide are motivated by specific interests. Developers pursue returns on capital, sales, share prices, GDP growth and exports, while conservationists seek to preserve traditional practices, livelihoods, and lands. They are also supported by ideologies – investment and infrastructure-driven developmentalism *versus* conservationism and cultural traditionalism. Moreover, both sides have a narrative and at least some degree of legitimacy. Developers emphasize the benefits of jobs, economic growth, productivity, output, infrastructure, export earnings, and other measures of economic development as traditionally conceived, and they argue that these are antidotes to poverty and under-development. Conservationists claim that natural resources and spaces are a manifestation of a nation's natural history and its self-understanding as a society. They draw attention to the economic importance of protecting natural areas,

biodiversity, forests and soils, habitats. They argue that traditions and customs in rural and indigenous communities are part of the social and cultural fabric of a nation, and integral to the health and wellbeing of both individuals and communities, even if they cannot be assigned a market price. Traditional development threatens this balance because of ecological and social damage, including emigration to urban areas and the Global North. The commonality in conservationists' interests and ideas, and their propensity to act collectively, is what enables us to move beyond interpreting their attitudes as site-specific NIMBY reactions.

Socio-environmental class conflict is infused with the same kinds of political and ideational consciousness as other class analyses. Inequalities, distributive conflicts, and collective group understandings about shared interests and antagonisms are at the heart of this conflict, just as with economic classes. However, the nature of socio-environmental conflict is not purely material, but cultural, environmental, and social. Unlike our traditional notions of class, this is not about position in the productive process, nor about differences in income or wealth. Instead, what it shares with older conceptions of class is that one side is in a position of weakness and is vulnerable to losing something of value to a more powerful economic actor.

Eco-Marxists have addressed some of these issues, but this essay parts ways with eco-Marxists because it conceives of developmental forces as broader than capitalism, and conservationist forces as an amalgam of different types of groups and communities. This article also defines and illustrates developmental and conservationist forces more completely than most accounts of eco-Marxists. For example, the ecologically unequal

exchange approach argues that natural resources, energy, and environmental goods are transferred from poor to rich countries, while consumption, or per-capita environmental demand in poorer countries is reduced (O'Connor, 1988; Hornborg 1998; Rice 2007; Givens et al. 2019). However, that argument ignores the fact that such exchange occurs within developing countries too. Resources are transferred domestically, from rural regions and communities to national firms and governments, and even between members of local communities, some of whom prosper from local mega-projects while others suffer.

Some have described this phenomenon as 'transclassist' because of the heterogeneity of interests at stake (Foyer and Kervran 2015). Yet, thinking about it as a distinct form of class conflict instead is appropriate for several reasons. First, developmentalist and conservationist actors have interests distinct from one another but common to others within their group, leading to consistent, predictable political positions and durable alliances. Stable ideologies and narratives have emerged to support both sets of claims, as mentioned above. Second, there are distributional consequences in terms of losses (land, livelihood, health) and gains (extraction, profits) which fuel the conflict (Scheidel et al 2020). Third, there is a growing (shared) awareness among conservationists, vulnerable communities, environmental and human rights activists, and indigenous and farming communities of the threat posed by large-scale development. This is not to say that there are shared understandings about *how* to protect conservationists, a topic I return to later. Fourth, there are clear power imbalances and inequalities, meaning that the interests of affected populations are often brushed aside, and that the more exposed and weaker populations bear the brunt of losses. Fifth, there have been growing efforts to redress the power imbalances through international pressure, domestic institutional and legal reforms, local

advocacy, and the ballot box. New leaders and movements are at the forefront of political change, as observers gain awareness about the costs and risks of continuing reliance on extractive industries and other mega-projects (Sánchez 2022). These trends offer opportunities for both scholarly analysis and policy proposals.

Traditional economic classes have similar underlying dynamics, and of course deeply entrenched and widespread inequalities. They have interests in common, they are aware of those interests, and they act collectively in opposition to other classes. But a big difference is that the interests that are bound together in the developmental and conservationist camps would not be found together in the traditional economic class groupings. The nature of underlying interests and values is different – capitalism and material conflict are at the core of traditional class analysis, whereas powerful developmental interests include the public and private sectors, left and right ideologies, and even sometimes include labor unions, ironically. A worker at a rural mine is on the same side of the socio-environmental divide as her foreign investor employer, but not on the same side of the traditional capital-labor divide.

