

The Politics of Accountability: Indigenous Participation in Colombian and Ecuadorian Oil and Gas Policies

Guillaume Fontaine
FLACSO (Ecuador)

Esther Sánchez
Consultant

Marco Córdova
Susan Velasco
FLACSO (Ecuador)

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ABSTRACT: Current literature on social and political accountability hardly explains why governments are (or are not) interested in including non-state actors in decision-making and policy implementation. This paper argues that accountability is the product of the interplay of ideas and institutions to mediate contradictory interests in the definition of normative, strategic and operational policy aims and means. Process-tracing is utilized to identify the causal mechanism linking the adoption of international law instruments to actual enforcement of accountability in a policy area. The case study is about the indigenous right to prior consultation on oil and gas policies in Colombia and Ecuador.

KEYWORDS: accountability • public policy • indigenous • Colombia • Ecuador (*Thesaurus*) • neo-institutionalism • process-tracing (*author's keywords*)

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La política de rendición de cuentas: Participación indígena en las políticas de petróleo y gas de Colombia y Ecuador

RESUMEN: La literatura contemporánea sobre el control social y la responsabilidad no explica con solvencia por qué gobiernos están (o no están) interesados en involucrar a actores no estatales en los procesos de toma de decisión y de implementación de políticas públicas. Este artículo argumenta que la responsabilidad es el producto de las interacciones entre ideas e instituciones para mediar intereses contradictorios en la definición de los objetivos y medios de políticas normativas, estratégicas y operacionales. Se utiliza el seguimiento de proceso para identificar el mecanismo causal que vincula la adopción de instrumentos de derecho internacional con el fortalecimiento efectivo de la responsabilidad en un área de política. El caso de estudio es el derecho de los indígenas a la consulta previa en las políticas de petróleo y gas en Colombia y Ecuador.

PALABRAS CLAVE: control social • responsabilidad • política pública • Colombia • Ecuador (*Thesaurus*) • neoinstitucionalismo • indígenas • seguimiento de procesos (*palabras clave autor*)



A política de *Accountability*: participação indígena nas políticas de petróleo e gás da Colômbia e do Equador

RESUMO: A literatura contemporânea sobre o controle social e a responsabilidade não explica com solvência por que governos estão (ou não estão) interessados em envolver atores não estatais nos processos de tomada de decisão e de implementação de políticas públicas. Este artigo argumenta que a responsabilidade é o produto das interações entre ideias e instituições para mediar interesses contraditórios na definição dos objetivos e meios de políticas normativas, estratégicas e operacionais. Utiliza-se o acompanhamento de processo para identificar o mecanismo causal que vincula a adoção de instrumentos de direito internacional com o fortalecimento efetivo da responsabilidade numa área de política. O estudo de caso é o direito dos indígenas à consulta prévia nas políticas de petróleo e gás na Colômbia e no Equador.

PALAVRAS-CHAVE: controle social • responsabilidade • Colômbia • Equador (*Thesaurus*) • política pública • neoinstitucionalismo • indígenas • acompanhamento de processos (*palavras-chave autor*)

Introduction: Why Do Governments Bother About Accountability?

The emergence of citizens' rights to participation and control over the state in contemporary literature on democracy came along with the global transformation regarding the role and nature of state institutions: upwards (through globalization and regional integration processes), downwards (through decentralization processes) and outwards (through the politicization of civil society) (Pierre and Peters 2000). In Latin America, after the democratic transition of the 1980s and the governability crisis faced by many countries during the following decade, the framing of democracy building has challenged the traditional concept of representative democracy with that of "co-governance" (Fontaine 2010a), a collaborative system based on participation and social control by different actors, in which the state acts as a coordinator (Kooiman 2002).

Yet participation and social control over the state are both time-consuming and economically expensive for governments (Irvin and Stansbury 2004). They are also often frustrating for social actors wanting more consultation, more accountability and more controlling capacity (Fung 2006a; 2006b), all of which affects the political outcomes governments can expect from such measures. Therefore, the reason why governments do (or do not) care for granting citizens such rights calls for more explanation, especially considering the irreversible nature of policy change for more accountability, which is comparable with the irreversibility of previous changes such as the recognition of human rights and universal suffrage. There is a need to know more about how governments face the need to design and implement effective public policies under growing scrutiny by non-state actors.

The argument in this paper is that such changes actually become irreversible when they materialize at three levels of objectives and means of policy content. This process is consistent with the neo-institutional three-order change framework¹ (Hall 1993), according to which first-order change, through calibration of policy instruments, and second-order change, through definition of policy objectives and means, result from social learning, while third-order change, through paradigmatic shift² (or a new cognitive framework), results from the adjustment obtained by influential actors through "puzzling" and

1 On neo-institutional frameworks and theories, see Lowndes and Roberts 2013.

2 Drawing on the theory of scientific revolutions (Kuhn 1971), this framework also considers the process of a policy paradigm shift which experiences a moment of incommensurability (Hall 1993), since it is a sociological, rather than a scientific process, that depends on the positional advantages of experts within a broader institutional framework and on exogenous factors affecting the power of one set of actors over the other.

“powering.” During this process, ideas and institutions mutually reinforce one another at two different moments (Hall 1993). Initially (at t_1), ideas are an insufficient but necessary cause of change that can provoke resistance due to contradictory interests among state and non-state actors. For this change to become sustainable, ideas need to be supported (at t_2) by institutional reforms and policy design. Hence, although participation of non-state actors generally depends on a normative obligation, it is also the result of strategic compromises and operational necessities.

This research focuses on the causal relationship between the adoption of international legal instruments aimed at increasing accountability to a domestic policy change implemented by governments in Colombia and Ecuador, two middle-range oil and gas-exporting countries of Latin America. Analytically, this is a relevant case of irreversible policy change since oil policies have been affected at three levels after the legislative power ratified international instruments protecting indigenous peoples, such as International Labor Organization (ILO) Convention 169 and the United Nations (UN) Declaration on Indigenous Peoples Rights (Fontaine 2009; 2010b; 2011). The adoption of said instruments materialized recognition of the right of indigenous peoples to be consulted on any development project affecting their territory and identity. In Latin American oil-exporting countries, this has triggered irreversible change at normative, strategic and operational levels of policy contents, thus improving indigenous peoples’ capacity to exercise control over oil and gas policies.

The following sections explain why this change occurred in Ecuador and Colombia, and why it can be considered irreversible. We start by reviewing the theoretical literature in political science and sociology on political and social accountability in order to construct a typology based on the degree of coercion and the relationship between state and society. We then proceed with a description of the method applied through case selection, congruence analysis and causal-mechanism testing. We continue with a presentation of our case study, including an analysis of policy change at three levels, and the description of the causal mechanism linking ideas and institutions throughout the process. We conclude with a brief reflection on accountability as a policy problem.

1. Theoretical Discussion

Over the past three decades, the debate on democracy in Latin America has gone through three different moments: during the 1980s it focused on transitions to democracy; in the 1990s it dealt with more effective mechanisms of accountability; in the 2000s it was about governmental effectiveness and the quality of democracy

(Altman, 2011; Mainwaring, 2003). In the last of these phases, a general agreement arose regarding the existence of novel forms of participation in the political process. These have been observed particularly in Brasil, Mexico, Colombia and Venezuela (Isunza Vera and Olvera 2006a; Isunza Vera and Gurza Lavalle 2010; Isunza Vera 2012), with special attention given to major cities in these countries (Hernández 2010; 2011; Gurza 2011; Hernández and Arciniegas 2011a).

Research on accountability in Latin America started with Guillermo O'Donnell's pioneering works on the democratic deficits of Latin American "polyarchies" (Dahl 1991) and the pattern of domination exerted by the executive power over the legislative and judicial branches, which he qualified as "delegative democracy" (O'Donnell, Schmitter and Whitehead 1986; O'Donnell 1993; 1994; 1996).³ On the one hand, political scientists analyze this as a problem of power, expressed in terms of vertical, horizontal and social accountability (Schedler, Diamond and Plattner 1999; Peruzzotti and Smulovitz 2002a; Mainwaring and Welna 2003). Sociologists on the other hand see it as a problem of social processes and interactions between civil society (rather than society as a whole) and the state (Isunza Vera and Olvera 2006b; Isunza Vera and Gurza Lavalle 2010; Hernández and Arciniegas 2011b; Isunza Vera, 2012).

Accountability embodies the three philosophical traditions —liberal, republican and democratic— that constitute the base of modern democracy regarding the control of political power (Ríos Ramírez *et al.* 2014). The liberal conception of accountability results from the individual's mistrust of the state and clearly separates the private and public spheres. The republican conception underscores the need for institutional equilibrium within the public sphere. The democratic conception stands for active exercise of citizenship through participation in constitutional power.

The twofold dimension of "answerability" and "enforcement" lies at the heart of the debate on accountability (Schedler 1999). While answerability refers to the public debate and the rule of reason inherited from the Enlightenment project of monitoring and overseeing power, enforcement refers to rewarding good and punishing bad behavior, which restricts our conception of accountability considerably, compared to more general notions of participation and social control. The main objective of answerability is to foster transparency through information and justification based on principles of publicity and responsibility.

3 In delegative democracies, "whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office" (O'Donnell 1994, 59).

Enforcement on the other hand seeks to give non-state actors the power or capacity to make answerability effective.

The transition to democracy in the 1980s created mechanisms of effective vertical accountability through regular elections (with minimum protection of fundamental rights). Nevertheless, most Latin American countries still suffer from weak or intermittent horizontal accountability⁴ frequently affected by encroachment, due to the (illegal) authority of one state agency over another, and corruption, due to the lack of transparency regarding government action toward citizens, which violates horizontal accountability. According to O'Donnell (1999), the reason is these “new democracies” inherited ready-made institutional packages from earlier democratic systems that identified democracy with the right of the *demos* to decide on any issue (following the ancient Athenian tradition), while the other philosophical components, regarding the protection of fundamental individual rights (sacred to liberalism) and subjection of law to the public interest (as in republicanism) were hardly assimilated at all in their institutional designs.

The institutional deficits of horizontal accountability increased the number of social actors demanding more participation and control over the state. This is commonly qualified as “social accountability,” a vertical but non-electoral form of pressure to make civil servants and elected representatives justify and inform about their decisions, and face possible sanctions when acting incorrectly or illegally (Peruzzotti and Smulovitz 2002b). Social accountability is (at least partly) the product of a threefold strategy at the judicial, the mass media and the social level. At the judicial level, it means the activation of judicial power and control agencies based on claims and petitions from organizations of civil society. At the media level, it involves informing the public regarding the action of civil servants and elected representatives in order to assign blame and possibly to put them on trial in the case of wrongdoing. At the social level, it refers to mobilization aimed at raising the reputational costs of illegal behaviors even when they do not receive judicial sanctions.

a. Four Kinds of Accountability Mechanisms

The novelty in today's Latin American polyarchies lies in the multiplication of alternative agencies and mechanisms of accountability, which represents a genuine innovation compared to the oldest democratic regimes. The region is

4 Horizontal accountability refers to the classic separation of the executive, the legislative and the judicial powers, while vertical accountability refers to electoral mechanisms of control by citizenship over the state (O'Donnell 1999, 38).

indeed experiencing deep changes through the creation of independent state agencies and social organization networks to compensate for the weakness of checks and balances (Escandón and Velásquez 2015; Ríos Ramírez *et al.* 2014). Independent state agencies, such as public ministries, national auditing offices and electoral authorities, are supposed to strengthen the traditional separation of the executive, legislative and judicial powers, while social organizations are expected to secure citizens' control over the state apparatus (Hernández and Arciniegas 2011b).

Effective horizontal accountability would then depend on two kinds of agencies to prevent and sanction transgressions of the limits of formally defined authority by elected representatives or civil servants (O'Donnell 1999, 40). The "balance agencies" still epitomize the division between the executive, legislative and judicial branches, but their deficiencies have led to a multiplication of "assigned agencies" such as prosecutors, auditors, ombudsmen, etc., that assume a function of social control with diverse degrees of coercion (O'Donnell 2002).

Nevertheless, the causal relationship between the difficulties faced by Latin American democracies and the emergence of new accountability mechanisms remains undetermined. First, the concept of accountability suffers from stretching and polysemy and its complexity is hardly reflected in the spatial metaphor of vertical *versus* horizontal, or the synonymous expressions of "electoral" (for vertical) and "intrastate" (for horizontal) accountability (Mainwaring 2003, 20). Hence, it may have been adequate initially to qualify the general trends of contemporary democracy in Latin America, but it may well cause confusion when trying to determine the degree of coercion exerted through these political innovations by the state and the citizenry.

Moreover, the fading of the borderline between the public and private spheres blurs the relationships between the rights of citizens and the obligations of political or administrative agents. Accordingly, a clear distinction between the responsibilities of politicians and the dysfunctions of administrative and legal systems is unlikely to be drawn except through due process and judicial control. At the end of the day, political accountability, "this obscure object of political desire and institutional design" (Schedler 1999, 27), refers to moral integrity as well as legality and legitimacy. Therefore, the old institutionalist conception of state institutions as the best mechanisms for achieving accountability must be revised since the need for accountability has long outweighed governments' mere willingness to be or not to be accountable to their citizens.

Social accountability offers no accurate alternative, however, since its relationship to vertical accountability and democratic institutions is endogenous. Social accountability agencies constitute a heterogeneous category in which

articulation with horizontal accountability is highly variable. They are more ambiguous than state agencies since they relate to the semantics of both “participation” and “responsibility” (Gurza and Isunza 2010). They consist of increasingly complex socio-state interfaces, acting at the heart of three different kinds of relationships between state and society: explicit agreements on accountability between two subjects, possible sanctions of one another, and the articulation of different modalities of accountability. Indeed, the most recent “democratic innovations” (Gurza and Isunza 2010, 19) for social control in Latin America involve collective actors assuming activities of representation more than participation (e.g., through transparency councils or inter-institutional groups negotiating policy agenda-setting, elaborating participatory budgets, monitoring and evaluating policy programs, etc.). The most constricted understanding of social accountability implies new mechanisms of representation and places the problem of “controlling the controllers” at the center of the debate on democracy (Gurza and Insunza 2010, 35).

The paradox is that social accountability was conceptualized to describe a solution to the failures of vertical-electoral and horizontal accountability, yet its acknowledgement by government reflects a political system’s degree of openness to political accountability. In other words, social accountability is more likely to blossom where there is simultaneously a longstanding mobilization capacity among social actors and the media, and notable respect for fundamental rights such as freedom of opinion and of the press, as well as control agencies.⁵ Hence we suggest dropping the distinction between “political” and “social” accountability, by assimilating “social accountability” into the category of “non-electoral democratic controls” (Isunza and Gurza 2012). This makes it possible to elaborate a single typology of political accountability mechanisms based on their degree of coercion over the state and their inclusion of non-state actors (Cf. Table 1). Vertical electoral mechanisms simultaneously involve the largest number of non-state actors and have the greatest power of coercion over the state. In contrast, horizontal mechanisms in the form of dedicated agencies do not involve non-state actors and exert little coercion over the state. Non-electoral democratic controls do involve non-state actors but they have only limited capacity to coerce the state. Horizontal mechanisms in the form of balanced agencies have a high coercion capacity but they do not include non-state actors.