The approach sketched out in this article owes an intellectual debt to Edward P. Thompson's analysis of the English working class, and especially the distinction he drew between the class experience and what he termed the cultural aspects of class consciousness, such as traditions, ideas, and values (Thompson 1966: 9-10). He used the same notions of the productive relations in which humans find themselves, but then enlarged on the social idea of how this circumstance gives rise to class consciousness. Unlike earlier class analyses, in the socio-environmental conflicts of Latin America we are

not talking about production as a node of conflict, nor about labor as the asset being sold. Instead the assets are more diverse – land, customs and traditions, environment, and health.

Who are these developmentalists and conservationists exactly? Developers may be a single entity, or a consortium of public agencies and/or private firms operating with a specific investment purpose. They may include multinational investors, local firms, and domestic workers. Conservationists tend to be more varied – they may be a group of neighbors, an Indigenous community, a farming cooperative, or combinations of different groups. Not all those who are impacted by development are opposed to it. There are deep disagreements in local communities; some locals need to (or want to) work for developers, while others believe that neither their labor nor other assets should be sold. Thus, proximity to development does not determine socio-environmental class position.

Some conservationist groupings are formed in anticipation of possible damages. An example is the Dam Affected People (*Movimento dos Atingidos por Barragens*), a group that arose in Brazil in the 1980s to defend those residing near dams who are affected by deforestation and loss of livelihoods.<sup>4</sup> Other conservationist groups come into being as the result of a catastrophic accident. For example, a tailings dam failure in Sonora, Mexico in 2014 resulted in millions of liters of spilled copper sulphate which polluted the Sonora and Bacánuchi Rivers, impacting 22,000 people in seven local communities. The communities created a group called the Río Sonora Basin Committees to fight for cleanup, compensation, and remediation (Aspinwall 2021). These and similar organizations serve as

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<sup>4</sup> See <https://mab.org.br>

forms of acknowledgement and solidarity, and they facilitate resistance organization and communication. They are different from the more focused NGOs who defend these groups, who I describe later.

### **So what?**

The division between conservationists and developmentalists is visible in all countries and is hardly a new phenomenon. What is new is that several dynamics have intensified conflict and further widened this cleavage, especially in Latin America, and it is important that we understand it. First is the exploding demand for minerals and metals, the more so as green and digital economies take off (De Jong et al 2021: vi, viii). Latin America is a particularly rich source of energy transition minerals. The growth of China and other emerging economies, and the dependence on extraction for export revenues among Latin American countries, has led to skyrocketing investment in extractive industries (Mazucca 2013; Rodríguez Garavito and Baquero Díaz 2020; ECLAC 2018: 131; IADB 2017; Auz 2022). Second, there is a growing political backlash to these investments as awareness rises of resource scarcities and natural calamities such as floods, droughts, and wildfires. Newly elected presidents in the region have pledged environmental and community protection in their campaigns, distinguishing them from some of the older pro-development leftists such as AMLO and Lula. Chile's Gabriel Boric, elected in late 2021, signed the Escazú accord to commit Chile to Principle 10 procedural rights related to the environment. Colombia's Gustavo Petro, elected in 2022, proposed a moratorium on mining and hydrocarbon exploration in his campaign. Also in 2022, Ecuadorian President Guillermo Lasso reached an agreement with striking indigenous communities that would limit extractivist activities and guarantee procedural rights for communities so that they may participate in decision-

making around major investments. Media attention, public opinion, and political forces increasingly highlight the environmental dangers posed by mega-projects, and environmental issues have inexorably climbed the list of political priorities, despite the fact that environmental ministries remain weak partners and broader inequalities and poverty plague Latin American populations.

Third, global pressures to comply with legal norms protecting the environment and human rights have intensified, even as lamentable lapses of enforcement and implementation abound. Latin American countries occupied eight of the top nine places in the list of environmental defender murders in 2022 and 88% of the number worldwide.<sup>5</sup> Numerous reports from international organizations highlight weaknesses in environmental rule of law (Organization of American States 2015; Dapolito Dunn and Stillman 2015; Worker and Da Silva 2015; IADB 2017; UN Environment Programme 2019; Barreira 2019; Inter-American Development Bank and World Justice Project 2020; Vizeu et al 2020). In its first global assessment of environmental rule of law (in 2019), the UN Environment Programme stated that weak enforcement, the lack of clear standards and mandates, insufficient funding and political will, and insufficient attention to the safety of environmental defenders, all threaten affected communities (UN Environment Programme 2019).

The Inter-American Court has issued rulings safeguarding indigenous rights in cases where mega-projects threaten them, requiring environmental impact assessments (EIAs) in indigenous territories, and where projects will have a ‘significant adverse impact on the

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<sup>5</sup> <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/>



environment' (Inter-American Court of Human Rights 2017: para. 157, p. 61; Inter-American Court of Human Rights 2007). It has also affirmed that access to information is a human right protected by international law and must be guaranteed by states (Inter-American Court of Human Rights 2006; Bookman and Guerrero Amparán 2009: 22-23). Moreover, the UN established a special rapporteur for the environment and human rights, and (in 2007) agreed a nonbinding declaration on the rights of indigenous peoples. The regional Escazú Accord, which entered into force in 2021, contains greater protections for procedural rights and environmental defenders, among other innovations. New principles adopted from international practice, such as the preventive principle and the principle of polluter pays, also provide greater rights and environmental protections.

Thus, rising demand for commodities coupled with the stress of environmental degradation have led to more awareness of problems among conservationists, which (coupled with information-sharing and external spotlights) have led to a clearer articulation of conservationist interests and more instances of collective action. Of course, these same dynamics and pressures are felt in developed countries too, and there are similar conflicts at play, especially in places like Flint, Michigan and Standing Rock and other locations where environmental inequalities are sharpest. But developed countries have buffers that blunt the worst effects of socio-environmental conflict. They have better legal and institutional systems of protection for the vulnerable. They also have more diverse economies that are less reliant on extractive industries and new infrastructure creation. The Global South already suffers from high levels of economic inequality, and environmental inequality is a further burden.

### **Redressing the power imbalance**

The developed world of the 19<sup>th</sup> century witnessed rapid industrial and technological change. Dickensian conditions in the London of the 19<sup>th</sup> century gave rise to Marxian analyses, which, following revolutions, World Wars, and economic disasters, slowly yielded legal and institutional reforms to protect workers. Lessons can be drawn from these experiences. The world economy today requires minerals, metals, energy sources, infrastructure, food, and other commodities, and these needs will not change. But equally important, conservationist groups and communities on the front line of development should have the opportunity to participate in discussions about projects, with full information presented in a timely manner and in non-technical language. Their health should not be impaired, and any change to their livelihoods should be compensated. They must have ready access to dispute resolution mechanisms and be able to discuss alternatives to development proposals. How to ensure that these protections are in place, and to improve the representation of conservationist interest through legal and institutional channels?

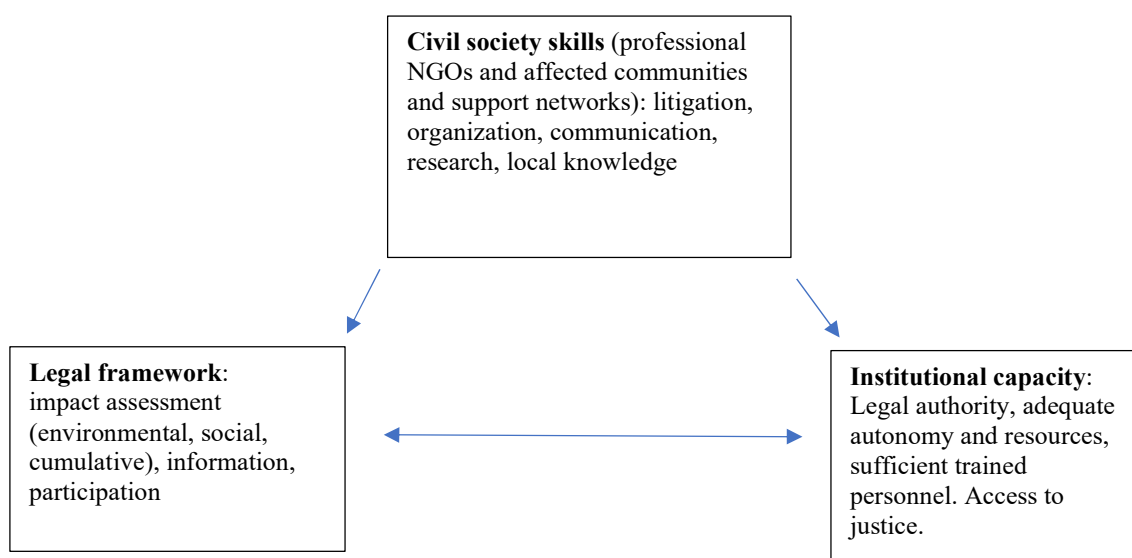
The answers to these questions will be informed by scholarly studies which will in turn help inform policy initiatives. Presidents and candidates for high office now frequently take socio-environmental conflict into account in their policy pronouncements, and domestic institutions have made some halting progress toward guaranteeing rights and appropriate environmental stewardship. International organizations, partner states, and civil society groups often weigh in on injustices and rights, but better institutional design at the domestic level is critical to fair and sustainable development, and to ensuring appropriate representation of conservationist interests. In this section I underscore some of the developments in civil society, legal, and institutional frameworks toward those ends.