5 Unsurprisingly, most experiences of social accountability in Latin America and the Caribbean have been studied in countries where governability crises resulted from corruption and encroachment denounced by urban social movements and middle-class protests. (See Peruzzotti 2006).

Table 1. Typology of political accountability mechanisms

		Coercion over the state	
		+	-
Inclusion of non-state actors	+	Electoral democratic control	Non-electoral democratic control
	-	Horizontal control through balanced agencies	Horizontal control through dedicated agencies

Source: Compiled by the authors.

All four categories are more complementary than exclusive of one another, which means the more integrated these mechanisms are, the less reversible political accountability will be. The integration of these mechanisms results from policy changes at the normative, strategic and operational levels. The case of countries adhering to international standards protecting the rights of indigenous peoples through legislative acts regarding strategic policy areas such as oil and gas in countries that export them offers a good way to test this theory, as we shall see in the following sections.

2. Methodology

a. Case Selection

The right of indigenous people to prior consultation in their territories is an example of a non-electoral democratic control mechanism, inasmuch as it refers simultaneously to social control and to the participation of non-state actors in public policies. It was originally regulated by International Labor Organization (ILO) Convention 107, adopted in 1957, and later reformed through Convention 169 “Indigenous and Tribal Peoples Convention” (hereafter referred to as C169) in 1989 (ILO 1989, Art. 6). This convention has been ratified by 22 countries around the world to date, 15 of which are in Latin America and the Caribbean (hereafter LAC) (IADB, 2015). It preceded the United Nations “Declaration on Indigenous Peoples Rights”, which was adopted by 144 countries in 2007, while 11 countries, including Colombia, abstained and 4 countries, including the US, voted against it (UN 2007, Art. 11).

These international legal instruments have been used by indigenous movements and their supporters around the world to advocate for the protection of indigenous identities and territories within nation states. Consequently, governments have had to adapt their extractive policies through new regulations, new systems of information, new organization of the state apparatus and new financial planning. Policy changes have been particularly important in countries

where strategic resources are located in indigenous territories, as in the case of oil and gas in the Amazon basin. As a matter of fact, 8 of the 15 LAC countries that adopted C169 export oil and/or gas. This justifies a special analysis of the oil and gas exporting countries among all of the countries that have adopted C169.

The information and sources used for case selection are summarized in a rectangular data set based on a qualitative comparative analysis (QCA) (Cf. Table 2).⁶

Table 2. QCA of LAC countries adopting ILO Convention 169

Country	Y= Adoption of ILO Convention 169	X1=Oil export	X2= Indigenous population (>10%)	X3=Oil rent (>10% GDP when C169 adopted)	Z=Protracted conflicts for oil and gas exploitation (2010-2013)
Mexico (Senate Resolution July 11, 1990)	1	1	1	0	0
Colombia (Law 21/1991)	1	1	0	0	1
Argentina (Law 24071/1992)	1	1	0	0	1
Peru (Legislative Resolution 26253/1993)	1	1	1	0	1
Ecuador (<i>Registro Oficial</i> 304/1998)	1	1	0	0	1
Venezuela (Law 41/2000)	1	1	0	1	0
Brazil (Executive Decree 5051/2004)	1	1	0	0	1
Bolivia (Law 3760/2007)	1	1	1	1	1
Costa Rica (Law 7316/1992)	1	0	0	0	0

6 On QCA, see Ragin 2008. On case selection, see George and Bennett 2005; Gerring 2007; Seawright and Gerring 2008.

Country	Y= Adoption of ILO Convention 169	X1=Oil export	X2= Indigenous population (>10%)	X3=Oil rent (>10% GDP when C169 adopted)	Z=Protracted conflicts for oil and gas exploitation (2010-2013)
Paraguay (Law 234/1993)	1	0	0	0	0
Honduras (Executive Decree 26- 94/1994)	1	0	0	0	0
Guatemala (Legislative Decree 9-96/1996)	1	0	1	0	0
Chile (Executive Decree 236/2008)	1	0	0	0	0
Dominican Republic (NC)	1	0	0	0	0
Nicaragua (NC)	1	0	0	0	0

Source: Compiled by the authors from ILO 2015; IADB 2015; ECLAC 2014, 37; World Bank 2015.

Before we start tracing the process that led from the adoption of international law instruments to policy changes improving accountability, three competing explanations regarding the adoption of C169 ought to be considered. The demographic hypothesis states that it depends on the relative weight of indigenous peoples within national populations.⁷ The economic hypothesis states that it depends on the importance of oil and gas rent within the gross national product (GDP).⁸ The sociological hypothesis states that it depends on the degree of organization of indigenous groups and their ability to mobilize in order to exert pressure on the state. The demographic and economic hypotheses fail to pass a hoop test,⁹ since C169

7 For a complete data set on indigenous peoples in the selected countries, see Annex 1.

8 For a complete data set on oil and gas rent in the selected countries, see Annex 2.

9 On process-tracing tests, see: Beach and Pedersen 2013; Bennett 2010; Collier 2011. A hoop test is used in process-tracing to prove an insufficient but necessary causal hypothesis. When a

was adopted stochastically in countries where indigenous peoples represent either less than 10% of the population (as in the case of Colombia, Argentina, Ecuador, Venezuela and Brazil) or more than that (as in Mexico, Peru and Bolivia) (UN 2009), and where oil and gas rent represented either more than 10% of GDP (Venezuela and Bolivia) or less than 10% of GDP (Mexico, Colombia, Ecuador, Argentina, Peru and Brazil) at the time it was adopted (World Bank 2015).

The sociological hypothesis is more difficult to grasp since it requires a socio-spatial perspective to contrast the main reserves of oil and gas and the indigenous territories, which is rarely available at the national level. The legal territories of indigenous peoples may be clearly defined, but they have different status in each country with respect to protection from the impact of extractive activities. Furthermore, natural resource cadasters tend to overestimate the location of reserves to maximize the government preemptive rights. However, the persistence of protracted social conflicts in 6 out of 8 countries (the exceptions being Mexico and Venezuela) after the adoption of C169 indicates a strong correlation between the existence of such capacities and the need to improve accountability in relation to oil and gas policies (ECLAC 2014, 49). Such conflicts also indicate that effective accountability needs to be improved in the countries where they occur, although this does not mean that improvements are not necessary in the absence of such conflicts.

To solve this problem, we applied a smoking-gun test¹⁰ to the case where we found the longest process since the adoption of C169, namely Colombia. Colombia is arguably the country where prior consultation of indigenous peoples has become the most common for environmental licenses, with more than 156 processes implemented from 1993 to 2012 for 2,331 such licenses, including 931 for oil and gas activities (Rodríguez 2014, 140). We replicated this test later in Ecuador. We chose to compare both causal mechanisms following a most similar system design,¹¹ i.e., two processes that started from a similar situation and context but led to different policy change processes due to intervening variables that have yet to be identified.

b. Process-Tracing

We use process-tracing to analyze “evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or

hypothesis passes the test, it is relevant but cannot be confirmed; if it fails, it can be eliminated (Bennett 2010, 210).