Cross-national commonalities in socio-environmental conflict mean there are opportunities to transfer policy initiatives across borders. Labor politics can serve as a heuristic: reforms to improve the chances of conservationists to defend their interests are analogous to employer-employee conflict resolution institution. Workers were once upon a time also very vulnerable, both as individuals and as members of collectives in workplaces. Changes in labor protections improved outcomes, and public policy in socio-environmental conflict regions could likewise move to better shield vulnerable communities. Workers are ostensibly protected by fundamental standards such as the right to work without discrimination, in a healthy and safe environment, and to organize and bargain collectively. This protects their interests against abusive behavior by firms or managers. Unions exist to protect workers' rights and advocate for improvements to working conditions. Where there are conflicts, institutions and procedures can be used to settle them, including conciliation and arbitration boards. Some of these protections are at individual level, others at collective level.

Just as labor rules and institutional fora can resolve disputes between conflicting employer-employee interests, so there are domestic institutions and rules that partly redress the power imbalance between development interests and conservation interests. The domestic forces and structures are inter-related to be sure, but each affects the capacity of conservationists to defend their rights and interests in a particular way. The problem is that they remain seriously under-developed, at least in comparison to labor institutions, and this fact retards the consolidation of democracies in the region. In the following sections I set out how legal frameworks, environmental enforcement and justice institutions, and NGO activity act to

protect conservationist interest and how they may be further strengthened. Figure 1 below shows a stylized schema of interaction between the three elements that I describe, with ideal qualities and characteristics for each of the elements. Civil society engages with institutions within the legal framework. Likewise, institutions act according to law to protect rights and environmental standards.

**Figure 1.**



### *Legal framework*

A legal framework protecting the environment and governing natural resources is essential for environmental rule of law (Barreira 2019: 2). Equally important is the right of all citizens to live in a healthy environment and have access to information, decisionmaking, and justice systems to defend those rights. Participatory institutions are especially important to mitigating conflict at an early stage, and many states now acknowledge that

community concerns need to be heard early and addressed adequately, with a willingness to listen and adapt and provide services directed at community needs (Jaskoski 2022).

The most important aspect of the legal framework for addressing and responding to development proposals is the environmental impact assessment. Depending on the country, the sector, and the size of a given project, environmental agencies must ensure that developers conduct valid EIAs ahead of major projects, respond to public concerns, and monitor subsequent development activities. EIAs are analogous to labor tribunals because they bring together competing interests with the aim of resolving conflicts. Their purpose is to ensure compliance with environmental regulations, environmental and procedural rights, and to consider alternatives and possible mitigation proposals (O’Faircheallaigh 2010; Morgan 2012; Velasco et al 2012: 13; Glucker et al 2013; Loomis and Dziedzic 2018; in Brazil see Hochstetler and Tranjan 2016; Hochstetler 2017; in Chile see Moraga Sariego 2017; Lostarnau 2011).

For EIAs to be valuable, they need to draw in affected communities, ensuring that they receive appropriate information about a project with sufficient time to consider the risks, are able to participate in discussions about it and propose alternatives and mitigation strategies, and have access to institutions of justice where there are violations of their rights. In principle, they allow conservationists to defend their rights and hold regulators and developers accountable to applicable administrative procedures. Increasingly, governments now also require strategic impact assessments, which evaluate the accumulated impact of multiple investments, and social impact assessments, which

consider the socio-cultural implications of an investment (Martinez and Komendantova 2020).