10 A smoking-gun test is used to prove sufficient but unnecessary causality. A hypothesis cannot be eliminated just because it fails this test, but if it passes the test, it is confirmed (Bennett 2010, 210).

11 On comparative research design, see: Peters 2013. A most similar system design is used to identify differences in the outcome (Y) or to control extraneous variance in the causal process linking similar independent variables to similar dependent variables (Peters 2013, 40).

testing hypotheses about causal mechanisms that might causally explain the case” (Bennett and Checkel 2015, 7). A causal mechanism is a combination of entities triggered by X and engaging in activities that end up in Y, where each entity is an insufficient but necessary part of an overall mechanism (Beach and Pedersen 2013, 29-30).

Our process is based on a congruence analysis featuring the causal relationships between the three orders of change, consistent with the path dependence theory, which states that a critical juncture is the starting point of the longstanding continuity of an institutional system, due to increasing returns and lock-in effects that make change more and more costly.¹² The original framework (Hall 1993) has already been adapted to provide for a typology by aims and means at the macro (third-order change), meso (second-order) and micro (first-order) levels of policy contents (Howlett 2009; Howlett and Cashore 2009). However, this analogy of three orders of change with three levels of action does not respect the idea that third-order change is a “sociological process” that is different from second- and first-order change, which involve a “learning process” (Hall 1993, 281).

Such discontinuity leads to a distinction between the three orders of policy change, with the first affecting instrument settings, the second affecting policy instruments and prioritization of goals, and the third affecting settings, instruments and goal priorities simultaneously. Drawing on this framework, we suggest that policy change can best be traced by a one-way sequence analysis leading from third to second and first orders of change, and by evaluating the consistency between policy aims and means at each level (Cf. Table 3). Thus, third-order change is characterized by normative aims implying constitutional reforms after the adoption of C169. These objectives are defined according to the cognitive framework or the paradigm accepted by a community, through the adoption of norms and rules that act as “informal institutions” (March and Olsen 1984). Second-order change is characterized by strategic aims implying policy design following constitutional reforms. These objectives are defined according to the state’s capacities and needs, through the selection of policy instruments, not only taken separately but, above all, incorporated into a policy mix (Howlett 2011). First-order change is characterized by operational aims implying instrument calibration during early implementation of the policy. These objectives are defined according to short-term necessities and teleological criteria, through adjustment of the existing policy mix during its implementation.

12 On the path dependence theory, see: Mahoney 2000; Pierson 2000; Lowndes and Roberts 2013.

Table 3. Three-order analytical framework of policy change

	Level of Policy Content		
	Third Order	Second Order	First Order
Aims	Normative	Strategic	Operational
Means	International Law Constitutional Reform	Policy Design	Instrument Calibration

Source: Compiled by the authors. Adapted from Hall 1993; Howlett and Cashore 2009; Howlett 2009.

Secondary sources were used to identify international law instruments and contextual information on indigenous rights in LAC oil-exporting countries. Previous studies on social conflicts related to oil and gas exploitation in the Amazon were used to identify key confrontational moments between social actors (including indigenous organizations and environmental NGOs), public and private oil companies, and state agencies (including the executive, legislative and judicial branches of government) after the adoption of C169.

Primary sources were used to identify policy design preferences and instrument calibration. We used a simple typology of instruments based on state resources and including nodality, authority, treasury and organization (Hood 2007; Howlett 2011). Nodality instruments refer to information resources processed and produced by government agencies; authority instruments refer to specific and general regulation of policy areas; treasury instruments refer to the economic and financial dimensions of these areas; organization instruments refer to the entities involved in the design and implementation of a policy. These instruments are the practical elements by which state agencies translate ideas into institutions, and therefore they provide reliable empirical observable units of second and first orders of change (Table 4).

Data were collected from institutional sources and completed through interviews of civil servants from both countries. In Colombia, information came from Constitutional Court jurisprudence (since 1991) and congressional archives. In Ecuador, information came from the constitutional debates of 2008, executive assessments of the prior consultation regarding Southern Amazon bids in 2013, and assessments of the 2013 legislative debate on the declaration of national interest in relation to blocks 31 and 43. Semi-structured interviews were conducted in Ecuador in the Department of Hydrocarbons, the National Assembly Permanent Commission on Biodiversity, and the Coordinating Ministry of Strategic Sectors.

Table 4. Policy instruments of accountability in Colombia and Ecuador

Colombia	<p>Nodality</p> <ul style="list-style-type: none"> ‣ Social and Environmental Impact Assessments ‣ National Council for Economic and Social Planning (CONPES) (Law 1151)
	<p>Authority</p> <ul style="list-style-type: none"> ‣ Law 21/1991 (on ILO C169) ‣ 1991 Political Constitution ‣ Executive Decree 1397/1996 (on regulation of prior consultation) ‣ Executive Decree 1320/1998 (on roundtable concertation) ‣ Executive Orders 2010, 2013 (on consultation procedure) ‣ Constitutional Court Jurisprudence: Decision 39/1997 (on the Uwa case) ‣ Decision 129/2011 (on prior “consent”)
	<p>Treasury</p> <ul style="list-style-type: none"> ‣ Royalties = 8%-25% ‣ Income Taxes on Oil Activities = 33% ‣ Central Government takes 32% (National Fund) ‣ Departments take 47% (including 5% for indigenous people per well within their territories +5km) ‣ Municipalities take 12,5% (including 20% for indigenous people per well within their territories +5km) ‣ Harbors take 8%
	<p>Organization</p> <ul style="list-style-type: none"> ‣ Constitutional Court ‣ Renewable Resources Institute (INDERENA) ‣ Ministry of the Interior and Justice ‣ Department of Indigenous Affairs, Minorities and Rom (Executive Decree 4530/2008) ‣ Ecopetrol ‣ Multinational Companies ‣ National Agency of Hydrocarbons ‣ National Authority for Environmental Licenses (ANLA) ‣ Permanent Coordination Roundtable (1996-2009) ‣ Consulting Commissions (national and departmental)
Ecuador	<p>Nodality</p> <ul style="list-style-type: none"> ‣ Social and Environmental Impact Assessments ‣ National Plan of the Good Life (2010-2017)
	<p>Authority</p> <ul style="list-style-type: none"> ‣ Executive Decree 1527/1998 (on ILO C169) 2008 Political Constitution ‣ Executive Decree 1215/2001 (on environmental regulation for hydrocarbon activities) ‣ Executive Decree 3401/2002 (on regulation of prior consultation for hydrocarbon activities) ‣ Organic Code of Territorial Organization, Autonomy and Decentralization 2010 ‣ Organic Law on Citizen Participation 2010 ‣ Constitutional Court Jurisprudence: Decision 2010 (on prelegislative prior consultation)

Ecuador	<p>Treasury</p> <ul style="list-style-type: none"> ‣ Royalties = 25% ‣ Income Taxes on Oil Activities = 25% ‣ GAD takes 10% of Non-permanent Incomes from Public Spending (including 27% for provinces + 67% for municipalities + 6% for lower level governments) + 21% of Permanent Incomes from Public Spending ‣ Regional Fund for the Amazon = US\$1/Barrel
	<p>Organization</p> <ul style="list-style-type: none"> ‣ National Assembly Commission on Biodiversity ‣ State Secretary of Hydrocarbons ‣ Petroamazonas ‣ Ministry of Environment ‣ Council of Peoples, Social Movements and Citizen Participation (Executive Decree 2007) ‣ Subsecretary of Lands and Agrarian Reform (Executive Decree 373/2010)

Source: Compiled by the authors from institutional sources.

3. Case Study

a. Third-Order Change

The institutionalization of accountability to indigenous peoples in oil-exporting countries has been shaped by constitutional reforms in Brazil (1988 and 2005), Colombia (1991 and 2003), Venezuela (1999), Ecuador (1998 and 2008), Peru (1993 and 2005) and Bolivia (1994, 2004 and 2009) (ECLAC 2014). In all the cases selected, the political constitution recognizes the principles of pluralism and cultural diversity, although they have different ideas about the state's duty to protect indigenous rights. In cases like Ecuador and Bolivia, the constitution refers explicitly to plurinationalism, (Republic of Ecuador 2008, Art. 1; Republic of Bolivia 2009, Art. 1). In others, it simply refers to the protection of minorities by the state, as in the case of Colombia (Republic of Colombia 1991, Art. 7), Peru (Republic of Peru 1993, Art. 19), and Venezuela (Republic of Venezuela 1999, Preamble).

These countries undoubtedly underwent quite different processes. In Colombia and Ecuador, the constitutional reforms embody a paradigmatic change in the direction of democracy as co-governance, from a state under the rule of law to a social state under the rule of law that is responsible for protecting its multicultural and pluriethnic society. These changes came after decades of mobilizations and politicization of the indigenous peoples (Laurent 2010; Massal 2010), which does not mean the latter phenomenon was responsible for the former, but rather that it took advantage of the opening of a policy window. Colombia had already ratified C169 through Law 21 (Republic of Colombia, Ley 21/1991), which was enacted a few months before the constitutional reform.

Ecuador did so after adopting the Constitution of 1998 (Republic of Ecuador, Executive Decree 1527/1998), but mesolevel reforms did not take place there until ten years later, after the Constitution of 2008 was adopted by referendum. Bolivia would likewise wait until 2009 to reform its constitution and adapt the institutional design of the state accordingly. As for Peru, the Constitution of 1993 was adopted before ratifying ILO Convention 169 and there was no constitutional amendment related to it afterwards. The last constitutional reform in Venezuela took place three years before that country ratified the convention.

The differences among these constitutional reforms implied different degrees of policy change regarding recognition of the right of indigenous peoples to prior consultation. The Colombian constitution institutionalizes the existence of special districts where indigenous peoples exercise their collective rights. It also explicitly states that the exploitation of natural resources in indigenous territories should neither infringe nor threaten the cultural, social and economic integrity of indigenous communities (Republic of Colombia 1991, Art. 330). In contrast, the Peruvian constitution assigns neither specific rights nor territories to indigenous peoples as such. Between both extremes, these ideas are echoed in the constitutions of Venezuela (Republic of Venezuela 1999, Art. 120), Ecuador (Republic of Ecuador, Art. 57.7) and Bolivia (Republic of Bolivia, Art. 352), although in a less contentious way.

The Colombian Constitution of 1991 was the starting point for the creation of participatory state institutions, with mechanisms including popular initiatives for referendum, consultation, repeal, and open councils of citizens (Escandón and Velásquez 2015; Velásquez 2010; Velásquez and González 2012). It also established the fundamental right to control government power and new means of accountability such as forms of constitutional supervision by ordinary courts (*acción de tutela* and *acción de amparo constitucional*). Further regulatory developments were implemented by the National Planning Department through the National Council of Economic and Social Policy (CONPES). This third-order change has led simultaneously to the emergence of new assigned agencies and to the expansion of social accountability mechanisms at both the meso and micro levels. Among the main assigned agencies are national auditing offices, courts of auditors, district attorneys' offices, ombudsmen, national human rights commissions, etc. (Hernández and Arciniegas 2011b).

The Ecuadorian Constitution of 2008 eventually improved horizontal accountability through greater control over the executive by the legislative power, particularly in restricting oil exploitation within protected areas and indigenous territories and conditioning them to a declaration of national interest by the National Assembly or by referendum (Republic of Ecuador 2008, Art. 307). Although the Constitutional Court has not yet proven to be a hardline balance

agency, horizontal accountability has influenced the implementation of oil policy in indigenous territories through the National Assembly Special Commission on Biodiversity and Natural Resources (Republic of Ecuador 2013). Although this commission has no coercive power over the executive, it does act as a whistleblower to foster transparency through answerability of the Secretary of Hydrocarbons and the Petroamazonas national oil company. Thus, the avoidance of blame currently provides the main protection for indigenous rights to participate in oil policy.

b. Second-Order Change

The paradox in Colombia is the fact that, although many new rules have been adopted at the base of Constitutional Court jurisprudence,¹³ there is still general discontent among indigenous organizations regarding the implementation of prior consultation (Foundation of Due Process of Law 2011, 49). The constitution establishes the right to prior consultation as part of the civil right to participate (Republic of Colombia 1991, Art. 40). Its contents have been developed as a consequence of the judicialization of civil participation in Colombia, within the context of violence caused by the armed conflict that has led to the militarization of indigenous territories and the forced displacement of local communities. In addition to Law 21, secondary instruments of authority include Law 99/1993 on prior consultation regarding the exploitation of natural resources, Executive Decree 1397/1996 on prior consultation of indigenous communities, and Executive Decree 1320/1998 on the creation of a permanent coordination roundtable (Republic of Colombia 1996. Executive Decree 1397/1996). Other, weaker instruments were added through presidential orders in 2010 and 2013 regarding prior consultation procedures in order to cope with restrictive interpretation of the constitution by the Constitutional Court. At present, the right to prior consultation is strongly supported by Ruling 39/1997 on the right of the U'wa people to oppose oil exploration within their traditional territory, and Ruling 129/2011 on the right to “prior consent” when major projects threaten to affect indigenous peoples physically or culturally (Republic of Colombia. 1996, Executive Decree 1397/1996; Republic of Colombia. 2011. “Ruling ST-129”).

In Ecuador, there is also a claim for adequate means at the secondary level of regulation and effective communication channels between the state, indigenous organizations and other non-governmental organizations (NGOs) (Burgos 2015; DPLF 2011, 62). The implementation of prior consultation procedures has been more erratic there than in Colombia since the ratification of ILO

13 Republic of Colombia 1993, “Ruling T-308”; Republic of Colombia 1994, “Ruling T-001”; Republic of Colombia, “Ruling T-428”; Republic of Colombia 1997, “Ruling SU-039”; Republic of Colombia 2003, “Ruling C-620”; Republic of Colombia 2011, “Ruling ST-129.”