Numerous international organizations and academic studies have weighed EIA criteria such as screening and scoping requirements, alternatives (to the proposed development plan), citizen participation, monitoring, and reporting (ECLAC 2018; UNEP 2019; O’Faircheallaigh 2010; Partidario and Sheate 2013; Sinclair 2008; André et al 2006).<sup>6</sup> In 2018, ECLAC compared Latin American EIAs, and while all countries in their study mandate impact assessments, publicity, information, and public participation, they also found differences in terms of time limits for participation, how indigenous communities are included, and whether public views are binding on state authorities or developers (ECLAC 2018: 83ff). Chile, Colombia, and Peru for example require public participation to be conducted in ways appropriate to indigenous populations, but most countries do not specify such a requirement.

Latin American countries vary in terms of which projects will be subject to evaluation, and the scope of the evaluation (Acerbi et al 2014). Scoping is often legislated and therefore inflexible in terms of what impacts are considered. Countries have different participation requirements related to how much input the public may have, at what stage, and how much account must be taken of public views. Most Latin American states require consideration of alternatives, though alternatives are often set up as straw-men to justify a prior decision on

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<sup>6</sup> See this comparison from the World Bank in 2015:  
<https://documents1.worldbank.org/curated/en/901091566831025907/pdf/Legal-Framework-of-Environmental-Impact-Assessment-in-Latin-America-2015.pdf>

siting, size, and other criteria (Bratman and Bená Díaz 2018). Most also consider mitigation issues, but the degree of monitoring and follow-through varies. Moreover, project decisions have often been made by the time public participation occurs, with EIAs completed after a project is underway, using poor methods or biased scientific evidence that gloss over environmental risk and give the benefit of the doubt to developers.

In some cases, EIAs are carried out by a sectoral ministry, such as mining, but reforms have generally moved to mandate that environmental ministries be in charge. Peru is one of the most recent to make this change. Transparency requirements also vary. All Latin American EIA regimes are constrained by time limits and can make it difficult for speakers of indigenous languages to obtain adequate information. Moreover, many countries only have mandatory participation requirements for specific high-impact projects, and there can be very little detailed information on how public participation is to be carried out. In Brazil, historical patrimony, indigenous customs, and other considerations must be taken into account in the EIA. However, a study of the mitigation and compensation programs at the Lajeado Hydroelectric Dam in north-central Brazil found that cultural elements had not been fully considered, and this failure had an impact on food production practices and conflict within the Xerente indigenous group (Hanna et al 2016).

Reforms to improve the ability of conservationists to defend their interests have been slow in coming. In Mexico, the last time the EIA was modified was 1996, and interested parties lack access to EIA annexes, which contain important supplementary technical and scientific information. There is no indication what weight public participation has in decision-making following consultation. The public has only 20 days to submit opinions, and that with

limited information. New principles such as the precautionary principle, polluter pays, and strategic assessments which evaluate accumulated impact are still not routinely taken into consideration, although some Supreme Court cases in Mexico have ruled that they should be.

On the other hand, there are some bright spots. Chile's 2012 EIA reforms require participation strategies to be adapted to the social, economic, cultural, and geographic contexts of the areas and peoples in question. Chilean environmental impacts are evaluated by the *Servicio de Evaluación Ambiental* (Environmental Evaluation Service), which produces a report containing the entire evaluation and recommendation to reject or approve. The EIA must include public participation in large projects with anticipated damages, although whether a given project will result in an adverse environmental impact is controversial and has resulted in court challenges. Furthermore, companies sometimes present the project in stages, each one small enough to avoid an onerous EIA with preventive measures.

### *Institutional reform*

Latin American environmental oversight and enforcement institutions are weak in both a Weberian sense – lacking authority, capacity, and resources – and also in a functional sense, in that they are outmatched by strong state economics and finance ministries (UNEP 2019: 35; Pring and Pring 2016). On paper, a wide variety of institutions act as ostensible bulwarks against unfettered development, including environment ministries, constitutional courts, specialized environmental tribunals, prosecutors, independent freedom of



information agencies, human rights commissions, and ombudsmen. Their powers and capacities vary significantly across states.