Convention 169 in 1998. Secondary instruments were initially introduced through Executive Decree 1215/2001 regarding environmental regulation of oil-related activities, and Executive Decree 3401/2002 on prior consultation regarding oil-related activities (Republic of Ecuador. 2001. Executive Decree 1215/2001; Republic of Ecuador. 2002. Executive Decree 3401/2002). Nevertheless, these initiatives were hampered by protracted conflicts over oil contamination and violation of the right to prior consultation within indigenous territories, so that no real progress has been recorded until recently. The Constitution of 2008 assumed most of the principles of the Constitution of 1998, which have since been significantly enhanced through a special chapter dedicated to the collective rights of indigenous and Afro-Ecuadorian peoples (Republic of Ecuador, Chapter 4, Art. 56-60) and a special chapter dedicated to civil participation (Republic of Ecuador, Chapter 5, Art. 61-65). In 2010 the National Assembly adopted the Organic Law on Citizen Participation, which qualifies as a superior norm in the Ecuadorian legal system. However, unlike its Colombian counterpart, the Constitutional Court of Ecuador has dismissed any interpretation of the right to prior “consultation” as a matter of prior “consent” through a ruling it handed down in 2010 regarding the scope of the Mining Law that had been adopted in 2009 (Republic of Ecuador 2013).¹⁴

Thus far, the instruments of treasury have proven to be much more precise in Colombia than in Ecuador. In Colombia they have been improved by the General System of Royalties —through different investment funds of the National Planning Department (Republic of Colombia 2008). Said royalties amount to between 8% and 25%, depending on oil and gas activities. They are distributed among the central administration (32%), departments (47%) and municipalities (12,5%), with an additional share allotted to ports (8%). According to Law 756/2002, indigenous peoples can receive a share from departments (5%) and municipalities (20%) for each well located within their territories and a five-kilometer buffer zone. In Ecuador they depend on the Ministry of Finance, so they are traditionally highly concentrated. The Financial Law of 2008 was intended to eliminate all mechanisms of pre-assignment through special funds (to the army, Amazonian provinces, universities, etc.). However, the current distribution of oil incomes actually coincides with the decentralized public administration map. Royalties amount to 25% and complement the 25% income tax paid to the state on oil activities. The Organic Code of Territorial Organization and

14 This refers to the case of “Saramaka People versus Surinam” that inspired the Interamerican Court of Human Rights ruling according to which the state should guarantee the effective participation of the Saramaka people, provide them with accurate benefits from the plan to be implemented in their territory, and suspend any further mining concession until environmental impact assessments be available. Regarding the distinction between prior consultation and prior consent, said ruling by the court indicates that the question requires further analysis (IACHR 2007, 41-43).

Decentralization adopted in 2010 formally recognized the indigenous territories as special territorial districts (Republic of Ecuador 2011, Art. 10, 72 and 93 to 103), which enjoy the same privileges as decentralized autonomous governments. Under this regulation (Republic of Ecuador 2011, Art. 192), local governments ought to receive 10% of non-permanent incomes from public spending (including oil incomes), in addition to their 21% share of permanent incomes. These incomes are distributed among provinces (27%), municipalities (67%) and smaller territorial entities (6%). Furthermore, local governments in the Amazon region also benefit from a special Amazon Region Ecodevelopment Fund that is financed by a one-dollar tax on each barrel of oil, as stipulated in Law 010/1992.

The instruments of organization are also quite well defined in both countries. The attempt to organize a permanent roundtable for coordination between indigenous organizations and the government in Colombia failed due to lack of legitimacy and indigenous groups' refusal to participate between 1996 and 2009. It was gradually replaced with thematic consulting commissions at the national and departmental levels. Initially, the Ministry of the Interior and Justice was in charge of prior consultation procedures, but these matters are currently being handled through the Department of Indigenous Affairs, Minorities and Roms, and the National Authority for Environmental Licenses. These agencies are accountable to legally elected indigenous authorities for activities carried out by the national oil company (Ecopetrol) and multinational oil companies within indigenous territories. In Ecuador, the government tried to centralize all indigenous affairs through the Department of Peoples, Social Movements and Citizen Participation between 2007 and 2013. The experience proved detrimental to the public interest since said department actually had no coercive power to counterbalance that of major ministries such as Energy and Mining, or Finance. The highest state agency for participation is currently the Council of Citizen Participation and Social Control (aka "The Fourth Power", since it is composed of members of civil society), but thus far it has had little to do with prior consultation on oil-related activities. The state agencies in charge of such procedures are the Ministry of Non-Renewable Resources (acting through the Secretary of Hydrocarbons) and the Ministry of the Environment (which is in charge of environmental licensing in protected areas). They are both accountable to the Coordinating Ministry of Strategic Sectors and to the National Assembly's Permanent Commission on Biodiversity and Natural Resources regarding the activities of Petroamazonas and its multinational partners.

Finally, the instruments of nodality are similar in both countries. They include social and environmental impact assessments, which have been institutionalized for the past two decades through environmental policies. In practical terms, these assessments include the right of local communities (including indigenous

peoples) to be informed about the risks involved in oil and gas activities, to monitor the management of the environment, and to obtain reparations and indemnities for negative impacts such as contamination, violation of territorial integrity, and damages to private property. Moreover, development planning in both countries is subject to social control by local populations. The National Council for Economic and Social Planning in Colombia and the National Secretary of Planning and Development in Ecuador elaborate multiannual policy documents within the constitutional framework of civic participation and prior consultation. Indigenous peoples in both countries are responsible for elaborating local development plans in accordance with the general national planning guidelines, to be applied to the special oil-financed public investment funds.

c. First-Order Change

Although the process of transition from constitutional reform to policy change was more erratic in Ecuador than in Colombia, since it underwent two constitutional reforms, the government in both countries showed a preference for weak executive instruments such as executive decrees.¹⁵ The instruments selected caused a legitimacy gap in the institutional system for ensuring accountability, which provoked fierce resistance among indigenous peoples and increased the conflicts in their territories over the past two decades (Fontaine 2003; 2010a). In Colombia, the conflict which confronted the U'wa community with the Occidental Petroleum company and the Colombian state constituted the most dramatic example of a policy failure, since neither the government nor the oil company were ever able to counteract the indigenous opposition to oil activities in their territory. Likewise, in Ecuador, the conflict between the Kichwa community of Sarayaku and the Arco and Burlington companies, and the conflict between the Shuar people of the Transkutuku area and CGC San Jorge epitomize the oil policy failures of all governments until now.

Before second-order change could improve enforcement by indigenous peoples and government answerability at an operational level, judicialization of accountability was required through Constitutional Court jurisprudence regarding the protection of indigenous rights. As mentioned above, the Constitutional Court in Colombia has been playing a key role in the enforcement of indigenous peoples' rights since 1991, unlike the Ecuadorian Supreme Court. Horizontal accountability has thus conditioned legal reforms and oil policy implementation in indigenous territories in this country, thanks to a high degree of coercion for constitutional protection.

15 In fact, the recurrent use of executive decrees to govern in conflictive situations is a strong indicator of the drift toward presidentialism, which weakens horizontal accountability. As such, it is a typical feature of delegative democracies in LAC. (Cf. O'Donnell 1994).

In Ecuador, the Permanent Commission on Biodiversity and Natural Resources purports to act as a balancing agency, by controlling the activities of Petroamazonas through assessments every six months prepared by the Secretary of Hydrocarbons. However, this control has only been mandatory for oil activities carried out in block 43 (aka ITT oilfields, for Ishpingo-Tiputini-Tambococho) since it was first established in 2013. This was done through declaration of the importance, in terms of national interest, of these reserves located within the Yasuni National Park (Republic of Ecuador 2013). In fact, the commission has no real capacity to sanction infringements of environmental licenses or violation of declarations of national interest except when they affect non-contacted peoples, a situation which is constitutionally codified as a risk of genocide.