There have been important reforms to strengthen institutions across the region (Poveda Bonilla 2021). For example, Peru's independent environmental prosecutor's office was established in 2008 with some 150 specialized environmental prosecutors, which reduces the impact of economics and mining ministries in environmental oversight (Rodríguez Garavito interview 2020; Puentes interview 2020). Brazil's *Ministerio Público*, dating from the 1980s, engages both in strategic litigation and case-specific prosecutions, and is a formidable prosecutorial and investigatory counterweight to executive power. It has the power to negotiate settlements with environmental offenders (Peruzzotti and Smulovitz 2006; McAllister 2008; Pring and Pring 2016: 41). Chile established independent environmental tribunals in 2012, led by law and science experts, with powers to resolve administrative disputes. The tribunals' expertise has improved enforcement and the quality of justice (ECLAC 2018; Pring and Pring 2016; Muñoz Gajardo 2014; Lillo interview 2020). Colombia and Costa Rica have strong constitutional courts which defend environmental human rights (Wilson 2005; Cepeda Espinosa 2005). Costa Rica's courts have broad standing and easy access for litigants (UNEP 2019: 185). The Colombian constitutional court has issued numerous progressive rulings on environmental matters in cases where harm is claimed (Rodríguez Garavito 2011; Gloppen et al 2010; Rodríguez-Raga 2011; Uprimny 2006).

However, despite institutional success stories, challenges remain before conservationist interests are truly represented in environmental disputes. If a given project is a flagship

presidential priority, powerful executives have been able to overcome legal and administrative obstacles presented by environmental agencies, courts, tribunals, prosecutors, auditors, and transparency agencies, and carry on with their plans. In the Tren Maya case, the UN High Commission for Human Rights criticized the ‘consultation’ carried out in five southern states in late 2019 because it only spoke of the benefits of the project, not the risks (Martín Cullell 2019). Mexico’s environmental law requires public participation in the approval process for large development projects, but the Tren Maya consultation was unilateral, did not provide enough information, was not translated adequately into indigenous languages, and provided very little time for feedback from communities. Environmental and human rights organizations stepped in, and legal challenges mounted. AMLO’s response was to declare public works projects such as the Tren Maya to be ‘national security’ activities and therefore not subject to scrutiny or normal environmental oversight, though his decree was struck down by the Supreme Court. He said the national security designation was necessary because a foreign government was interfering, because the Mexican government was losing money, because it was a priority project, and because justice moved too slowly.<sup>7</sup> He also disparagingly referred to environmental challengers as an *elefante reumático* (rheumatic elephant) because they interfered with his plans (Gutiérrez 2021).

Thus, the record is mixed. In Mexico, for example, the Supreme Court has made a series of increasingly progressive rulings, drawing on principles from other countries such as

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<sup>7</sup> <https://www.infobae.com/america/mexico/2022/07/25/esta-interviniendo-un-gobierno-extranjero-amlo-justifico-declarar-al-tren-maya-como-obra-de-seguridad-nacional/>. He complained that the U.S. government was financing opponents of the project.

polluter pays and the precautionary principle, which touch directly on procedural or substantive human rights (Rabasa Salinas et al. 2020). Yet in many cases, lower courts are simply unaware of these rulings. Moreover, human rights training in SEMARNAT and SENER, the environmental and energy agencies, is virtually non-existent, despite both agencies being deeply involved in environmental impact assessments and consultations with local communities.

### *Civil society activity*

Conservationist groups face a serious collective action problem because most people are unaffected by investments in mega-projects. Those communities and groups who are impacted are concentrated in specific locations without broader support networks. This makes it hard to organize professionalized structures to defend their interests on an ongoing basis, as trade unions do for workers. Latin American green political parties are weak and have contributed next to nothing to the defense of conservationist interests. Thus, NGOs do most of the work of redressing the imbalance between developers and conservationists. They lobby or undertake strategic litigation to promote general interest reforms such as strengthening EIA procedures, transparency, and access to justice. They mount information campaigns aimed at pushing climate change activism to the forefront, they advocate for new protections such as the preventive and precautionary principles and polluter pays, and new agreements such as the Escazú Accord to strengthen procedural environmental rights and protections (AlCosta et al 2015; Velasco et al 2012; CEMDA 2018; AIDA 2021). However, NGOs also target specific cases in pursuit of justice. They mobilize publicity campaigns and litigation to protect vulnerable groups. They also take part in direct actions, although their efforts are more broadly oriented toward professional activities such as

litigation, information-gathering, capacity-building, legal advice and accompaniment, and scientific research (Aspinwall 2021). Many environmental professionals have advanced degrees in law or the sciences. They tap international contacts to promote protections for the environment and for vulnerable populations.

While conservationists are often formed in broad groups under a banner such as Dam Affected People, organizing marches and communicating opposition to specific projects among locally-affected groups, the NGOs that I refer to here are more permanent and often located in the metropolitan areas. In other words, professional NGOs are part of wider conservationist movements, temporarily assisting specific local communities in need. They provide accompaniment in court actions, administrative and enforcement procedures, and so forth, and specialize in certain activities, forming networks or alliances in specific cases. An example is the *Plataforma Nacional de Afectados y Afectadas por Metales Tóxicos*, created in 2017, which includes NGO representatives from across the Americas. It won legal protection from the Peruvian Congress against exposure to toxic metals. Another case is the Latin American Alliance on Fracking, a large group consisting of environmentalists, human rights, scientists, country specialists, and others from various countries. The group gave testimony to the Inter-American Commission on Human Rights in November, 2018. In some cases, NGOs have added scientists to their staff – as in the case of AIDA (a pan-American rights and environmental NGO) – or draw in scientists on a case-by-case basis to help make legal challenges more technically sound.

The most effective NGOs are not researchers or spontaneous street activists, but permanent, professional, national-level organizations engaged in representing communities. Much of

what we know about their activities comes from these NGOs themselves rather than academics. For example, a detailed analysis by personnel from CEMDA and FUNDAR, two of Mexico's most important environmental and human rights NGOs, described the steps necessary to take effective action on behalf of local communities (Leyva et al 2018). They argued that civil society representatives should accompany, encourage, inform, advise, and research. In addition to litigating, they can help affected communities by observing and documenting development activities and intervening in legal and administrative processes where necessary. Their experience led them to advocate using a variety of tactics to defend rights and narrow the gap in power and information between large developers and affected communities (Leyva et al 2018: 41). NGOs are the actors that connect the disparate institutions and communities, and – often against great odds – score some successes in ensuring that the law is applied fairly. This can also lead to institutional learning as NGOs engage with personnel inside the environmental institutions, contributing to evolutions in thinking on the part of judges and administrators.

## **Conclusion**

A new way of understanding socio-environmental conflict is of little use if it does not lead to fairer outcomes for the most vulnerable. Strong state administrative and legal frameworks, robust institutions with budgets, independence, and legal authority, and professional civil society organizations, all supported and reinforced by international partners, are critical ingredients to better outcomes. Principles and rules related to access to information and justice, rights to participation, prevention, and precaution also need to be clarified and made real. But despite a few bright spots throughout Latin America,

enforcement and compliance failures still plague environmental institutions, and prolong or exacerbate the inequalities between developers and conservationists.

In addition to the kinds of reforms mentioned above, there are ways that states could support conservationists without necessarily undermining development incentives. They could assist expert NGOs through training, information, financial support, expanded awareness and communication. This would build capacity among environmental, human rights, indigenous, and community groups. Also, governments could engage proactively with both developers and conservationists, be open to innovative solutions to conflict, provide complete information on proposed projects, including non-technical summaries, in a timely fashion and in relevant indigenous languages as well as Spanish or Portuguese, and communicate best practice. Better conditions also need to be in place to foster direct company-community interaction and dialogue.

Updated website connections between EIA agencies, freedom of information agencies, and NGOs would boost transparency around proposed development projects, planned EIAs, and ongoing assessments (UNEP 2019: 135-6; André et al 2006). Other innovations could be to create secondment programs and partnerships between state agencies and NGOs, and permanent forums for NGO officials to interact on a periodic basis with agency officials and developers in the interest of maintaining open exchanges of information and perspectives. States also need to fund enforcement and justice agencies adequately and clarify relationships between them. Socio-environmental class conflict will never go away, but these steps could help manage the conflict and lead to more just and lasting solutions.

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