In Colombia, the permanent consultation roundtable or local and national consulting commissions have endured severe criticism from, and low participation on the part of representatives of indigenous organizations. Nevertheless, constitutional protection of indigenous rights (through *acción de amparo* and *acción de tutela*) has led to sanctions such as the suspension of projects in progress and the conditionality of legislation prepared without proper prior consultation. This has improved horizontal accountability through greater judicial control over the executive and legislative branches. In the meantime, indigenous organizations and their supporters have gained international support from the InterAmerican Court of Human Rights, which has reaffirmed their right to prior consultation and recommended the application of precautionary measures to protect indigenous peoples from negative impacts of oil activities. However, in Ecuador this has also led to the criminalization of social protest and the militarization of indigenous territories, the multiplication of detention orders against indigenous and political leaders, and the persecution of environmental and human rights NGOs accused of illegal activities.¹⁶

d. Causal Mechanism

The right of indigenous peoples to prior consultation guaranteed through the adoption of C169 by national states is closely related to the existence of social conflicts over oil and gas extraction in indigenous territories. Once ratified by the legislative or the executive branch at the national level, it constitutes a non-electoral democratic control mechanism with little coercive power over the state, since there is no possibility of a veto or requirement of prior consent. Nonetheless,

16 The most infamous case of criminalization of social protest in Ecuador was the shutdown of the radical environmentalist NGO Pachamama in December of 2013, officially for administrative reasons, but actually for its activism against oil exploitation in the Amazon region, especially in indigenous territories. The decision was based on Presidential Decree No. 16 by which the government considerably increased its control over social organizations through their registration in the state information system (L19).

when combined with other political accountability mechanisms, it does become a powerful constraint on policy choices for non-state actors.

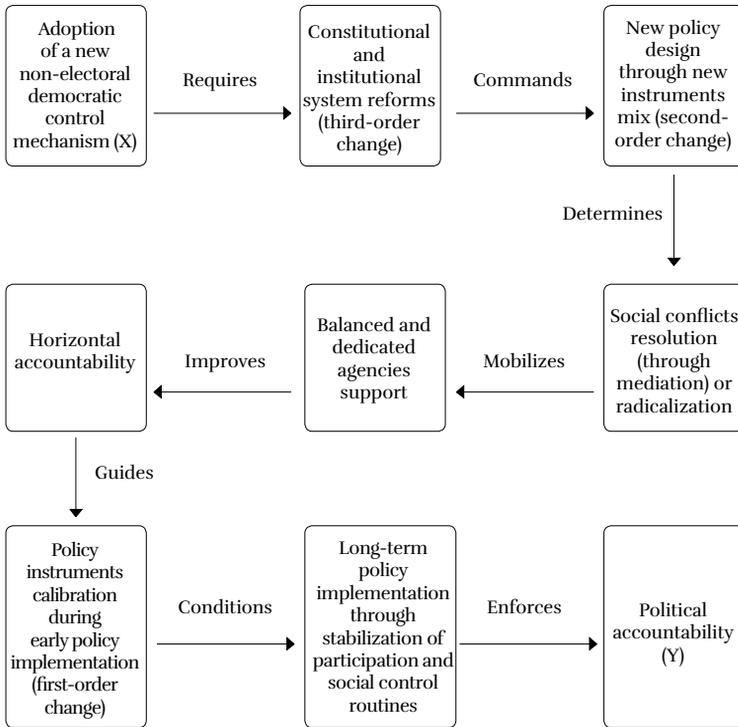
Constitutional reforms can complement the adoption of C169 by institutionalizing ideas regarding indigenous rights, but they are neither a sufficient nor a necessary cause for these rights to become effective. In Colombia and Ecuador the constitutional reforms of 1991 and 1998, respectively, were indeed influenced by the adoption of C169, but our research has shown that policy change followed different paths. While the constitutional reform in Colombia strengthened the balanced agencies that would later sustain second-order changes through policy control by the judicial branch, the 1998 reform in Ecuador was not sufficient to foster policy change in the absence of a strong and active constitutional court. Hence, a second reform was necessary in 2008 before a second-order policy change was able to institutionalize the new ideas regarding indigenous participation in determining oil policy.

When existing policy instruments institutionalize social control, prior consultation programs become an effective way to prevent or mitigate social conflicts. These first-order changes then constitute sufficient cause to improve participation through instrument calibration. In contrast, when third-order changes are not complemented by accurate policy design and institutional reforms, protracted social conflicts become more frequent. Hence, social conflicts are a sufficient though unnecessary cause of second-order change. They can either be a cause of improvement of accountability when mediated at a political level by balanced agencies, as in Colombia, or a cause of policy failure when demands by social actors are not supported by national balanced agencies, as in the case of Ecuador. The causal mechanism linking third-order change to second- and first-order change is presented in Figure 1.

The adoption of a new non-electoral democratic control mechanism, such as C169, triggers the process leading to increased accountability in sectorial policy such as oil and gas policies. Third-order change requires constitutional and institutional system reforms that constitute the first interplay between ideas and institutions. These reforms command a new policy design in different sectorial areas, through the selection of instruments that constitutes a second-order change.

The nature of the policy mix determines the way social conflicts are processed, either in a negotiated way when selecting consistent instruments regarding third-order change, or in a protracted way when these instruments lack consistency. This constitutes a second interplay between ideas and institutions, which mediates contradictory interests of social, economic and political actors. Non-state actors involved in these conflicts require the support of balanced agencies in order to counter-balance the executive power. The support of these agencies is fundamental for improving horizontal accountability and social control over the state.

Figure 1. Causal mechanism of the politics of accountability for C169



Source: Elaborated by the authors.

Horizontal accountability mechanisms then provide a guide to policy instrument calibration during the early moments of policy implementation. This is a third interplay between ideas and institutions, in which ideas supported by social actors are effectively taken into account by the government to increase accountability. Hence policy instrument calibration conditions long-term policy implementation through the stabilization of participation and social control routines. This eventually enforces political accountability in the reformed policy area, which can in turn be replicated to other areas.

Conclusion: Accountability as a Policy Problem

The policy of accountability is essentially designed for procedural purposes, inasmuch as it affects the relationships between state and society (Howlett 2011). It may be participatory in itself or it may correspond to hierarchical modes of governance. In any case, since it is mainly about regulation, it is centered on

“authority” instruments. This means that instrument mix overrates state legal resources, as opposed to nodality (information), treasury, and organization.

Accountability is a combination of three modalities, including vertical-electoral mechanisms, horizontal-intrastate mechanisms, and non-electoral democratic control mechanisms. The reason why governments actually bother about it is because they are obliged to do so by judicial and legislative power and by public opinion. In a context of increasingly complex interplay among state, society and the economy, non-electoral democratic controls are not an alternative to horizontal accountability aimed at strengthening vertical-electoral mechanisms: they depend on it. Otherwise these mechanisms are mere formalities since they do not imply coercion. Therefore, non-electoral democratic controls ought to be secured by horizontal accountability, so that assigned agencies can exert effective influence on the policy design and implementation by the government. Rather than substituting balance agencies, they provide a natural complement for them. However, without strong legal support, they remain subject to conjunctural variations, depending on the good will of the executive and the intensity of the social protest. In a delegative democracy, non-electoral democratic controls are not the solution: they are the problem.

The analysis of indigenous participation in oil and gas activities shows that the consistency of the instrument mix regarding accountability may vary from one country to another, depending on the relationships among state, society and economy on the one hand, and among the balance agencies on the other. However, a similar causal mechanism links macro level (third-order) to meso and micro levels (second- and first- orders) of the policy process, making policy change irreversible. After demonstrating that constitutional reforms are an insufficient but necessary condition for implementing third-order change regarding accountability, we have shown that they are an independent variable for second-order change, rather than the result, which confirms that third-order change consists of a discontinuity in the social learning process, rather than an accumulated effect of second-order changes.

Our research concludes that the initial ideational dimension of third-order change needs to be institutionalized through policy design improving horizontal accountability mechanisms that sustain non-electoral democratic controls. These mechanisms may later be calibrated through first-order change regarding the operationalization of accountability. This is ultimately the key to explaining the greater development of the right of indigenous peoples to consultation and participation in Colombia, in spite of the structural obstacles and the absence of any consistent instrument mix for the policy of accountability. This is also why we can expect that further development of accountability through non-electoral democratic mechanisms will depend on the degree of autonomy and coercion of these agencies, as well as the enforcement power of non-state actors.

Non-electoral democratic controls relate to the possibility of influencing and changing public action by individual and collective actors. They still aim at correcting the deficits of vertical-electoral and horizontal accountability, which remain common in Latin America, but they adopt more sophisticated modalities than prior mechanisms of social accountability, as and when they are institutionalized. Today, the question is not why governments should implement policies of participation and social control but how they actually do it.

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Annex

Annex 1. Indigenous peoples in oil and gas exporting countries around 2010		
	National population (million)	% indigenous
Brazil	190,8	0,5
Argentina	40,1	2,4
Venezuela	27,3	2,7
Colombia	46,5	3,4
Ecuador	14,5	7,0
Mexico	112,3	15,1
Peru	29,3	24,0
Bolivia	10,0	62,2

Source: elaborated by Guillaume Fontaine from ECLAC 2014, 37

Annex 2. Oil & gas rent in Latin America and the Caribbean (% GDP)												
	1995-1999			2000-2004			2005-2009			2010-2012		
	Oil rent	Gas rent	Total rent	Oil rent	Gas rent	Total rent	Oil rent	Gas rent	Total rent	Oil rent	Gas rent	Total rent
Argentina	1,16	0,52	1,68	3,30	2,53	5,83	4,56	3,51	8,07	3,15	1,00	4,15
Bolivia	2,06	2,70	4,76	3,85	7,71	11,56	7,64	23,47	31,11	5,35	8,93	14,28
Brazil	0,50	0,04	0,54	1,97	0,17	2,14	2,91	0,20	3,11	2,50	0,08	2,58
Colombia	3,52	0,33	3,85	5,00	0,78	5,78	6,40	0,92	7,32	7,80	0,44	8,24
Ecuador	7,86	0,00	7,86	14,00	0,04	14,04	22,40	0,18	22,58	19,31	0,08	19,39
Mexico	3,31	0,41	3,72	3,92	0,52	4,44	6,91	0,99	7,90	6,59	0,56	7,15
Peru	1,06	0,05	1,11	1,36	0,16	1,52	2,13	0,69	2,82	1,77	0,94	2,71
Trinidad & Tobago	10,73	7,65	18,38	10,80	25,08	35,88	13,55	43,70	57,25	11,63	24,58	36,21
Venezuela	21,13	2,70	23,83	25,95	3,49	29,44	31,48	3,40	34,88	25,44	1,27	26,71

Source: elaborated by Guillaume Fontaine from World Bank 2015

Annex 3. Latin American and Caribbean countries and the ratification of ILO Convention 169		
	Countries that have not ratified ILO C169	Countries that have ratified ILO C169
Oil and gas exporting countries	Trinidad and Tobago	Mexico (Senate Resolution/July 11, 1990) Colombia (Law 21/1991) Argentina (Law 24071/1992) Peru (Legislative Resolution 26253/1993) Ecuador (<i>Registro Oficial</i> 304/1998) Venezuela (Law 41/2000) Brazil (Executive Decree 5051/2004) Bolivia (Law 3760/2007)
Oil and gas non-exporting countries	Cuba El Salvador Panama Surinam Guyana French Guyana Uruguay	Costa Rica (Law 7316/1992) Paraguay (Law 234/1993) Honduras (Executive Decree 26-94/1994) Guatemala (Legislative Decree 9-96/1996) Chile (Executive Decree 236/2008) Dominican Republic (NC) Nicaragua (NC)

Source: elaborated by Guillaume Fontaine from ILO 2015; IADB 2015



Guillaume Fontaine is a sociologist of the Université Sorbonne Nouvelle-Paris III (France) and a political scientist of Sciences Po (France). Research professor at FLACSO Ecuador; member of the *Grupo de Investigación en Políticas Públicas Comparadas* of FLACSO Ecuador; member of the *Research Committee on Comparative Public Policy* (RC30) of IPSA (*International Political Science Association*); member of the *Comparative Public Policy Research Group* of ALACIP (Latin American Political Science Association); member of the Executive Committee of the IAPP (*International Association of Public Policy*). His lines of research are governance, public policy instruments, and comparative energy policies. His latest publications include: *El análisis de políticas públicas: Conceptos, teorías y métodos*. Quito, Barcelona: FLACSO, Anthropos, 2015; “The Effects of Governance modes on the energy matrix of Andean countries,” *Energy Policy* 39 (5), May 2011: 2888-2898; “The effects of energy co-governance in Peru,” *Energy Policy* 38 (5), May 2010: 2234-2244. ✉ gfontaine@flacso.edu.ec

Esther Sánchez Botero is an anthropologist of the Universidad de los Andes (Colombia) with a PhD from the Law School of the Universiteit van Amsterdam (Holland). National and international consultant for the BID, the Office of the National Attorney General of Colombia, *Cooperación Alemana, Ecopetrol, Oleoducto de los Llanos, Oleoducto al Pacífico, Oleoducto BiBIDcentenario*. Her lines of research are cultural and normative conflicts. Her latest publications include: “Pautas para el Fortalecimiento del Pluralismo Jurídico étnico y cultural en el Programa Nacional Casas de Justicia.” Bogota: Ministry of Justice and Law, Direction of Alternative Methods of Conflict Solution, ALVI Impresores, 2011; “El peritaje antropológico: Justicia en clave cultural,” Bogota: GTZ, Fiscalía General de la Nación, Embassy of the Federal Republic of Germany, ALVI Impresores, 2010. ✉ antropologajuridica@gmail.com

Marco Córdova is a political scientist and research professor with FLACSO Ecuador and PhD candidate in Social Sciences, with mention in Andean Studies, by FLACSO Ecuador. Member of the FLACSO Ecuador Research Group on Comparative Public Policies; member of the ALACIP (Asociación Latinoamericana de Ciencia Política) Research Group on Comparative Public Policies. His lines of research are political institutions and urban governance. His latest publications include: (with Alexandra Vallejo) *Riesgos urbanos en América Latina: Historia, sociedades y desastres*. Quito: FLACSO Ecuador, in press; *Influencia del Sistema Electoral y Sistema de Partidos en los procesos de democratización: Análisis comparado entre Chile y Ecuador*. Quito: FLACSO Ecuador, Abya Yala, 2011. ✉ mcordova@flacso.edu.ec

Susan Velasco is a sociologist, associate researcher with FLACSO Ecuador and PhD candidate in Social Sciences, with mention in Andean Studies, by FLACSO Ecuador. Member of the Comparative Public Policy Research Group of FLACSO Ecuador. Associate Professor at Universidad de las Américas in Quito (Ecuador). Her lines of research are: governance, public policy instruments, state reforms, and energy policies. His latest publications include: *La nacionalización pactada: una nueva forma de gobernanza sobre el gas boliviano*. Quito: FLACSO, 2011; (with Guillaume Fontaine) “La conceptualización de la gobernanza.” In *Gobernanza ambiental en Bolivia y Perú. Gobernanza en tres dimensiones: de los recursos naturales, la conservación en áreas protegida y los pueblos indígenas*. Quito: FLACSO, UICN, 2011. ✉ velasco_susan@yahoo